

3rd edition

Bankrupt Your
Student Loans
And Other
Discharge Strategies

You Can Do It!

By Chuck Stewart, Ph.D.

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**Learn the inside tips from the author
who successfully bankrupted \$54,000
in student loans!**

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Publisher's Page

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Dedication

To Dean Moffat and James Cabral whose long-time friendships have given me the strength to believe in myself as a writer.

— C.S.

To the readers of this book who had the courage to take the law into their own hands.

Acknowledgments

The author gratefully acknowledges Bonnie Bell for her insightful editing and attention to details in the production of this book; and to Jim Dochterman for his help and support.

About the Author

Chuck Stewart received his Ph.D. in Education from the University of Southern California. Since that time he has written almost 100 academic articles and fifteen academic books including a law dictionary (ABC-CLIO Publications), 3-volume encyclopedia on world culture and politics (Greenwood Publishing), diversity training programs (SAGE Publications), and environmental textbooks on the hazards of lead and mold in residential real estate. He won the David Cameron Legal Research Award in 2001, the President's Award from the Southern California Lambda Medical Association (1999), and multiple grants for academic research and writing by the Institute for the Study of Human Resources (ISHR). He has been responsible for researching and writing a number of teaching curricula and textbooks including some used at the Los Angeles Police Academy. He is a respected author and lecturer.

If you purchase this book, you will gain access to a library of documents, educational videos, and other help from the website— www.BankruptYourStudentLoans.com.

If you have comments or questions about this book, you are welcome to contact Chuck Stewart via E-mail at: info@BankruptYourStudentLoans.com. Please be courteous. Realize that hundreds of E-mails each week come into BankruptYourStudentLoans.com mostly from people asking legal advice. Chuck Stewart is not an attorney and provides legal information, not legal advice. Please don't ask specific questions about your own situation. But, if you have a unique question or slant on the student loan problem and suggested solutions that could benefit others, do write. This book is, in many ways, a community outpouring on the topic since the legal profession and Department of Education actively discourage an honest discussion on the student loan problem.

Chuck Stewart's bankruptcy case is public information and can be found at the California Central Bankruptcy Court case LA04-19681ER, filed August 2004.

FOREWORD

July 2009

A PERSONAL LETTER FROM THE AUTHOR,

I want to personally thank you for buying *Bankrupt Your Student Loans and Other Discharge Strategies*. You made a wise choice to educate yourself on this important topic.

You are embarking on a very difficult and personal struggle. I have been there. I was faced with overwhelming financial debt of which student loans seemed an insurmountable problem. I was told it was impossible to bankrupt my student loans. Attorneys actually laughed at me and wanted exorbitant amounts of money to represent me— and then predicted I would lose. When the U.S. Attorney laughed at me for asking how to bankrupt my student loans I felt I had nothing to lose by representing myself. But the problems were daunting. There simply were no books or resources revealing how to go about this.

I wrote this book to help honest debtors, like you, to have the best chance at representing yourself in attempting to bankrupt, or have discharged, your student loans. Not everyone buying this book should consider bankruptcy. There are other means to discharging student loans. The book covers a multitude of options. Perhaps one of them will work for you.

I hope you visited our website— www.BankruptYourStudentLoans.com— and downloaded the Table of Contents and Chapter 1 to help in your decision to buy the book. Not all debtors qualify to attempt to discharge their student loans through the bankruptcy “undue hardship” exemption. However, the book also gives information and strategies for direct negotiations with the Department of Education. Even if you cannot bankrupt your student loans, perhaps you can strongly negotiate with the Department of Education for better loan terms or the discharge of part, or all, of your student loans. The book can help with this negotiation.

Once you complete the process, or decide not to go forward, may I suggest that you donate the book to your local library. If the book is unblemished, they can put it in their reference section. You will be helping future debtors with their problem.

I want to share that during the adversary proceeding process there were times I felt angry, overwhelmed, under attack, like giving up, confused, and more. It is a very emotional journey made difficult by attorneys who are paid not only defend the government, but to attack you. My heart goes out to you.

You are welcome to contact me with questions about the book. I cannot, however, help you with your particular case since I am not an attorney. I would like to hear about your case along with any new insights to add to future editions to the book.

