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-The Intersection of Bankruptcy and Divorce-
Focus: Domestic Support Obligations (DSO) / Property Settlement
What Is Dischargeable? What is Not Dischargeable?
Answer: It Depends!

By: Firas M. Abunada

Overview

Divorce attorneys who represent individuals in either a pre-decree or post-decree matter sometimes find themselves dealing with a bankruptcy petition that was filed by their client or the opposing party. Now what? Well, you need to determine if the bankruptcy petition is a chapter 7, 11, or 13. You need to determine if the bankruptcy petition was filed and the debtor received a discharge or if the bankruptcy petition was recently filed and pending. If the debtor received a discharge and your client did not participate in the bankruptcy proceeding as a creditor or non-filing spouse, then their rights to property in the marital estate may have been determined by the Bankruptcy Court as well as certain divorce-related debts. If the bankruptcy petition is pending, then the automatic stay is in effect as soon as the bankruptcy petition is filed (assuming the debtor is not a serial filer). The automatic stay directs all parties to pause their claim(s)/suit(s) and not interfere with the property in the marital estate as it is now part of the bankruptcy estate. The non-filing party needs to tread carefully when moving forward with their case if a discharge order was entered or during a pending bankruptcy. The automatic stay statute is a complex topic of its own in these situations; however, it does provide certain exemptions.

Although the above paragraph may raise questions, the focus of this seminar is what actions are paused due to the automatic stay, what happens to domestic support obligations, attorney's fees, *guardian ad litem's* fees, child representative's fees, property settlements in a chapter 7 or 13 bankruptcy. Also, an overview of Proof of Claims. What do we do now? As we say most, "it depends" on the facts. However, below, I have provided a few tips, the relevant statues, and a few samples of opinions from the United States Bankruptcy Court, Northern District of Illinois, Eastern Division and the Seventh Circuit Court of Appeals that address these matters.

The Definition of "Domestic Support Obligation" Pursuant to 11 U.S.C. §101(14A):

"**(14A)** The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt."

Note: For a debt to qualify as a DSO, it must meet all 4 requirements under section 101(14A). See section 101(14A) and *In re Trentadue*, 837 F.3d 743, 747 (7th Cir. 2016).

The Automatic Stay (In Relevant Part) Pursuant to 11 U.S.C. §362:

"**(a)** Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

> **(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> **(2)** the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> **(3)** any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> **(4)** any act to create, perfect, or enforce any lien against property of the estate;
>
> **(5)** any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
>
> **(6)** any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
>
> **(7)** the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
>
> **(8)** the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

Continued on the next page

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act[.]"

Exceptions to Discharge Pursuant to 11 U.S.C. §523(a)(5):

"**(a)** A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

> **(5)** for a domestic support obligation[.]"

Exception to Discharge Pursuant to 11 U.S.C. §523(a)(15):

"**(a)** A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

> **(15)** to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit[.]"

Exception to Discharge Pursuant to 11 U.S.C. §1328(a), (b), & (c):

"**(a)** Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

> **(1)** provided for under section 1322(b)(5);
>
> **(2)** of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);
>
> **(3)** for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or
>
> **(4)** for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

> **(1)** the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
>
> **(2)** the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
>
> **(3)** modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

> **(1)** provided for under section 1322(b)(5) of this title; or
>
> **(2)** of a kind specified in section 523(a) of this title."

Introduction

To start, the term "Domestic Support Obligation" (DSO) was added to the Bankruptcy Code as a result of the 2005 Amendments (the Bankruptcy Abuse Prevention and Consumer Protection Act "BAPCPA").

In short, as a result of the 2005 Amendments, DSO payments such as alimony/maintenance and child support payments became non-dischargeable pursuant to Bankruptcy Code sections 523(a) and 1328(c)(2) and are afforded priority over most creditors pursuant to Bankruptcy Code section 507(a)(1)(A). Remember, DSO payments are provided more protection than property settlement agreements.

