

Bankruptcy and Divorce

Spouses often use bankruptcy differently. Some spouses use bankruptcy after a divorce has been finalized as an offensive weapon to delay or prevent having to refinance a mortgage. Other couples file bankruptcy before a divorce to simplify the debts before they separate. So how you use bankruptcy depends on your goals in the divorce. Generally it's wise to file a bankruptcy before divorce so you know how the debts are going to be handled.

When one spouse files a bankruptcy after the divorce, creditors usually come after the other spouse to satisfy jointly incurred marital debts. This means that one spouse's bankruptcy filing could send the other spouse into bankruptcy.

Your bankruptcy estate is everything you own at the time the bankruptcy is filed. When spouses file bankruptcy, all property acquired during the marriage is included and potentially available to pay debts. Your bankruptcy estate is everything you own at the time the bankruptcy is filed.

Once the bankruptcy is filed, the court issues an immediate stay to stop creditors from collecting debts. Your spouse will still have to pay child support or alimony; however, they may not have to perform other tasks, such as refinancing to remove one spouse from the mortgage.

I am involved in a case now where the wife is under a court order to refinance and remove her husband's name from the mortgage. For the last several years she has not complied with the order. The wife filed a bankruptcy to restructure her debts and the divorce court is powerless to force her to complete the refinance.

Whether the bankruptcy court discharges a divorce property settlement will depend on whether the debtor can show they cannot pay the debt and still take care of themselves, their dependents, and their business. Generally, property settlements are not dischargeable in bankruptcy.

Exempt property is protected and not available to be sold to pay debts. Each state where a bankruptcy is filed has its own exemptions. For example, in Illinois each filing spouse can "exempt" \$15,000.00 of home equity.

An effective way to protect yourself against your spouse filing a bankruptcy is to take lien on property your spouse gets in the property settlement. This makes you a secured creditor. If later, they file a bankruptcy you can repossess the property to pay the debt.