Since the publication of the first issue of this book, hundreds of people have contacted me with their plight. Some common questions have come up that made it necessary to write a third edition. The most common question comes from those who have already been through bankruptcy to only learn that it may have been possible for them to include their student loans. I have heard the pain and anger in their E-mails at being told (or better yet duped into believing) it was impossible to bankrupt their student loans. It may be possible to reopen a bankruptcy and pursue an adversary proceeding. A number of people are trying this approach at

this time. I've included a generalized petition they are using. It seems a strategy worth pursuing since tens of millions of people who have been through bankruptcy are still struggling with the burden of student loans. Watch our website for developments on this new strategy. I hope it works. It could open the floodgates of litigation; something I hope happens, as I believe this is the only way to bring this daunting problem to the attention of Congress.

Besides some legal updates, this edition contains:

- Discussion and forms related to reopening a bankruptcy for the purpose of including student loans and filing an adversary proceeding.
- Extended discussion on the Compromise and Write-Off procedures. There seems to be many people who are not considering bankruptcy but live under crushing student loan debt and need to do something to make life more bearable. Here I discuss more the psychology behind these two discharge strategies.

A website– www.BankruptYourStudentLoans.com– has been created specifically on this topic. If you buy this book, you will gain access to the members only section of the website. As a member, you will:

- Gain access to all forms in downloadable format
- Have access to many videos explaining specific aspects of the adversary proceeding including discussions on the overall problem and strategies.
- Be able to share your stories and questions with others in an open Forum.

The website hopes to become a community center where people can come together to help one another on this important topic.

As you read the book, you may come to understand that besides your specific situation, there is need for a complete revision of the student loans discharge options. A national political movement of debtors, attorneys and community activists is needed to address the growing student loan problem. One purpose of the website is to become a center for this political movement. The website contains links to various student loan activists groups. Hopefully attorneys who believe in the cause will join in and help develop a nationwide resource of legal centers and attorneys who are willing to work with debtors on this problem.

Ultimately, I would like to see class action suits attack the inherent unfairness of the adversary proceeding. Student loan debt needs to be reclassified back to being unsecured debt dischargeable through standard bankruptcy process. In the future, there should be no need for this book. Let's work to make this happen.

Best of luck.

Chuck Stewart (*See [About the Author](#) for contact information.*)

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CHAPTER 1

You Can Do It!

You have been told that it is impossible to bankrupt your student loans. Attorneys tell you this, the Department of Education tells you this, and it is common knowledge. But it is not true.

You can bankrupt your student loans or discharge your student loans through other means.

However, until now it has been a secret and very difficult. With this book, you will learn that it is, in fact, easy, just emotionally challenging.

Chuck Stewart, Ph.D., author of this book, successfully bankrupted over \$54,000 in student loans as part of a Chapter 7 bankruptcy. Like many of you, after receiving his college degree he experienced years of difficulty getting employment. Either the job market was tight, or his degree was in a field that had too many other job seekers, or he lived in the wrong place with few jobs, or the company he worked for downsized and he lost his job, and more. If he tried to get “any” job, including ones well below his education, he was not hired because he was “over-qualified.” As he got older, ageism became a real barrier to employment. Years of part-time employment took its financial toll. Credit card debt mounted. He lost his house. He supported his very ill partner who eventually died. After 10-years of struggle, he had large debts, no retirement, no savings, no medical insurance, and little hope of ever finding a decent job. He subsisted at the poverty level.

Many of you have experienced similar problems: loss of job, years of part-time employment, never getting ahead. Many of you have your own medical illnesses — not bad enough to get you permanent disability (for which you could have your student

Overruled!

Jonathan G, 46, had \$100,000 in student loans incurred while earning a degree from the New England Conservatory of Music. He performed with two city orchestras and finally won a position with the Louisiana Philharmonic Orchestra in New Orleans. Even after reaching this high level of professionalism, he taught cello at Tulane University to earn a paltry \$20,000 a year. He filed bankruptcy to try and get out from under the crushing debt.

