



ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

Broke and Broken Hearted – The Intersection of Bankruptcy and Divorce

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Bankruptcy is the process where someone who is unable to pay their debts files a petition to discharge (eliminate) those debts or restructure the debt with a payment plan. But what happens if a bankruptcy petition is filed by someone who is divorced or divorcing?

BANKRUPTCY BEFORE A DIVORCE IS FINALIZED

If a person who is in the process of divorce in Massachusetts files a bankruptcy petition, the Probate and Family Court will not proceed with finalizing the divorce case until the bankruptcy matter is resolved. The reason is that when a bankruptcy petition is filed, there is an automatic stay put in place, which prohibits creditors from moving forward to collect monies owed to them, including via a lawsuit, foreclosure, or eviction. Assets are frozen so that the bankruptcy trustee can determine the nature of the assets and sell those available to pay certain debts before discharging other debts. While the bankruptcy process is happening, the Probate and Family Court is unable to complete its job – which is determining the value of the marital estate and equitably dividing the assets between the spouses. Until the conclusion of the bankruptcy matter, which may result in sale of certain assets of a spouse, a divorce will not proceed. It does not matter if the divorce was filed first or the bankruptcy was filed first – the bankruptcy halts the divorce either way.

That said, an automatic stay does not apply to alimony or child support. Complaints to establish or modify alimony or child support are not impacted by the bankruptcy filing and payment of those obligations can be established, and collection efforts can be pursued, notwithstanding a bankruptcy.

BANKRUPTCY AFTER A DIVORCE IS FINALIZED

Once divorced, the Judgment of Divorce or settlement agreement will set forth which assets are to be retained by each party and any financial obligations one spouse has to the other following divorce. There are instances where individuals feel unable to meet the financial obligations under the terms of the divorce and think that a bankruptcy will absolve them of their financial responsibilities – but not so fast. Anything that is considered to be a “domestic support

obligation” as determined by federal bankruptcy law cannot be discharged in a bankruptcy. A “domestic support obligation” is a debt that (a) is owed to a former spouse or child, (b) in the nature of alimony, maintenance, or support, regardless of how the debt is designated, (c) by application of a separation agreement, divorce decree, or court order, and (d) is not assigned to a nongovernmental agency. Alimony and child support obligations are clearly and unequivocally domestic support obligations and can never be discharged, nor can accrued past-due alimony or child support. Additionally, obligations to pay a former spouse a share of assets or to pay a loan on behalf of a spouse have also been determined to be domestic support obligations. A divorced party can successfully discharge their own debts, including those pre-dating the divorce, just not obligations to their spouse or children.

If you are divorcing and struggling with debt, seek the advice of an experienced [divorce attorney](#) and a [bankruptcy attorney](#) to determine the best course of action. The bankruptcy code is complicated and the process is neither simple nor straightforward. Choosing the right time to file for divorce and deciding whether to file a bankruptcy petition are important decisions with significant impact. Don't let your broken heart get in the way of getting solid legal advice on financial matter.