



## **Bankruptcy** by Scott Abel

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Divorce proceedings and bankruptcy proceedings on their own, can be complicated and expensive court matters. When the two are combined, the issues can become much more complicated. However, working with your lawyer and the trustee in bankruptcy can often result in a simplification of the issues.

The purpose of bankruptcy laws is to assist an honest but unfortunate debtor, to free themselves of their debts, so that they can provide for themselves and their family, and contribute economically to society.

The purpose of divorce laws, or at least one of the purposes, in the context of support and property, is to apportion the economic consequences of the marriage, and the separation, fairly between the spouses.

Often those two purposes do not and cannot co-exist. However, understanding how they interrelate can relieve some of the fear and anxiety that one undergoes in either or both proceedings.

Orders of support are not extinguished by the bankruptcy. A debt that exists in relation to support, continues to be owing to the support recipient, despite the bankruptcy. A payor spouse cannot seek to avoid his or her obligations to pay support, by declaring bankruptcy.

Ordinarily, upon the assignment of a person into bankruptcy, all claims against that person are stayed – that is, the creditors cannot continue to take action against the debtor.

However, the bankruptcy of a support payor does not stay or impede the enforcement of support claims. The stay does prevent the enforcement of the support claim against assets of the bankrupt's property which are assigned to the trustee in bankruptcy. This does not prevent the enforcement against the bankrupt's wages or income tax refunds, for example, in order to enforce the support claim.

In property settlements, the amount owing by one spouse to the other is a debt, the enforcement of which is stayed

by the bankruptcy proceedings. It is necessary for the spouse seeking to receive their settlement, to get around the stay imposed by the bankruptcy.

It would be preferable for the spouse to obtain security for the debt that is owing to them for the property settlement, prior to the bankruptcy occurring. In that way, the spouse is a secured creditor, not subject to the bankruptcy proceedings.

However, even if there is no security, the recipient spouse can seek to oppose the bankruptcy, on a number of specified grounds. The bankruptcy court may still grant a discharge for the bankrupt, but there may be conditions imposed, which could include payment to the recipient spouse, depending on the circumstances of the case.

While bankruptcy proceedings can certainly complicate divorce proceedings, they do not necessarily result in the denial of entitlements to a recipient spouse, whether for support or property settlements. Understanding the interrelation

between bankruptcy laws and divorce laws is the key to ensuring a just resolution.