Attorneys from the Department of Education and a guarantee agency that held some of the loans scrutinized his living expenses and argued that he could trim his expenses if he canceled his Internet services (\$23.90/m), gym membership (\$48.51/m) and got rid of his cat (\$20/m). The bankruptcy judge sided with Mr. G saying that the Internet service was needed to look for work, the gym membership to work out the pain in his back caused from playing the cello, and the expenses related to the cat were not “luxuries” considering Mr. G was single and living alone. The judge ruled the loans caused an “undue hardship” and were discharged.

The Education Department appealed and Mr. G lost. The federal appellate court suggested Mr. G find a job as a music-store clerk.

Hechinger, J. (January 6, 2005) U.S. Gets Tough on Failure to Repay Student Loans, *Wall Street Journal*, v.CCXLV n.4.p.1



loans discharged) — but bad enough to push you into poverty and keep you there. Or maybe you are taking care of someone with medical needs and that is pushing you over the financial and emotional edge. Medical problems are the number one cause of bankruptcy. It is estimated that two-thirds of all bankruptcies are precipitated by crushing medical bills. For some of you, either you did not finish your education or the training program you paid for was of such low quality or with outdated skills that you never landed a better paying job. In either case, education did not lead to a better life and participation in the American dream. Now you are saddled with student loan debts for an education that did not benefit you. How aggravating!

Of course, the recent decline in the economy is devastating many families. Bankruptcy looms to which student loans add an extra burden.

This book is for you.

What This Book Covers

This book discusses many strategies for discharging your student loans. The focus of the book is to help you discharge your student loans through either bankruptcy OR direct negotiation with the Department of Education (what is termed *Compromise* or *Write-Off*).

Bankruptcy: This book gives the step-by-step procedure for filing, mediating, and arguing an adversary proceeding as part of bankruptcy. *Student loans are not dischargeable in a straightforward bankruptcy.* Student loans are listed as part of the over-all debt in bankruptcy, then, usually within 60 days of the creditor meeting, an adversary proceeding is filed with the bankruptcy court against the U.S. Department of Education to prove that repaying the student loans will create an “undue hardship.” If you prevail, the court will discharge all or a portion of your student loans as part of your bankruptcy.

Many people have already been through bankruptcy. Most were told it was impossible to include their student loans in bankruptcy or that it was very very

“difficult” and shouldn’t be tried. As such, they did not file an adversary proceeding in conjunction with their bankruptcy filing. Upon publication of this book, some debtors have sought to reopen their previous bankruptcy to attempt an adversary proceeding. This strategy is discussed in detail later in this chapter.

Negotiating a Discharge: If you are not planning a bankruptcy, this book can still provide important information for negotiating a reduction or discharge of your student loans through the *Compromise* or *Write-Off* procedures.

No other book provides the information or guidance needed to help you discharge student loans through bankruptcy or negotiation.

This book provides:

- Step-by-Step process for filing an adversary proceeding or negotiating a Compromise or Write-Off; and, if needed, reopening a bankruptcy
- All forms
- Sample forms
- History and Analysis of the student loan program and its enforcement to help you prepare your own arguments.
- Mediation strategies
- Many more resources

Why You Should Use This Book

When the author of this book first contemplated bankrupting his student loans as part of his Chapter 7 bankruptcy, he sought the advice of a number of attorneys. All of them said it was virtually impossible to win an adversary proceeding but that they would take on the case for \$10,000 up front and \$450 per hour with court fees. Even still, they said he most likely would not win. The author was broke, down to his last \$300, and could not possibly pay the attorney fees. So, he thought he had nothing to lose by representing himself. Being an academic with a number of published books (including a law dictionary), he researched the problem.

First, he discovered that people who represent themselves in an adversary proceeding are more likely to win. Judges are aware that if you can afford a high-priced lawyer, you are obviously not in terrible financial need. Also, you know your situation better than any hired attorney. You can argue your case with greater fervor and conviction.

Second, until the release of this book, there was no concise information that addressed the problem of bankrupting student loans through an adversary proceeding or negotiating a discharge through Compromise or Write-Off. The author researched many law journals, cases, and books to pull together everything that is needed to attack this problem. He also spoke with a number of people who have gone through the process, gleaned from them bits of information that is never written in law journals.

