



Bankruptcy and Divorce - Which Should Come First?



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Bankruptcy and divorce are two of life's most upsetting challenges and are often intertwined. Financial stress may be a factor in the decision to get divorced. Divorce itself may cause financial stress. Many couples who were able to handle the household debt while living together may find it difficult or even impossible to keep up with that debt once they are separated. As a result, you may find yourself considering both divorce and bankruptcy.

This e book will outline some valid reasons why you might want to consider eliminating your debt and the financial pressure by filing for bankruptcy before you file for divorce. Let's take a look at some of the factors you should consider when deciding if you should file bankruptcy before or after a divorce. It will also discuss issues related to child support and how it is affected by bankruptcy.

I. BANKRUPTCY WHILE MARRIED-MUST BOTH SPOUSES FILE?

It is a common misconception that if one spouse files for bankruptcy, the other must also file. This is not correct. One spouse is permitted to file without the other, although in most cases the income of both spouse's is counted toward eligibility for a Chapter 7 bankruptcy, that requires a "means test" to qualify.

Another common misconception is that if one spouse files for bankruptcy, the other spouse's credit will be adversely affected by that filing. It is not the filing of the bankruptcy or the discharge of debts that adversely affects a non-filing spouse's credit. It is the nonpayment of joint debts and other obligations that could affect the credit. If all debts in the non-filing spouse's names are timely paid, that spouse's credit should not be adversely impacted by the bankruptcy of their spouse.

II: SOME FACTORS TO CONSIDER IN DECIDING WHETHER TO FILE BEFORE OR AFTER DIVORCE

1. Bankruptcy Type - Do You Want to File Chapter 7 or Chapter 13?

A main factor in deciding whether to file bankruptcy before or after divorce is the type of bankruptcy you want to file. If your bankruptcy is a Chapter 7 bankruptcy, then filing before the divorce may be the best option. Since the Chapter 7 bankruptcy can be filed and completed in three to six months, it might be possible to wait until the bankruptcy is complete to file for divorce. A Chapter 13 bankruptcy involves a repayment plan which lasts from three to five years. This lengthy period before the bankruptcy is over makes it unrealistic for most couples to complete a Chapter 13 bankruptcy before getting divorced. If you file for divorce during the bankruptcy you will need to go through the process of having the bankruptcy case separated or closed once you officially end the marriage.

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2. Household Income-Will Divorce May it Easier to Qualify for Chapter 7 Bankruptcy?

Your household income is another factor to consider when deciding whether to file before or after the divorce. To qualify for a Chapter 7 bankruptcy, you must take and pass the "means test." If your income is too high, you will be required to file Chapter 13 instead.



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It is possible that your income while married may be too high to qualify for Chapter 7. You might become eligible to file Chapter 7 once you are legally separated or divorced and relying solely on your income. In that case, you may want to wait to file.

3. Protection of Property-Will More be Protected in a Joint Bankruptcy or Individual Bankruptcies?

It is important to work with a bankruptcy attorney to determine how your assets will be protected if you file a joint bankruptcy with your spouse. This is particularly important if you jointly own property such as a house and a car. Filing a joint bankruptcy could provide you with additional exemptions (the amount the law allows you to keep).



4. The Cost of Filing One vs. Two Bankruptcies

If you file a joint bankruptcy, the overall cost will be lower than if you file two separate bankruptcies after you divorce. The filing fees are the same whether one or both spouses file. Currently the filing fees for a Chapter 7 bankruptcy is \$335.00 and for a Chapter 13 bankruptcy is \$310.00. Further, paying an attorney to file one joint bankruptcy will be considerably cheaper than if each spouse hires a separate lawyer and files a separate bankruptcy.

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5. Relationship Status

If you are on amicable terms with your spouse, then filing for bankruptcy before a divorce could be a viable option. However, attempting to file bankruptcy with a spouse who is hostile to your financial interest, or who you think is hiding assets could be detrimental.

III: BENEFITS OF FILING FOR JOINT BANKRUPTCY BEFORE DIVORCE

There are many benefits for a married couple who are contemplating both divorce and bankruptcy to file a joint bankruptcy prior to filing for divorce. This option should only be considered when it is appropriate to wait for a divorce filing. Depending on your circumstances, filing a joint bankruptcy petition with your spouse before a divorce can help to ensure your financial welfare going forward. These are some of the reasons why you may want to file for bankruptcy before divorce.

1. Filing A Joint Case Will Save You Money

A couple who files jointly before the divorce saves money because the spouses can file one bankruptcy petition instead of two. There will be one court filing fee, one set of documents and schedules, one meeting of creditors, and usually one attorney's fee. Even if the legal fee when filing jointly is higher than if one spouse files, the total fee is usually less than if each spouse files separately.



