

My ex-husband/ex-wife filed for bankruptcy, what do I do?

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There are many concerns that can arise when an ex-spouse files for bankruptcy —too many to address in one or even a few blogs— and every situation is different anyways. So, if you're in this situation you should *immediately* meet with a competent bankruptcy lawyer who includes creditor representation as part of his practice (yes, you are likely considered a creditor, and possibly a co-debtor to some debts as well, or at least a "party in interest" in bankruptcy terms).

One concern that absolutely requires assessment by a competent bankruptcy attorney is the property settlement v. support issue. This is important because if your ex-spouse files a chapter 13, they may be trying to discharge (eliminate their personal responsibility for) an obligation they are calling a "property settlement." You see, an obligation arising from a "property settlement" is dischargeable in a chapter 13, but one arising from a "domestic support obligation" is not dischargeable. So it will be advantageous for them to take the position that the obligation to you arises from a "property settlement" as opposed to a "domestic support obligation." You may now be pulling your divorce order out to see how the obligation(s) to you are termed. But that will not be the end of it. A bankruptcy court is not controlled by how a state court characterized the obligation(s), but assesses the question according to federal bankruptcy law. *In re Peter*, No. 02-6295-AA, 2002 U.S. Dist. LEXIS 27329, at * 5 (Bankr. D. Or. Nov. 26, 2002). So, even if your divorce order describes an obligation as a property settlement (or as alimony or some other term). The bankruptcy court may not see it that way. This can make all the difference to you; the difference between receiving all of what is due to you, or just a fraction of it.

A few more suggestions; timing, do not wait. Not only are there important deadlines to meet in bankruptcy, but bankruptcy cases generally move faster than other types of legal cases or proceedings. One other suggestion is, do not rely on your divorce lawyer (usually) to properly assess the ramifications of a bankruptcy filing by your ex-spouse. Typically, a divorce lawyer only has a rudimentary knowledge of bankruptcy, as opposed to someone practicing in the field regularly.

If your ex-spouse just filed bankruptcy and you need some help, or you just finished a divorce and have some bankruptcy concerns, feel free to give us a call.

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