Third, this is a very personal journey. There are many self-help law books that describe the bankruptcy process. When it comes to student loans, they devote less than a page to the problem and refer you to an attorney. These books are well written but very impersonal. An adversary proceeding is very different. The courts will pry deeply into your life, making judgments every step along the way. They will question your purchasing decisions, e.g., did you minimize living expenses by getting rid of your pet to free up \$20 more a month to make payments to the government (see the box at the beginning of this chapter describing the ordeal of Mr. Jonathan G). They will question your inability to find work and much more. You will feel besieged and belittled. The author of this book has been through this process and shares his experience about how to minimize the government's efforts to beat you down, and, thus, win your case. No attorney isolated in a glass office, living in the upper levels of income, can possibly understand this.

And **fourth**, there is a track record of success by people who have used this book. Of the people who have corresponded with the author about their experiences, everyone has expressed their gratitude for the help received from the book. Many have either

renegotiated their loans for much better terms or have successfully bankrupted all or most of their student loans. The most successful case to date achieved a discharge of \$225,000 through bankruptcy in 2009. Although the author cannot provide legal advice, he would like to hear your stories to improve future updates of this book. See the contact information on the "About the Author" page. Let's make it better for honest debtors to legitimately discharge student loans.

Who Qualifies for an Adversary Proceeding, Compromise, or Write-Off and When are they Applied?

You may qualify to file for an Adversary Proceeding, Compromise, or Write-Off if:

- You have student loans backed or issued by the U.S. Department of Education that you want to have discharged.
- You cannot maintain your current living standard if forced to repay your outstanding debt, including your student loans.
- There are circumstances that will prevent you from obtaining sufficient income in the future to repay your student loans.

Considering Bankruptcy

- You are ready to file, or have filed, a Chapter 7, 11, 12 or 13 Bankruptcy.
- It has not been more than 60 days since your meeting with your creditors.

Previous Bankruptcy

- Have already completed a bankruptcy and want to reopen the bankruptcy for the purpose of including your student loans.

Not considering Bankruptcy

- There are circumstances that will prevent you from obtaining sufficient income in the future to repay your student loans. These include: job market; familia obligations; discriminatory factors such as age, race, sexual orientation, gender; and other circumstances.

The courts have developed a number of comprehensive tests that delve much deeper into your living and financial conditions than the usual bankruptcy courts. These tests have revealed a number of rule-of-thumb guidelines that if you do not meet the conditions, it will be very difficult to explain away. Not that they are impossible to overcome, but it will be very difficult.

These conditions include:

- Your student loans should not make up more than 50% of your total debt.
- You should be living at or near the Federal Poverty Guideline.
- More than 5 years should have passed since obtaining your last student loan.
- You have been diligent in making payments on your student loans. When you were unable to make loan payments, you showed diligence by delaying payment through the proper use of forbearances and deferments, or negotiated alternative repayment plans.
- There should be a sense of “*hopelessness*” with the circumstances of your case.

Even though these are guidelines many courts have adopted, they are not set in stone. It is our hope that with the onslaught of adversary proceedings generated through use of this book, the guidelines will be challenged and changed. Many of the guidelines are not logical and were never specified by Congress. For example, as you will read in this book, the adoption of the Federal Poverty Guideline to determine “undue hardship” was arbitrary. There are other federal measures of poverty. Why was this one— which is the most restrictive and not based on poverty but on survival— adopted by the courts? Easy, the Department of Education used it in one of the earliest cases and it stuck. It is arbitrary and abusive. It needs to be challenged and changed. A few courts have decided that a standard of living below middle-class is an “undue hardship” thereby overruling the accepted

practice of using the Federal Poverty Guideline. It will take many more cases ruling for a middle-class standard for it to become adopted practice.

Here is another way to think of your debt situation— If you don’t attempt to discharge your student loans, you probably will be stuck with them for the rest of your life, which will prevent you from ever owning a home or achieving the American Dream. So what do you have to lose?

How to Use this Book

If you have filed a Chapter 7 bankruptcy, you have discovered how relatively easy it is. Many free legal clinics can help with the bankruptcy and there are many fill-in-the-blanks books on the topic. Really, it is easy to file a Chapter 7 bankruptcy. Although the recent changes in the bankruptcy laws requires a preliminary step of court oversight, it doesn’t change that most people will proceed to the traditional Chapter 7 process. The meeting with the creditors is a non-event. The meeting lasts a few minutes if there are no challenges to the debts of your case. The judicial representative looks over your forms to see that they are complete. That’s it. No drama. Usually there are no questions. If you visit the court a few days or hours before your meeting, you will be able to watch the process and be amazed how fast they conduct each case. Maybe one case in thirty has a creditor show up to challenge some aspect of the bankruptcy. So relax. Within 3 months after the meeting of the creditors, your debt will be discharged.