Bankruptcy Court's Determination on Domestic Support Obligations v. Property Settlement Agreements

When a bankruptcy petition is filed and the obligation (whether it is a support obligation or a property settlement), the Bankruptcy Court will look at the obligation at issue and determine if the obligation is in the nature of support or something else. This determination is a federal bankruptcy law issue, not a state law issue. See *In re Reines*, 142 F.3d 970, 972 (7th Cir. 1998). The Bankruptcy Court is "not bound by the labels attached to the obligation" under state law. *Id*. Rather, the Bankruptcy Court applies a "functional approach that look[s] beyond the language of a[n award] to the intent of the parties and to the substance of the obligation." *In re Goin*, 808 F.2d 1391, 1392 (10th Cir. 1987) (cited in *In re Trentadue*, 837 F.3d 743, 748 (7th Cir. 2016)).

If there is no settlement agreement by the parties and the state court renders a judgment, then the Bankruptcy Court "must look to the intent of the state court in rendering its judgment and fee award." *In re Trentadue*, 837 F.3d 743, 749 (7th Cir. 2016) (See *Cummings v. Cummings*, 244 F.3d 1263, 1266 (11th Cir. 2001) ("[T]he bankruptcy court should have examined the intent of the divorce court before making a determination that no portion of the equitable distribution was in the nature of support.").

The three factors used by the Bankruptcy Court to determine the intent of the state court are the following: "(1) the language and substance of [a judgment] in the context of the surrounding circumstances, using extrinsic evidence, if necessary; (2) the parties' financial circumstances at the time of [the judgment]; and (3) the function served by an obligation at the time of [the judgment]." *Trentadue*, 837 F.3d at 748; 9D Am. Jur. 2d Bankruptcy §3646 (2016) (citing *In re Gianakas*, 917 F.2d 759 (3d Cir. 1990)).

If there is "no clear intent expressed, [the Bankruptcy Court] must look to other factors to try and figure out what the parties had in mind" when their "settlement papers" where entered by the state court. *Reines*, 142 F.3d at 973. *Reines* used the 20 factors from *In re Daulton*, 139 B.R. 708 (Bankr. C.D. Ill. 1992).

The 20 factors are:

1. "Whether the settlement agreement includes payment for the ex-spouse;
2. Whether there is anu indication that provisions within the agreement were intended to balance the relative income of the parties;
3. The position of the assumption to pay debts within the agreement;
4. The character or method of payment of the assumption;
5. The nature of the obligation;
6. Whether children resulted which has to be provided for;
7. The relative future earning power of the spouse;
8. The adequacy of support absent debt assumption;
9. The parties\' understanding of the provisions;
10. The label of the obligations;
11. The age of the parties;
12. The health of the parties;
13. Existence of 'hold harmless' or assumption terminology;
14. Whether the assumption terminated upon death or remarriage;
15. Whether the parties had counsel;
16. Whether there was a knowing, voluntary, and intelligent waiver of rights;
17. Length of marriage;
18. Employment of the parties;
19. The demeanor and creditability of the parties;
20. Other special or unique circumstances of the parties."

It should be noted that the Bankruptcy Courts held that "exceptions to discharge are to be [construed] strictly against a creditor and liberally in favor of the debtor." *In re Morris*, 223 F.3d 548, 552 (7th Cir. 2000). However, the policy behind exempting DSOs from the debtor's discharge "favors enforcement of familial support obligations over a 'fresh start' for the debtor." *In re Miller*, 55 F.3d 1487, 1489 (10th Cir. 1995).

"The party seeking to establish an exception to discharge bears the burden of proof." *Reines*, 142 F.3d at 973. The burden of proof is preponderance of the evidence.

What is Dischargeable? What is Not Dischargeable? It Depends!

In a Chapter 7 Bankruptcy (Liquidation), Domestic Support Obligations, Property Settlement Agreements, and Hold Harmless Agreements are not dischargeable. See Bankruptcy Code section 523(a).

In a Chapter 13 Bankruptcy (Repayment Plan), Domestic Support Obligations are not dischargeable. See Bankruptcy Code section 1328 (a), (b), and (c). However, Property Settlement Agreements and Hold Harmless Agreements are dischargeable. See Bankruptcy Code Section 1328(a)(2) as it does not reference Bankruptcy Code Section 523(a)(15).

> Note: the debtor will not receive their discharge unless they certify with the Bankruptcy Court at the end of the Chapter 13 Plan that they are current on their post-petition domestic support obligations. See Bankruptcy Code section 1307(c)(11).

