

Defense-to-Repayment Declaration Checklist

Guidelines:

- Present facts in chronological order with approximate dates (month and sometimes year sufficient). Remember you are trying to tell a simple and sympathetic story in language the client would use.
- Provide as much detail as possible – what would a judge want to know?
- Remember what the client must prove:
 - **Substantial misrepresentations**
 - Likelihood of finding employment;
 - Likely starting salary;
 - Job placement rates or success of graduates;
 - Starting salaries of graduates;
 - Representations re schools connection with potential employers; Job placement/career advising assistance;
 - Promises re internships;
 - Graduate completion rates;
 - Transferability of credits;
 - Urgency of enrolling right away;
 - Admissions selectivity;
 - Accreditation of school;
 - Accreditation of program (i.e. has accreditation necessary for licensure or certification);
 - Cost of program;
 - How long to complete program;
 - Type of financial aid received;
 - Ease of repaying loans;
 - Quality/experience of instructors;
 - Quality of classes;
 - Size of classes;
 - Quantity of equipment available to students;
 - Quality of equipment (i.e., how up-to-date);
 - **Have you provided facts about how the client discovered/determined each of the representations was untrue?**
 - **Breach of contract:**
 - What other promises did the school make that it did not follow through with?

- For example, did it terminate the client from the program before he/she completed? Did it fail to provide something (books, computer, etc.) that it promised to provide?
- Always include a statement re reliance. The client must prove that they relied on the misrepresentations made in deciding to enroll and take out student loans. Thus, make sure you include a “catch-all” statement, to the extent it is true, that
 - The client relied on all the representations described in the declaration in deciding to enroll and take out student loans; and
 - The client would not have enrolled or taken out student loans had they known that any of the misrepresentations described in the declaration were untrue.
- Use all sources of available information (I often print out all the information I have and cross it off manually as I insert it into the declaration to make sure I don’t leave anything out):
 - Questionnaire completed by client;
 - Notes from oral conversations with client;
 - School or student loan documents, if any; and
 - Call/interview client for gaps in information.
- Include useful exhibits that the client can identify, such as enrollment agreement, transcript, diploma.
 - The client should attest for each exhibit, “A true and correct copy of [name of document] is attached hereto as Exhibit [exhibit letter].”.

Fact Checklist: Make sure to include approximate dates for all.

- Why did the borrower go to this school?**
 - What were their dreams and goals?
 - What was their financial situation at the time? How many in family/supporting?
 - How did they find out about the school (i.e., television ads? written ads? other?)?
 - What did the ads, if any, promise that attracted them?
 - Promises of high-paying jobs?
 - Promises of long-term career?
 - Promises of high-quality training?
 - Other?
 - What were they excited about or interested in?
- First Contact (if not in person): How did they first contact the school (i.e., by phone? by internet?)**
 - Flesh out first contact details
 - What was promised/represented about the school?

- **First In-person Meeting:**
 - Who did the client meet with?
 - What did the client tell the person they wanted?
 - What did the recruiter tell the client about the school (review all of the above issues under substantial representation)?

- **Enrollment and Financial Aid:**
 - Did the client enroll the first time they visited the school?
 - If so, why?
 - What representations did the school make re urgency to enroll?
 - Why did the client enroll and take out student loans?
 - Did they rely on the representations made by the school in deciding to do so?
 - Did the school give them time to read all the documents they were asked to sign?
 - If not, did they student sign/date where indicated by the school without reading anything?

- **Falsity of Representations – Quality of Program:**
 - What did the client experience that showed that any of the above representations were false? This could include things like class size, quality of instructors, quality/quantity of available equipment, rescheduling or cancelling of classes, etc.
 - Did the client complain about any problems?
 - If so, how did the school respond?
 - Why did the client stay enrolled if they were having issues with the school?
 - Did the school place the student in an appropriate internship if one was required for gradation?
 - What problems were there, if any? For example, did the client have to find the internship on his/her own? Did the client use the skills he learned in the internship?
 - Did the client notice anything re new enrollments in their program (i.e., was the school truthful in telling the client that they had to enroll right away or they would lose their seat in the class?)

- **Falsity of Representations – Completion:**
 - Did the client complete?
 - If not, why not?
 - If so, was it within the expected timeframe? If not, what happened to lengthen the program?

- **Falsity of Representations – Employment in the Field:**
 - Did the client try to find a job in the field for which they trained using the credential earned or skills earned?

- Did the school help them find a job?
 - What, if any assistance, did the school offer?
 - If so, provide details re job search:
 - Time frame – how long did they search?
 - About how many places did they apply?
 - Why wouldn't employers hire them? What did they tell them?
 - Did they give up on finding a job in the field? If so, why?
 - Did they find a job in the field? If so
 - Did they have the skills they needed to keep the job? Get details.
 - Were they let go? If so, why?
 - Was the pay what they expected based on the school's promises?
 - Did other students that the client is friends with have similar issues?
- **Falsity of Representations – Transferability of Credits:**
- Did the client ever try to transfer credits to another school?
 - If so, what happened?
- **Falsity of Representations – Any Others?**
- Make sure that the client describes how any other misrepresentations were false and how they discovered that.
 - Insert these statements in appropriate place in declaration chronologically.
- **Financial Harm:**
- Was the client able to pay their student loans?
 - Why or why not?
 - How did this impact the client (i.e., did they default on their loans? If so, did ruined credit impact them? Did they ever have wages garnished or federal income tax refunds offset? Did they want to go back to school but could not? How did the stress impact them?)
 - What is their current financial and family situation? (Are they employed? Are they struggling to pay for living necessities? Are they homeless or on verge of being homeless? Etc.).
- **Finish with the following statement:** Under penalty of perjury, I certify that all the information I have provided on this Declaration is true and correct to the best of my knowledge and belief.