An *Adversary Proceeding* is very different. This is a full-blown lawsuit against the government and its attorneys. They have 20 years of litigating this problem. As such, it is paramount that you educate yourself thoroughly on the topic. You are not expected to be an expert, but you must be able to hold your own. This book is for you.

If you plan to file a *Compromise* or *Write-Off*, this book provides everything you need to prepare your arguments and negotiate with the Department of Education— so much hinges on understanding the

psychology of those who work for the Department of Education.

You are strongly advised to read every chapter thoroughly. Not just skim them, but also read them in depth. Take your time. Take a couple of days, and then revisit a chapter. As you begin preparing your case, reread sections that come to mind. You must become fully knowledgeable on this topic if you are to win. It usually takes months between each action in court, so you have time to prepare.

Chapter 2—Taking Control: Helps you evaluate your student loan situation. Perhaps bankruptcy is not the right action for you to take. There are many other ways to discharge student loans if you qualify. This chapter presents some of the alternatives to bankruptcy.

Chapter 3—History of Student Loan Program: Gives a historical background to the implementation of student loan programs backed or issued by the U.S. Department of Education. It is important for readers to understand how these programs came about and the concerns the public, and many in Congress, had over the increasing number of students defaulting on their government loans. Congress slowly amended the laws to make it more difficult for debtors to bankrupt their student loans. It is this Congressional debate that molded many court decisions. People planning to defend their adversary proceeding must be familiar with this debate as they, too, will have to use the same language and concepts.

Chapter 4—Court Opinions and Tests: Briefly examines the U.S. bankruptcy system as related to the concept of “undue hardship.” Ultimately, to have student loans discharged, a debtor must present a strong case proving that repaying the student loans would create an undue hardship for them. Unfortunately, Congress failed to define undue hardship leaving it to courts to construct. This chapter describes in great details the four major tests used by a majority of United States courts to determine undue hardship and the dischargeability of student loans.

Chapter 5—“Undue Hardship” Arguments: Develops a set of characteristics common to all undue hardship tests and reviews some of the arguments you will use to meet the tests.

Chapter 6—Example Court Cases with Analysis: Presents a number of bankruptcy cases along with an analysis of why they succeeded or failed. You will gain a better understanding of the capricious nature of the courts and the overt aggressiveness displayed by the Department of Education. You will also learn how to evaluate your own case to increase the possibilities of success.

Chapter 7—Advocacy: The bankruptcy code that governs the discharge of student loans is bad law. The Department of Education and courts have mostly taken a very narrow interpretation of the law. As a result, few debtors are successful at having their student loans discharged through bankruptcy. This chapter discusses many of the limitations of the law and the poor application by the courts. You may want to engage in advocating for rescinding or overturning this law. If you are successful at having the law rescinded, then your student loan debt becomes just like any other unsecured debt and bankrupted through a standard bankruptcy proceeding.

Chapter 8—Preparing for the Adversary Proceeding: This chapter helps you gather all the personal and financial information necessary to present a solid case for discharge of your student loan debt. Forms and worksheets were developed and are included in the Appendix.

Chapter 9—Step-By-Step Procedure for the Adversary Proceeding: This chapter gives the exact steps required to file an adversary proceeding, strategies for effective mediation, and presentation in court (if needed).

Chapter 10—Preparing Your Case for Compromise or Write-Off: This chapter helps you gather all the documents and personal information needed to prove during a Compromise or Write-Off negotiation that repaying your student loans would be impossible.

Chapter 11— Step-by-Step Negotiations for Compromise or Write-Off: Provides effective strategies for engaging the Department of Education in tough negotiations to discharge all or part of the student loans during Compromise or Write-Off proceedings.

(If you are not needing to reopen a bankruptcy, you may skip the next section and proceed to Chapter 2).

