

**ORDER DISCHARGING DEBTOR BEFORE COMPLETION
OF CHAPTER 12 PLAN**

Applicable Law and Rules

After confirmation of the chapter 12 plan, the court may grant a discharge to a debtor that has not completed payments under the plan only if:

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of [the Bankruptcy Code] on such date; and
- (3) modification of the plan under section 1229 of [the Bankruptcy Code] is not practicable.

11 U.S.C. § 1228(b). The court can grant the so-called “hardship discharge” only after notice and a hearing.

The chapter 12 hardship discharge discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of the Code, except payments to the holders of certain long-term claims and the kinds of debts specified in section 523(a) of the Code. Some common types of debts that are not discharged are listed on the back of Form 18FH.

Section 523(c) states that the debtor shall be discharged from the kinds of debts specified in section 523(a) unless, on request of the creditor to whom such debt is owed, the court determines that the debt is excepted from discharge under sections 523(a)(2), 523(a)(4), or 523(a)(6) of the Code. A complaint to determine the dischargeability of a debt in a chapter 12 case pursuant to section 523(c) must be filed not later than 60 days following the first date set for the meeting of creditors. Bankruptcy Rule 4007(c). The court may extend the time but the motion to extend must be filed before the time has expired.

The court may not issue the hardship discharge until it has determined that there is no reasonable cause to believe (1) that section 522(q) of the Code may apply, and (2) that there is a pending proceeding of the type described in that section. 11 U.S.C. § 1228(f). Section 522(q) applies if (1) the debtor has claimed an exemption under state or local law in more than

\$136,875¹ worth of property of the type described in section 522(p)(1) of the Code and (2) there is pending a proceeding in which the debtor may be found guilty of one of the types of felonies described in section 522(q)(1)(A) or found liable for a debt of the kind described in section 522(q)(1)(B).

An individual debtor who claims an exemption under state or local law in more than \$136,875 of section 522(p)(1) property must file a statement as to whether section 522(q) applies. Rule 1007(b)(8). The court may determine that section 522(q) does not apply if the debtor has not filed a section 522(q) statement and no party has filed a motion requesting that the court make a determination under section 522(q) or section 1228(f). If the debtor is required to file the section 522(q) statement, the court may not issue the discharge until at least 30 days after the statement is filed. Rule 4004(c)(3).

Section 524 of the Code sets out the effect of a discharge in a chapter 12 case.

Rule 4004(f) provides for the registration of a certified copy of the discharge in another district.

General Information for the Clerk

This form is for use in a chapter 12 case in which the debtor receives a so-called “hardship discharge” pursuant to section 1228(b) of the Code despite not completing the plan payments. Form 18F may be used if the debtor has completed the plan payments.

Notice and a hearing are required before the court grants a chapter 12 hardship discharge. 11 U.S.C. § 1228(b). Rule 4007(c) does not provide for a new period to file dischargeability complaints when a chapter 12 debtor requests a hardship discharge.

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 and the last four digits of each debtor’s social-security number or individual taxpayer-identification number.

While Rule 2002 permits the court to order a person other than the clerk to give a number of types of notices, Rule 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.”

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