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Five Easy Ways to Lose a Discharge

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FIVE EASY WAYS TO LOSE A DISCHARGE

The materials below outline five common reasons a debtor may be denied a global discharge (§727) or denied the discharge of a particular debt (§523). For our purposes, the five easy ways to lose a discharge include:¹ 1) false oaths and false representations; 2) misconduct; 3) unexplained losses and failure to preserve records; 4) failure to follow divorce decrees and settlements and 5) failure to complete the plan. The cases here were chosen for their relevance or timeliness; however, many other cases can be found. In each case summarized below, the Debtor is referred to as “Debtor” and the party objecting to discharge is referred to as “Plaintiff, Trustee or Movant,” even in appellate cases.

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Although there is much overlap between the concepts listed above, for the purposes of this paper, we have divided the code as follows:

Section I: False Oaths and False Representations

§523(a)(2)(A)-(B)

§727 (a)(4)

Section II: Misconduct

§523(a)(3)

§523(a)(4)

§523(a)(6)

§523(a)(7)

§727(a)(2)

§727(a)(6)

§727(a)(7)

Section III: Unexplained losses and failure to preserve records

§727(a)(3)

§727(a)(5)

Section IV: Failure to follow divorce decrees and settlements

§523(a)(5)

§523(a)(15)

Section V: Failure to complete the plan

§1322(b)(5)

§1328(a)(1)

¹ This paper also includes a miscellaneous section which describes additional reasons a debtor may lose, or have a particular debt excepted from discharge.

I. False Oaths and False Representations

The following is a sampling of cases which describe the denial of discharge, or the exclusion of a particular debt from discharge, due to false oaths and fraud under sections 523 or 727.

Bankruptcy Code Sections Discussed

§523(a)(2)(A)

a discharge does not discharge a debtor from any debt-
for money, property, services, or an extension, renewal, or
refinancing of credit to the extent obtained by-
false pretenses, a false representation, or actual fraud, other
than a statement respecting the debtor's or an insider's
financial condition

§523(a)(2)(B)

a discharge does not discharge a debtor from any debt-
for money, property, services, or an extension, renewal, or
refinancing of credit to the extent obtained by-
use of a statement in writing-
that is materially false;
respecting the debtor's or an insider's financial
condition;
on which the creditor to whom the debtor is liable for
such money, property, services or credit reasonably
relied; and
that the debtor caused to be made or published with
intent to deceive

§727(a)(4)

the court shall grant the debtor a discharge, unless
the debtor knowingly and fraudulently, in or in connection with the
case-
made a false oath or account;
presented or used a false claim;
gave, offered, received, or attempted to obtain money,
property, or advantage, or a promise of money, property or
advantage, for acting or forbearing to act; or
withheld from an officer of the estate entitled to possession
under this title, any recorded information, including books,

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