Reopening a Bankruptcy

Since the publication of the first edition of this book in 2005, the most frequently asked question comes from people who have already completed a bankruptcy. They are interested in knowing if it is possible to still bankrupt their student loans. Their correspondence is usually filled with despair and anger. Bankruptcy relieved them of some personal debt but not their student loans. Upon learning it was possible for them to have included their student loans in their bankruptcy, they feel duped by a system upheld by attorneys and the Department of Education.

A few of these people have recently attempted to reopen their bankruptcy to address their student loans. Some have met with success. They have shared their experiences and documents with the author. None of the cases have proceeded all the way to the final court hearing so we don't know the actual chances for success. The information is presented here as a starting point. If you proceed with this course of action, please keep the author abreast of the case development. We would like to provide accurate information to others needing to take this course of action. Please check our website—www.BankruptYourStudentLoans.com— for updates on this strategy.

Recommendation: When other legal self-help books broach the topic of reopening a bankruptcy, they recommend that you seek the advice of an attorney. The author of this book also encourages you to seek the help of an attorney to reopen a bankruptcy.

Bankruptcy Code [Section 11 U.S.C. § 350(b)] authorizes bankruptcy courts to allow for the reopening of bankruptcy cases for a number of reasons. The decision to allow a case to be reopened is at the discretion of the court— meaning that the court is not required to reopen a case.

There are three steps to the process: (1) bring a motion to reopen the case, (2) amend your original petition by modifying Schedule F (this assumes you did not originally list your student loans), and (3) send notice to the creditors, trustee and the U.S. Trustee of the amendment. The fees for reopening and amending the original petition vary according to local law often costing as much as \$1,000 and varies depending if you are reopening a Chapter 7, Chapter 11, or Chapter 13. One person who reopened his bankruptcy found that once the court was clear the purpose was to file an adversary proceeding to determine the dischargeability of student loans, the filing fees were waived.

Step 1 — Gather all your bankruptcy documents so that you can pull the necessary information.

Step 2 — Contact the court where your bankruptcy was processed to ask for guidance for filing a motion to reopen your bankruptcy. Forms, fees, timing and exact procedures vary from state to state. Some courts are providing forms that can be filled in and filed through the Internet. The forms and fees vary by court.

Step 3 — Prepare your Motion to Reopen Bankruptcy and file with the court. Two examples and blank form are provided in the Appendix. This shows how they vary depending on location. Remember, these forms are just a suggestion and their exact form may be different at your local court. You must check with your bankruptcy court first to find out what form they use.

Step 4 — Amend Bankruptcy Forms. Most likely, when you filed your original bankruptcy forms, you did not include your student loans under the section for unsecured debt. If this is so, then the forms need to be amended. In a Chapter 7 Bankruptcy, Schedule

F is where your student loans should have been listed. Once your Motion to Reopen Bankruptcy is approved, an Amendment to Schedule F needs to be filed with the court. An example and blank form are provided in the Appendix. If you did include your student loans in the original bankruptcy, you do not need to perform this step.

Step 5 — Notify the creditor, trustee and the U.S. Trustee. Here, you notify the creditor (Department of Education) that the bankruptcy has been reopened and the list of creditors modified. Notification details are given in Chapter 9.

It has not been tested, but we believe you will have 30 or 60 days from the date the judge approves the Motion to Reopen Bankruptcy to complete these steps and file the adversary proceeding. Check with your local court to be sure. For details on preparing, filing, and representing yourself in an adversary proceeding, see Chapters 8 and 9.

We hope the best for you. If you have insight on this process, please contact the author so that better information can be provided to future debtors having to engage in this process.

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Disclaimer

There is no guarantee that by using this book you will achieve a discharge of your student loans.

This book is based on the personal experiences of the author, the experiences of other debtors who have gone through the process and the author's research into the topic. Your experiences may be different.

The author is not an attorney and makes no claims concerning the legal accuracy of this book.

No part of this book should be construed as being legal advice. If in doubt, consult an attorney in your area. Be aware, though, that very few attorneys are knowledgeable in this field. By

reading this book, you will be able to better assist any attorney you consult. An attorney or paralegal may be useful in helping you construct the legal document needed to file with the courts.

The author is providing legal information. Legal knowledge is not legal advice.

