

Types of Consumer Bankruptcy

The bankruptcy law gives people in financial crisis an opportunity to start over. Most individuals who file for bankruptcy file under Chapters 7 or 13 of the Bankruptcy Code. In a Chapter 7 case an individual eliminates personal liability for most types of unsecured debts and keeps property that is within the amounts of the applicable exemptions. A person may not qualify for a Chapter 7 case if he or she earns too much money or has recently received a Chapter 7 discharge. A Chapter 13 may allow a person to keep property that would be lost in a Chapter 7 or have other significant advantages over a Chapter 7. The goal of most bankruptcy cases is to allow the debtor to obtain a fresh start.

A simple proceeding under Chapter 7 may be completed in as little as five months. In a Chapter 13, a debtor proposes a plan for payment of all or

a percentage of his or her unsecured debts over three to five years. In both kinds of cases, the debtor receives a discharge order at the end of the case, which means that the debtor is no longer personally liable for most kinds of debts.



Divorce-Related Debts

The 2005 amendments to the Bankruptcy Code created the term “Domestic

Support Obligation,” or “DSO,” and the law provides new rights and obligations. For example, a creditor who is owed a DSO now has more remedies to collect that debt. A person who owes a DSO now has much less ability to escape that obligation by filing bankruptcy. Debts that are DSOs are not eliminated (“dischargeable”) in bankruptcy. Property settlement debts may or may not be dischargeable. This means that if a person is owed support as a result of a divorce, that person could have valuable rights in case the former spouse files a bankruptcy case.

If one of the spouses files a bankruptcy case, a third-party creditor, such as a credit card company, may pursue the other spouse to collect the debt if the debt is owed by both of them.

DSOs have first-priority status in the payment of claims. A court may not grant a discharge in a Chapter 13 bankruptcy unless the debtor certifies that he or she is current on all post-petition DSO payments. Bankruptcy trustees must inform DSO claimants about the resources available to them to collect their claims and of their rights under the Bankruptcy Code.

While bankruptcy is considered a last resort and is not the right answer for everyone with financial problems, the system may provide needed relief and a fresh start to a new financial and emotional life.

The information contained herein is for educational and informational purposes and is not legal advice.

Diane Brazen Gordon has an office in Lincolnshire and provides compassionate guidance to people contemplating bankruptcy or in need of asserting rights if a former spouse files bankruptcy. She has over twenty years of legal experience concentrating in consumer bankruptcy law and civil litigation.

Ms. Gordon was a recent speaker at the American Bar Association Family Law Conference on the subject of marital debts in bankruptcy and has published articles on the subject.



Honors/Distinctions

- Phi Beta Kappa, University of Illinois
- J.D., University of Iowa College of Law
- Associate Editor, Iowa Law Review

Publications

Dischargeability of Divorce Debts in Bankruptcy, Volume 3, Number 3, American Journal of Family Law, Fall 2010

Memberships/Affiliations

- Illinois State Bar Association
- Texas Bar Association
- Federal Trial Bar of the United States Court for the Northern District of Illinois
- Vice-Chair of the Bankruptcy Committee, American Bar Association Section of Family Law; speaker at the ABA Section of Family Law 2009 Fall CLE Conference in Montreal, Quebec, Canada, on “Bankruptcy and Marital Debts – Is it Enforceable or Dischargeable?”
- Vice President; North Shore Law
- Exclusive Professional Women’s Networking Group
- National Association of Consumer Bankruptcy Attorneys

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The Law Office of Diane Brazen Gordon is a Debt Relief Agency and helps people file for bankruptcy relief under the Bankruptcy Code.

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