

DISCHARGE OF JOINT DEBTORS

Applicable Law and Rules

1. Section 302(a) of the Bankruptcy Code (11 U.S.C. § 302(a)) states that an individual and the individual's spouse may file a joint case.
2. Section 727(a) of the Bankruptcy Code states that the court shall grant the debtor in a chapter 7 case a discharge unless the debtor is not an individual, has committed any of certain specified actions, has been granted a discharge in a previous chapter 7 or chapter 11 case commenced within the last eight years, has been granted a discharge in a chapter 12 or chapter 13 case commenced within six years unless the debtor repaid either 100 percent of the allowed unsecured claims or 70 percent of such claims in the debtor's best effort under a plan proposed in good faith, or has failed to complete an personal financial management course after filing the bankruptcy case; the court has approved the debtor's written waiver of discharge; or the court finds that there is reasonable cause to believe that section 522(q) of the Code applies to the debtor and that there is a proceeding of the kind described in that section pending against the debtor.
3. Section 727(a)(12) of the Code states that the court shall not grant a chapter 7 debtor a discharge if, after notice and a hearing held not more than 10 days before the entry of the order granting the discharge, the court finds that there is reasonable cause to believe that section 522(q) of the Code applies to the debtor and that there is a proceeding of the kind described in section 522(q)(1)(A) or section 522(q)(1)(B) pending against the debtor.
4. Section 522(q) applies to an individual debtor who claims an exemption under state or local law in more than \$136,875¹ worth of section 522(p)(1) property.
5. Section 727(c)(1) of the Code states that the trustee, a creditor, or the United States trustee may object to the debtor's discharge under section 727(a).
6. Section 727(b) states:

Except as provided in section 523 [of the Bankruptcy Code], a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 [of the Code] as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 [of the Code], and whether or not a

¹ Subject to adjustment on 4/1/10 and every three years thereafter. 11 U.S.C. § 104.

claim based on any such debt or liability is allowed under section 502 [of the Code].

7. Section 524 of the Bankruptcy Code specifies the effect of a discharge in a chapter 7 case.
8. Fed. R. Bankr. P. 4004 states that a complaint objecting to a chapter 7 debtor's discharge must be filed not later than 60 days after the first date set for the section 341(a) meeting of creditors. On motion by a party in interest and after a hearing on notice, the court may extend the time for cause. The motion must be made before such time has expired.
- 9 Bankruptcy Rule 4004(c)(1) states:

Grant of Discharge. In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

- (A) the debtor is not an individual,
- (B) a complaint objecting to the discharge has been filed,
- (C) the debtor has filed a waiver under § 727(a)(10),
- (D) a motion to dismiss the case under § 707 is pending,
- (E) a motion to extend the time for filing a complaint objecting to the discharge is pending,
- (F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending,
- (G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);
- (H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;
or

(J) a motion to enlarge the time to file a reaffirmation agreement under
Rule 4008(a) is pending;

(K) a presumption has arisen under § 524(m) that a reaffirmation
agreement is an undue hardship; or

(L) a motion is pending to delay discharge, because the debtor has not
filed with the court all tax documents required to be filed under § 521(f).

10. Rule 4004(c)(2) provides that, on the debtor's motion, the court may defer the entry of an order granting a discharge for up to 30 days. On motion filed within the 30-day period, the court may defer entry of the order to a date certain.
11. Rule 4004(e) states that a discharge shall conform to the appropriate Official Form.
12. Rule 4004(f) provides for the registration of a certified copy of the discharge in another district.
13. Rule 4004(g) provides that the clerk shall promptly mail copies of the order of discharge to the debtor, creditors, the trustee, the trustee's attorney, and the United States trustee.
14. The exceptions to discharge in a chapter 7 case are set out in detail in section 523(a) of the Code.
15. Section 523(c) states that the debtor shall be discharged from certain kinds of debts specified in section 523(a) unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under section 523(a)(2), (4), or (6), as the case may be.
16. The deadlines for filing section 523 actions are set out in Fed. R. Bankr. P. 4007.
17. Section 727(e) of the Code states that the trustee, a creditor, or the United States trustee may request revocation of a discharge for the grounds set out in that section.

General Information for the Clerk

Form 18J may be used for the discharge of two joint chapter 7 debtors. Form 18JO may be used when only one of the debtors in a joint case is discharged. Official Form 18 is used for the discharge in a chapter 7 case filed by an individual debtor.

It is contemplated that the discharge will be prepared by the clerk, rather than by a party in interest.

The caption of a discharge for joint debtors should include all names used by each of the joint debtors within the last eight years, the debtors' address, and the last four digits of each debtor's social-security number or individual taxpayer-identification number.

While Bankruptcy Rule 2002(a) permits the court to order a person other than the clerk to give a number of types of notices, Fed. R. Bankr. P. 4004(g) requires the clerk to promptly mail a copy of the final order granting discharge to the debtor, all creditors, and parties in interest. The 1983 Advisory Committee Note to Rule 4004 states that notice of the discharge should be mailed promptly after the order becomes final "so that creditors may be informed of the entry of the order and of its injunctive provisions."