

# Domestic Support Obligations, Part 3-- Protecting Support Creditors in Bankruptcy. Key Concepts

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As we discussed previously in [Part 1](#) and [Part 2](#)...

A domestic support obligation (DSO) is a debt owed by a bankruptcy debtor to a spouse, ex-spouse, child, parent, legal guardian, or governmental agency. These are obligations intended to cover the recipient obligee's basic needs and upkeep and, so, include child support and [spousal maintenance](#) under a separation agreement or court order. DSO claims are non-dischargeable in bankruptcy.

## **How does it all begin?**

First of all, every bankruptcy petition is filed with the clerk of the U.S. Bankruptcy Court. Although some states have several districts, Arizona has only one. Do not be deceived, there are no state court bankruptcies!

As soon as a debtor files his bankruptcy petition, the judge and trustee are assigned, the "meeting of creditors" is set, and notices are sent to every listed creditor in the petition, including child support and spousal support creditors.

The meeting of creditors is an informal hearing held at various locations throughout the state, depending on where the petition was filed. At the meeting, the trustee on the case has an opportunity to question the debtor face-to-face while under oath. Any creditor can attend the meeting and question the petitioner as well. Although the debtor must appear (or risk having his case dismissed), it is not a mandatory hearing for creditors and, in fact, they seldom attend.

When he files his bankruptcy petition, or very shortly thereafter, the debtor must file numerous evidentiary schedules that disclose his personal financial details. One of those is "Schedule E: Creditors Holding Unsecured Priority Claims." On Schedule E, the debtor is required to report his DSOs. He lists the support creditor's name, address, account number and specifics to fully describe the nature of the support obligation.

As soon as the support creditor learns of the bankruptcy, she should notify her attorney. If child support is involved, she should also notify Arizona's DES Division of Child Support

Enforcement (DCSE). The following case information will be needed: the bankruptcy chapter (7, 11, 13), case number, date filed, state and district where filed, attorney of record if any, and a photocopy of the "Notice of Bankruptcy Case."

The support creditor should file a "Proof of Claim" with the bankruptcy court clerk. The Proof of Claim specifies the priority unsecured nature of the DSO claim, putting it in a top position over other creditors' claims. Instructions on filing proofs of claim are printed on the notice of bankruptcy case.

Bankruptcy is a complex area of law and can be quite intimidating. Understanding a few key concepts is helpful.

Anyone who has had a family member, friend, or co-worker involved as a debtor or creditor in bankruptcy is familiar with the key concept "bankruptcy estate." This includes every ownership interest the debtor has in every single thing, no matter how inconsequential or seemingly valueless. The bankruptcy estate includes all the debtor's property interests, legal and equitable, that he had when he filed the petition. It even includes pets!

Another key concept is the "automatic stay." It is an injunction that starts automatically the instant the debtor files a bankruptcy petition with the court clerk. The automatic stay protects the property in the bankruptcy estate, protects the debtor, and protects the creditors. By prohibiting actions against the estate, the automatic stay stops any administrative, judicial, or other court action by creditors to collect or sue on a debt.

Foreclosures stop, garnishments stop, lawsuits stop, collections stop. If a creditor wants to recover property, or wants control over property that is in the bankruptcy estate, then she must file a lift stay motion. The motion requests that the court grant her relief by lifting the automatic stay, which allows the creditor to continue with proceedings against the bankruptcy estate.

With child support enforcement, the DCSE can continue with certain actions even after a bankruptcy petition is filed. On its website, the DCSE explains that it can "establish paternity, establish an order, modify an order, and take some enforcement actions after the non-custodial parent has filed..." So child support orders may be established even after the non-custodial parent has filed for bankruptcy and after the automatic stay is in place.

The bankruptcy judge can lift the automatic stay so that the debtor and spouse can continue their ongoing divorce in the state Superior Court. Once divorced, though, enforcement takes place in the bankruptcy court. As stated in the 2009 case of *In re Taub*, the bankruptcy court retains jurisdiction "to enforce any judgments within the context of [the] bankruptcy case."

Bankruptcy proceedings can go on for five years or more. To allow payments to continue during the bankruptcy, a child support creditor requests that the court lift the automatic stay and allow payments to be made out of the bankruptcy estate. This is accomplished by filing an "Appearance of Child Support Creditor" along with a "Motion for Relief from the Automatic Stay." If the debtor, trustee, and child support creditor are all on the same page, then a "Stipulation for Relief from the Automatic Stay" is filed asking the court to lift the stay because all the parties agree to it.

## The bottom line?

The bankruptcy court can be a very complicated arena within which to do battle. It is the job of attorneys to ensure that domestic support obligations are very carefully written to survive a bankruptcy intact and as the parties intended. The family law attorneys at the Law Offices of David Scott Stewart work diligently to provide such legal services throughout Arizona.

Resources:

[Arizona Department of Economic Security: Division of Child Support Enforcement](#)

Cases:

In re Taub, 413 B.R. 55 (Bankr. E.D.N.Y. 2009)

In re McCollum, 415 B.R. 625 (Bankr. M.D.Ga 2009)

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