What about my attorney fees? It depends. Attorney fees that were incurred during in a pre-decree or post-decree may be non-dischargeable in certain situations. Ordinarily, attorney fees owed by the debtor to their attorney are dischargeable (unless the attorney has a basis to object to the debtor's discharge under Bankruptcy Code section 523).

However, attorney fees awarded to a spouse in a court order and or incorporated into the judgment may be non-dischargeable. An important factor is for the court to order that the attorney fees are in the nature of support in order to fall under Bankruptcy Code section 523(a)(5). If the court does not order that the attorney fees are in the nature of support, there is still a possibility that they may be non-dischargeable under Bankruptcy Code section 523(a)(15).

There are cases where law firms who are owed attorney fees from the debtor have standing to bring an Adversary Complaint to determine if the fees are non-dischargeable. Also, attorney fees incurred to enforce a provision of a judgment may also be non-dischargeable. "[A]ward of attorneys' fees for services in obtaining support order have been held non-dischargeable even though the attorney is neither the spouse, a former spouse, or child of the debtor." See *In re Rios*, 901 F.2d 71, 72 (7th Cir. 1990) and See *Eden v. Robert A. Chapski, Ltd.*, 405 F.3d 582 (7th Cir. 2005).

See *In re Trentadue*, 837 F.3d 743 (7th Cir. 2016). The simple facts are the following: Husband and Wife divorced in 2007 and a judgment was entered regarding the custody of their 6 minor children. *Id*. at 746. The custody arrangement did not work out well for the parties and hence, the Wife filed a post-decree motion to "modify placement and child support related to one child." *Id*. The matter lasted 3 years and the court ruled on the matter after trial and entered its amended order in May of 2013. *Id*. In that order, the court also determined that the Husband "committed 'significant over-trial' and ordered that he 'contribute $25,000.00 toward [his ex-wife's] attorney fees.'" *Id*. The Husband appealed the state court's ruling. During the pendency of the appeal, he filed a petition for bankruptcy pursuant Chapter 13. *Id*. Wife's counsel filed a proof of claim in the Chapter 13 Bankruptcy claiming that the fees owed are a DSO and are a priority (rather being treated a general unsecured creditor). *Id*. Husband objected to her proof of claim arguing that the fee award is a form of punishment, not a DSO, and therefore, dischargeable. *Id*. 747. The

Bankruptcy Court overruled the Husband's objection and determined that the fees owed "was not a punishment but instead meant to 'compensate for the harm he had done' to the children in the form of an 'expensive custody litigation' that would have a negative financial and emotional impact on them." *Id*. Husband appealed to the District Court (which affirmed the Bankruptcy Court) and then to the Seventh Circuit (which affirmed the District Court). The Seventh Circuit held that "the overtrial order here is intertwined with the issues related to financial support, including child support and health insurance" and "making sure that its distribution of child support was not undermined by the costly legal tactics employed by [the Husband]." *Id*. at 751.

What about my GAL fees? What about my Child Representative Fees? The Seventh Circuit has not yet addressed whether a child representative or *guardian ad litem* can qualify for a domestic support exception. However, the Bankruptcy Court of the Northern District of Illinois, Eastern Division, the Fifth Circuit Court of Appeals, and the Tenth Circuit Court of Appeals have held that they are.

The case of *In re Miller*, 55 F.3d 1487, at 1489-90 (10th Cir. 1995) has held that "debts to a guardian ad litem, who is specifically charged with representing the child's best interest, and a psychologist hired to evaluate the family in child custody proceedings, can be said to relate just as directly to the support of the child as attorney's fees incurred by the parents in a custody proceeding." Further, "to hold a debt dischargeable simply because the money was paid payable to someone other than the spouse [or child], would be to put form over substance, in contravention of established bankruptcy law." *Id*.

The case of *In re Dvorak*, 986 F.2d 940, 941 (5th Dist. 1993) held that the legal fees incurred by the guardian ad litem in the underlying custody proceeding were "clearly for [the child's] benefit and support." *Id*.

The case of *In re Anderson*, 463 B.R. 871 at 875 (Bankr. N.D. Ill. 2001) followed and held that the "reasoning in *Miller* is sound." Hence, the Bankruptcy Court for the Northern District of Illinois, Eastern Division in *Anderson* held that "the fees due to a child representative is held to be within the domestic support exception of § 523(a)(5)." *Id*. at 876.

