

**CHECKLIST FOR MOTIONS FOR ORDER DIRECTING CLERK OF COURT  
TO DISCHARGE JUDGMENTS DISCHARGED IN BANKRUPTCY**

- Only judgments against the bankruptcy debtor(s) may be listed in the motion and proposed order.** Although a judgment may have been entered against a bankruptcy debtor and a formal business entity, spouse or former spouse, or other associate or family member, only the judgment against the bankruptcy debtor(s) may be included in the motion and proposed order. An order under S.D.C.L. § 15-16-20 has no effect on the judgment against any other person or entity against whom the judgment was entered.
- All judgment creditors listed in the motion were scheduled and received notice of the bankruptcy case before the discharge was entered.** If the judgment creditor was not scheduled and did not receive the Notice of Commencement of Case from the Bankruptcy Clerk before the discharge was entered and if the case was a no-asset Chapter 7 case, the debtor must obtain a voluntary waiver of notice from the judgment creditor and attach it to the motion or the debtor must commence an adversary proceeding under § 523(a)(3) seeking a declaration that the unscheduled debt was nonetheless discharged.
- All judgment listed in the motion represent a debt that was actually discharged.** Some debts/judgments are not automatically discharged and may not be included in the motion. For a Chapter 7 case, these include, from § 523(a):

- 523(a)(1) - certain taxes;
- 523(a)(3) - certain debts not listed in the debtor's schedules;
- 523(a)(5) - family support debts;
- 523(a)(7) - fines and penalties to governmental units;
- 523(a)(8) - student loans (unless hardship declared by court through an adversary proceeding)
- 523(a)(9) - debts arising from death or injuries associated with a DWI;
- 523(a)(10) - debts declared non dischargeable in a previous bankruptcy;
- 523(a)(11) - certain insurance and bank related judgments or orders;
- 523(a)(12) - certain FDIC related obligations;
- 523(a)(13) - criminal restitution obligations from federal crimes;
- 523(a)(14) - debts incurred to pay non dischargeable taxes;
- 523(a)(16) - certain co-op or condo fees;
- 523(a)(17) - certain federal court or prisoner costs and expenses; and
- 523(a)(18) - family support payments owed to a state.

For certain other judgments/debts to be declared non dischargeable, the creditor must timely seek and obtain a judgment of non dischargeability from the Bankruptcy Court. If a non dischargeability adversary proceeding has not been timely filed under the following four subsections of § 523(a), the debtor's motion to discharge judgments may include judgment of this nature:

- 523(a)(2) - fraud based debts;
- 523(a)(4) - debts arising from fraud or defalcation by a fiduciary or from larceny or embezzlement;
- 523(a)(6) - debts arising from willful and malicious injuries; and
- 523(a)(15) - certain property settlement debts arising from a divorce or formal separation.

In a Chapter 11 case for *an individual*, the debts listed under § 523 are excepted from discharge in the same manner as in a Chapter 7 case.

In a Chapter 12 case, the debts listed under § 523(a) are excepted from discharge in the same manner as in a Chapter 7 case. The other debts excluded from discharge in a Chapter 12 case are those long-term debts that are being paid beyond the plan term, as provided by § 1228(a), which incorporates §§ 1222(b)(5) and (9), and those debts not "provided for by the plan", as stated in § 1228(a). (Different statutes may apply if a hardship discharge is granted.)

In a Chapter 13 case, the only debts excepted from discharge are those listed under §§ 523(a)(5), (8), and (9); those for restitution, for a criminal fine, included in the sentence on the debtor's conviction of a crime, as provided by § 1328(a)(3); long term debts being paid beyond the plan term, as provided by § 1322(b)(5); and those debts not "provided for by the plan", as stated in § 1328(a). (Different statutes may apply if a hardship discharge is granted.)

- All judgments were for pre-petition debts.** If a particular judgment was entered post-petition for a pre-petition debt, a motion under § 15-16-20 is still applicable. See 11 U.S.C. § 524(a)(1) (a discharge "voids any judgment at any time obtained"). However, the debtor will bear the burden, if necessary, of proving that the post-petition judgment included in the motion is actually for a pre-petition debt.
- The form for the motion, notice, and proposed order set forth in the Local Bankruptcy Rules, Appendices 28, 29, and 30, have been followed.**
- The motion and proposed order list the name of each judgment holder, the civil number of the state court proceeding, the date (month, day, and year) the judgment was entered, and the amount of the judgment.** A motion under S.D.C.L. § 15-16-20 applies only to judgments entered by the circuit courts of the State of South Dakota. The Federal District Court for the District of South Dakota requires only a copy of the general discharge order to discharge a judgment on its books. Some other states also require only a copy of the general discharge order. Check with court officials or a bankruptcy attorney in a particular state to learn their local procedure, if any.
- The motion and notice have been served on each judgment creditor and the creditor's attorney, if known.** Look to the schedules or mailing list in the Bankruptcy Court file and/or the county's judgment entry for the name of any attorney that represented the creditor.

If the judgment creditor is now at an unknown address, state in the motion what efforts have been made to locate a current address.

If judgment creditor is a business that no longer exists, state in the motion how that information is known.

The debtor is no longer required to serve a motion to discharge judgments on the case trustee, the United States Trustee, the United States Attorney (unless the federal government is the judgment holder), or the county clerk of court. (The clerk of court will, of course, receive the order.)