

Divorce, property settlements, and bankruptcy (#3)

Planning to get a divorce? Consider what might happen if your ex-spouse files bankruptcy. If you don't, you might be in for a big (and bad) surprise.

What's the problem? Aren't amounts owed under a marital settlement agreement or divorce decree "immune" from a future bankruptcy? Many people think so, but it's not that simple.



Chapter 7 bankruptcy - the type of bankruptcy that gets rid of debts quickly. Yes, all debts owed to a former spouse are not dischargeable in a Chapter 7 bankruptcy. That means they survive the bankruptcy intact. So no problem here.

Chapter 13 bankruptcy - a payment-plan type of bankruptcy. This is for people who have regular income and who can afford to pay their creditors something each month, even a small amount. Now hear this: **A discharge of debts in a Chapter 13 bankruptcy eliminates all debts or obligations to a former spouse except for support!**

For example, a Chapter 13 bankruptcy will get rid of any obligation to pay a former spouse to equalize the division of property, or to hold a former spouse harmless from a debt of the marriage.

How to protect yourself? There are a few things you can do to protect yourself from a former spouse's Chapter 13 bankruptcy:

- **Get rid of existing debts of both of you.** Either pay them off before the divorce or file a joint bankruptcy (a bankruptcy for both of you) before your divorce.
- **Avoid obligations for one spouse to pay the other spouse's debts.** Make each spouse liable for his/her own debts.
- **Divide assets equally.** Avoid having one spouse pay the other spouse money to equalize the property division.
- **If you can't divide assets equally, give the payment-receiving spouse a lien** (property interest) on the property the payment-making spouse received. In general, these liens will survive all bankruptcies.
- **Reserve support.** If you reserve an award of support until the non-support financial obligations of the spouses to each other are satisfied, you give the family law court a tool (awarding support) in the event one ex-spouse files a Chapter 13 bankruptcy and eliminates non-support obligations.

As you can see, this is a "Don't try this at home" kind of thing. Discuss this with your family law attorney and, if necessary, that attorney will consult with a bankruptcy attorney.

Divorce, property settlements, and bankruptcy (#2)

Divorce, property settlements, and bankruptcy. Oh my!

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