

Divorce and Bankruptcy—Minnesota law

31 JAN 2012



Sometimes Bad Things Happen...

Divorce and bankruptcy together: sometimes life just isn't going well. When these two issues collide, there are extra legal consequences to be aware of. There are two possibilities to consider here—(a) when the bankruptcy comes first, and then the divorce, and (b) when the divorce comes first, followed by bankruptcy. If you end up filing for either [Chapter 7](#) or [Chapter 13](#) different areas come into play.

Bankruptcy followed by divorce:

First, what happens when you are already in the process of bankruptcy when you become involved in a divorce? As you might already know, filing for bankruptcy triggers something called an [automatic stay](#). The stay stops your creditors from collecting debts that you incurred prior to the bankruptcy filing. The scope of the automatic stay is broad and bars any action that “would inevitably have an adverse impact on the property of the bankruptcy estate.” Since divorce could have an adverse impact on your property, you may need to first obtain relief from the stay before you can file a divorce petition. Second, if it is your soon-to-be-ex who is in bankruptcy proceedings and you intend to make a [child support](#) or [spousal support](#) claim, you (and your lawyer!) may need to modify the stay to allow this to happen.

Divorced and then filing for Bankruptcy?

Okay, what about the second situation, where you are already divorced and then file for bankruptcy? The first thing to recognize is that any obligation you owe that is clearly for child support or spousal support will still be owed at the end of the bankruptcy proceeding; it is the type of debt that is called “non-dischargeable.” However, that doesn't mean that bankruptcy can't do anything to help with your support obligations. First, an obligation that is less clear-cut may end up being discharged in bankruptcy. Second, you can try to gain more time to repay overdue support amounts. A bankruptcy court cannot modify any of your non-dischargeable support obligations, though; you'll have to go to family court for that.

If it is not you that is declaring bankruptcy but rather your ex-spouse, the thing that you want to be aware of is that the automatic stay triggered by a bankruptcy filing prohibits creditors from trying to collect debts owed by the person filing for bankruptcy. Although the stay may not cover certain types of debt

collection, your best bet is to assume that the stay applies, which means you shouldn't try to pursue your ex for any overdue support amounts without the bankruptcy court's permission.

Any questions feel free to call Jason Kohlmeyer, 507-625-5000 or Jkohlmeyer@rokolaw.com

Rosengren Kohlmeyer
Law Office Chtd.
Mankato, Minnesota

www.Rokolaw.com