Divorce Debt in Bankruptcy

Treatment of Divorce Debt in Bankruptcy

Bankruptcy can be complicated all on its own, but things can get even more tricky when you throw in the fact that it has already been addressed in a divorce. Let me explain.

There are two categories of "divorce debt" in bankruptcy: "support" and "debt owed to a spouse, former spouse, or child of the debtor and not [support], that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit". It is important to figure out which category your debt fits into before making any other decisions about bankruptcy.

"Support" debt is defined as "a domestic support obligation", usually child support or alimony. Easy, right? It should be, except there are family attorneys and judges that like to get creative with terms in settlements and judgments. It is important to read the agreements and orders to make sure that payment of a debt by one for the other isn't classified in the order as a form of support. This is true for tax reasons as well as pre-bankruptcy review purposes. Also important to remember: treatment of the debt as "support" or "debt owed in the course of a domestic relations proceeding" doesn't come into play until the state court judge signs the order giving it that status… which may be a reason to consider filing a bankruptcy before that happens. Bankruptcy judges have been known to void settlement agreements before they are ratified by the state court that appear to be unfair to the debtor and/or the debtor's creditors.

So we have our debt classified. What now? "Support" debt is not dischargeable at all in any kind of bankruptcy. However, if it gets to the point where bad things are happening because a debtor just cannot get it in control (ex is bringing contempt actions, suspending licenses, etc), it can be managed and the state court can be held away with Chapter 13. Several conditions are attached, including the ongoing payments have to be maintained and the arrearage (amount already owed) has to be repaid in full over three to five years. Licenses are eligible to be reinstated upon the filing of the bankruptcy and cannot be taken again as long as the bankruptcy is active.

The other kind of debt, debt that was assigned to the debtor as property and debt division in a divorce, needs to be checked carefully. First thing to look for with credit cards and other third party loans is "who is responsible for the debt as far as the lender is concerned?". The divorce order is not binding on the lender and they can still collect from anyone originally on the debt. If the debtor was the only account holder, then there is no domestic relations issue and it is probably ok to discharge in a chapter 7. What we are looking for is debt assigned to the debtor in the divorce, but the ex is still a joint account holder as far as the lender is concerned. The other kind of debt is any debt owed to the ex by the debtor as property division by virtue of the divorce, but not classified as "support". These are the kinds of debt that are not dischargeable in Chapter 7, but are in Chapter 13 on the condition that the debtor completes their Chapter 13 Plan and gets a Chapter 13 Discharge.

Chapter 13 is a powerful yet very underutilized tool when it comes to managing obligations incurred in any kind of domestic relations case. It requires the attention of an experienced bankruptcy attorney who has, or has access to someone who has, experience in the local family law community. The Law Office of Lori Patton, PA has family law experience in Central Florida and shares space with William S. Orth, an experienced and well-respected family lawyer in Seminole County.