

# Popular Threads on Solosez

## Getting Rid Of Law School Debt Via Bankruptcy

I know you cannot get rid of law school debt via Bankruptcy, but I had an idea that I shared with colleagues the other day. Now, I do not plan to declare bankruptcy, but this conversation got interesting and I wanted to share it and see what people's thoughts are.

What if one were to transfer all law school loans to various credit cards, pay the minimal amount for a year or so, and THEN declaring bankruptcy. Alternatively, take out a home mortgage to pay off loans and then declaring bankruptcy...etc.

In other words, changing the substance of the loan.

Hmmmmm....would it work?

Mazen Salfiti

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Sounds like fraud to me!

Larry David

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I believe this was done already by someone in PA. IIRC, the debt was discharged. Of course, there was probably a passing of time b/w when the school loans were transferred to the credit cards and the bk.

Fred DelSignore

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Fraud upon whom?

Does this mean every person who uses a credit card with the knowledge they are likely or are going to file bankruptcy soon commits fraud upon the credit card provider? And this would enable the credit card provider to avoid a discharge of the debt?

Just curious.

Ed Lawson

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I think fraud is certainly a possibility. Would it be fraud if you did it because the interest rate was lower (and somehow also fixed which is a



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possibility, but not likely a credit card would offer you enough credit to transfer the entire balance, and even so the minimum payments will be higher because they don't plan on having you spend 30 years paying it)?

Chances are if the credit card companies notice very large balance transfers used to go to educational loans they would bring adversary proceedings claiming they aren't dischargeable either for fraud or due to the fact they are actually student loans even if they are now credit card debt. And then you'd be stuck paying way more interest than you ever imagined on debt that is now probably less than 5%/yr?

If you obtained a home loan to pay for them, then the mortgage company would foreclose on the house if you didn't want to pay your mortgage so that would defeat the purpose of filing bankruptcy, unless you don't want the house anymore. But if that's the case (and there is sufficient equity in the house to avoid a deficiency) why even bother filing bankruptcy?

Lesley Hoenig

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I worked for a bankruptcy judge for a summer and this exact 'idea' was discussed when an attorney representing a bankruptcy client, had also previously filed bankruptcy a few years prior but did not get his loans discharged. I asked the judge, theoretically what would happen if he had paid off his loans with his credit cards then a year later filed bankruptcy. The answer - only if the attorney's financial situation had gone down would the judge not be suspect that this was the original intention of the attorney, since the attorney originally charged the cards up knowing what the payments would be. But the judge also mentioned that if the attorney had been making payments for a year or more and missed a few payments causing the interest to go up, and the attorney could demonstrate that he/she could not continue to pay the payments, then it might not be so suspect. (This was before BACPA though.)

William Devine II

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But it would not be fraud if the person intended to achieve cheaper interest rates by transferring the loans to such a credit card and fully intended to pay off his/her loans. (I know that these additional facts were not in my original fact pattern.)

Mazen Salfiti

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It was a case that I handled before the Third Circuit. In that case, the debtor, a Podiatrist had an undue hardship and was able to discharge his \$250,000 plus student loan. The Opinion tells a lot but doesn't give all the detail. If you wish to hear more, please call me.

David J. Harris, Wilkes-Barre, Pennsylvania

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I couldn't remember all the facts but thought that the person had paid off the student loans with credit cards and then after a period of time had filed for bankruptcy. Not sure if this is the same case that you handled or not.

Fred DelSignore

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I believe the facts indicated the borrower would transfer the debt from the student loan organization to another lender with the intent, AT THE TIME OF THE DEBT TRANSFER, of declaring bankruptcy within a short period of time. This is a promise to pay when the promisor has no intention, at the time the promise is made, of keeping the promise. I believe this matches the definition of common law fraud.

Larry David

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The more interesting question to me is if a cc holder has run up a large balance, knows he is going to file and then charges a tank of gas on the card, to what extent can the cc provider claim fraud regarding the outstanding balance. I assume only on the gas, but assumptions are deceptive things.

Ed Lawson

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The case did not involve a satisfaction of a student loan debt by use of a credit card. It was merely a student loan dischargeability case invoking the undue hardship exception. (My post overlapped with the e-mail inquiring about the use of a credit card.) It was decided by a three member panel including some guy named Alito. (The panel really adhered to strict construction). Go onto the Third Circuit's homepage and type the debtor's name: Pelliccia. It is a non-precedential opinion in analyzing the third prong of the Brunner test.

David J. Harris, Wilkes-Barre, Pennsylvania

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The transfer of the law school debt better be pretty well hidden and undocumented because BK does not look kindly on fraudulent transfers (which go back for 12 months or more depending on the severity of the fraud).

In other words, don't do it!

Robert C. ("TJ") Thurston, Huntley, Illinois

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I don't think there would be fraud here, because:

If he pays the cards for a year, how would anyone be able to prove his intent?

Second, by transferring the student loan debt to credit cards (and paying the minimum monthly payment for a year), you in fact pay off the student loan. I think the time limit to avoid a fraudulent transfer issue is 90 days, but if I'm wrong, OK.

however, I suppose a glitch would be the interest rate issue. I don't know what loan rates actually, but suppose the student loan is X, and the credit card loan is X+. It makes no sense to move the loan to a higher interest card.

And of course the other issue is the whole notion that the scheme is immoral and unethical, and shame on any attorney who discusses it in more than a purely academic sense.

Barry W. Kaufman, Jacksonville, Florida

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" I think the time limit to avoid a fraudulent transfer issue is 90 days, but if I'm wrong, OK."

You're thinking of "Preferences" 11 U.S.C. Sec. 547.

Fraudulent transfers are 1 year (and maybe longer depending on circumstances). 11 U.S.C. Sec. 548.

Robert C. ("TJ") Thurston, Huntley, Illinois

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absolutely, it was only legal banter on my part... just a bunch of law school chums hacking it up the other day!

Mazen Salfiti

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