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2. Filing Bankruptcy Can Eliminate Liability on Joint Debt

A couple who files jointly prior to divorce can eliminate the marital debt and simplify the property division in a divorce. This might lower your divorce costs as a result. By eliminating the majority of your debt, there is less to fight over in your divorce case. This can be especially helpful if you have had significant debt problems. Additionally, if debt is eliminated there will be more money to live on now that one household is being split into two. Conversely, if a divorce is filed before a bankruptcy, then you and your spouse will need to split up the joint debt. This can be time consuming and lead to more strife and legal fees in the divorce.

3. Filing Jointly Increases Exemption Amounts

When you file a bankruptcy case, you are allowed to keep some property with which to get a fresh start. These are called exemptions. Exemption amounts are capped at a particular dollar amount. If you file a bankruptcy case with your spouse, you will each be able to claim a full set of exemptions thereby usually keeping more property.

4. Filing Jointly Saves Time

Typically, jointly filing for bankruptcy before filing for a divorce can save you time in both the bankruptcy and divorce case. The bankruptcy will help to eliminate the parties' debt and therefore resolve the issues of debt in the divorce. Also, if you file for a divorce first, and then, in the middle of the divorce, the other spouse files for bankruptcy, the divorce proceedings will be delayed.

5. Filing Jointly Helps in the Divorce

In a divorce, the assets and the debt must be allocated and resolved. By first filing for bankruptcy, you will eliminate most, if not all, of your credit card debt, personal loans and other

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unsecured debt. This will help resolve these issues in the divorce.

IV. BANKRUPTCY DURING DIVORCE

If one party files for bankruptcy while a divorce case is pending, it can complicate matters. Your filing can cause delays in the divorce proceedings, which typically frustrates your spouse and causes emotions to run high.

Certain aspects of your divorce case can proceed while your bankruptcy case is open, such as child support, alimony, custody and visitation. However, the automatic stay may prevent the division of the marital assets until the bankruptcy case is over or the bankruptcy court gives permission to continue the division of the assets.

Your bankruptcy trustee may want to intervene in your divorce case to ensure that the property division is fair, which can make the process more complex and expensive. However, if there are few assets to be administered by the bankruptcy estate, a mid-divorce bankruptcy filing may have little effect.

V. BANKRUPTCY AFTER DIVORCE

When considering bankruptcy and divorce, it may not make sense to jointly file before the divorce. The most obvious reason would be if your divorce is not amicable and/or you suspect that your spouse may be hiding assets.

When you file a personal bankruptcy immediately after your divorce is final, the trustee may scrutinize your marital settlement agreement to determine if the property division was equitable. If the trustee believes that the asset division is not reasonable, your bankruptcy trustee may file an avoidance action. However, this is not a common occurrence because trustees understand how financially damaging divorce can be.

VI. WHAT HAPPENS TO CHILD SUPPORT OBLIGATIONS IN BANKRUPTCY?

1. Child Support Collection is Not Halted by the Automatic Stay

No matter which type of bankruptcy you file, the automatic stay

will go into effect immediately, forcing most creditors to halt all collections activity right away. The automatic stay, which is provided in both Chapter 7 and Chapter 13 bankruptcy, puts a sudden stop to any efforts or proceedings regarding foreclosure, repossession, wage garnishment, utility disconnections and more. This will help alleviate some of the stress caused by collection calls and letters as you sort through your finances and dissolve your marriage.

One thing the automatic stay does not cover, however, is collection for child support payments. Child support and other family support obligations will remain the same, along with responsibility for back payments. Alimony and child support obligations cannot be discharged in a bankruptcy filing although past due payments may be paid over time in a Chapter 13.

2. Bankruptcy Will Not Discharge or Lessen Child Support

You should not file bankruptcy with the goal of discharging (eliminating) or lessening child support payments or back child support since it does not do so. Child support is considered a priority debt and is not discharged or lessened in a bankruptcy. Along with current child support payments that you must pay, other actions cannot be interfered with in bankruptcy either, including:

- Modifications to child support by the bankruptcy court
- Attempts to collect back support in Chapter 7
- Custody or visitation issues
- Paternity tests
- Protective orders for domestic violence
- Alimony

CONCLUSION

The interplay between matrimonial law and bankruptcy law is a complex and must be navigated carefully. It is important to determine whether you should file for bankruptcy if you are contemplating a divorce and when to proceed.



Take the next step toward financial freedom.

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