

# Domestic Support Obligations, Part 1-- Protecting Support Creditors in Bankruptcy

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Whether in anticipation of [divorce](#), in the middle of divorce proceedings, or after the divorce is final, bankruptcy can create havoc for debtors and creditors alike. [Family law attorneys](#) are familiar with the anxiety their clients' suffer when the threat of bankruptcy becomes a reality.

Do child support obligations disappear along with other discharged debts? Will an ex-spouse lose her claim to [spousal maintenance](#) because of her ex's insolvency? The short answer to both questions is "No"--domestic support obligations (DSOs) survive bankruptcy. But at a time of record bankruptcy filings, being vigilant in protecting those obligations could mean the difference between security and disaster.

Here's an example of vigilance...

It was years after the co-founder of Death Row Records, Marion "Suge" Knight, Jr., filed for Chapter 11 protection in 2006. R&B singer Michel'le Toussaint, his ex-wife, asked the bankruptcy court to take Knight's property and apply it to her unpaid spousal support and [child support](#) (in 2009, that was \$40,000). Toussaint, as a support creditor, asserted her priority over Knight's other creditors, and there were many.

An ex-spouse is going to have filing options under the Bankruptcy Code. Some may file under Chapter 11 (reorganization), but most will seek relief under Chapter 7 (liquidation) or Chapter 13 (wage earner plan). In any case, the "discharge" from debts--the release of personal liability and the end of any duty to pay--is key to a financial "fresh start." And a lot of people are looking for just that.

Not surprisingly, bankruptcies are still increasing in Arizona. Many, too many, of those debtors include DSOs in their unmanageable debt load. Comparing January-July 2010 to the same period in 2009, the U.S. Bankruptcy Court for the District of Arizona cites the following statistics:

--Arizona's average increase was just over 36.1%. The vast majority of those filings were in Chapter 7 and Chapter 13, personal bankruptcies.

--Phoenix filings increased an average of 39.2%. The high water mark for Chapter 7s was in March with a 58.2% increase; for Chapter 13s it was in January with a whopping 73.5% increase.

--Tucson filings increased an average of 28.7%, while Yuma filings increased an average of 24.7%.

This news is particularly disheartening given Arizona's bankruptcy trend over the past several years:

- 2009 filings up 77.4% from 2008.
- 2008 filings up 81.1% from 2007.
- 2007 filings up 62.3% from 2006.

Once a bankruptcy petition is filed, creditors are ranked based on the type of debt they are owed. For example, secured creditors holding mortgages or car loans are generally in a better position than unsecured creditors, like the local feed store's line of credit. All creditors hope to get something on the debt owed to them, even if it is just pennies on the dollar.

But DSO claims are exceptional; they receive special treatment in bankruptcy. They are given priority over many other types of claims, including tax obligations. If a claim is determined to be a DSO priority claim, then it has to be repaid first, before other claims are paid out of the debtor's assets. Establishing that the debt is in the nature of a DSO priority claim falls on the support creditor.

A "domestic support obligation" claim is defined in the Bankruptcy Code, 11 USC § 101(14A), as:

"a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law . . . owed to or recoverable by a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or a governmental unit; [and that is] in the nature of alimony, maintenance, or support without regard to whether such debt is expressly so designated."

In our upcoming Domestic Support Obligations, Part 2--Protecting Support Creditors in Bankruptcy, we'll cover a few more bankruptcy basics and the importance of DSO priority claims.

Resources:

U.S. Bankruptcy Ct., District of Arizona: New Case Filing Report, Calendar Year 2010 vs. 2009

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