Can you discharge the marital estate? Hypothetical: Husband and Wife took out a joint loan during the marriage (there is no dispute that this is a marital debt). During the pendency of the divorce, Husband files for bankruptcy alone and discharges his loan obligation (assuming that the creditor did not file an Adversary Complaint) and leaving the Wife solely liable to the creditor. Is the Husband liable to the marital estate? The answer may be found in *In re Marriage of Cesaretti*, 203 Ill. App. 3d 347 (Ill. App. 2nd Dist. 1990) and in *In re Marriage of Lee*, 224 Ill. App. 3d 691 (Ill. App. 3rd Dist. 1992).

The appellate court in *Cesaretti* held that "[w]hile [Husband's] liability to the creditors was obviously discharged by the bankruptcy proceedings, we do not find that those proceedings discharged his liability to the marriage resulting from the subsequent divorce." *Id*. at 356.

The appellate court in *Lee* followed the reasoning in *Cesaretti* by holding that "[w]hile [Husband's] liability to the creditors was obviously discharged by the bankruptcy proceedings,

those proceedings did not discharge his obligations to the marriage resulting from its dissolution." *Id*. at 694 (citing *In re Marriage of Cesaretti*, 203 Ill. App. 3d 347 (Ill. App. 2nd Dist. 1990)).

The Automatic Stay – 11 U.S.C. §362

As a result of the 2005 Amendments (the Bankruptcy Abuse Prevention and Consumer Protection Act "BAPCPA"), it expanded the list of what matters are *not* subject to the automatic stay (such as actions for child custody, the dissolution of the marriage (not the division of the property), and actions for domestic violence.

What actions *are stayed*? See 11 U.S.C. §362(a)(1) to (8):

> **"(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> **(2)** the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> **(3)** any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> **(4)** any act to create, perfect, or enforce any lien against property of the estate;
>
> **(5)** any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
>
> **(6)** any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
>
> **(7)** the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
>
> **(8)** the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title."

"Property of the estate" is defined by 11 U.S.C. §541. "In cases under all chapters of the Code, property of the estate generally includes all property in which the debtor had any interest of any kind on the date the bankruptcy was filed." See *In re Welsh*, 602 B.R. 682 (Bankr. N.D. Ill. 2019). In a Chapter 13, the debtor's post-petition earnings and acquired property are property of the estate. *Id*.

What actions are *not stayed*? See 11 U.S.C. §362(b)(2):

> "**(A)** of the commencement or continuation of a civil action or proceeding—
>
> > **(i)** for the establishment of paternity;
> >
> > **(ii)** for the establishment or modification of an order for domestic support obligations;
> >
> > **(iii)** concerning child custody or visitation;
> >
> > **(iv)** for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
> >
> > **(v)** regarding domestic violence;
>
> **(B)** of the collection of a domestic support obligation from property that is not property of the estate;
>
> **(C)** with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute[.]"

When do you need to modify the automatic stay?

- If you are in doubt if a certain action in a pre-decree or post-decree action is stayed, then you may want to see a "comfort order" from the Bankruptcy Court.

  Note: if you proceed with an action that is in violation of the automatic stay, then that action is void (as opposed to voidable) (unless you annul the automatic stay). See *In re Myers*, 491 F.3d 120, 127 (3d Cir. 2007). Annulling the automatic is based on the Bankruptcy Court's discretion. See *In re Brittwood Creek*, LLC, 450 B.R. 769, 774 (Bankr. N.D. Ill. 2011).

  If you proceed with an action(s) that are stayed, then the moving party may be exposed to sanctions by the Bankruptcy Court for violation of the automatic stay.

- If your client is seeking to proceed against the property of the estate (such as the debtor's income in a Chapter 13).

- If you client is proceeding with the division of the marital estate.

- If the Chapter 7 Trustee wants to be involved in the parties' pre-decree or post-decree proceedings.

What is needed to obtain relief from the automatic stay? The cost to file a motion for relief from the automatic stay is currently $181.00 and you must file your Required Statement with your motion. 11 U.S.C. § 362(d), which states as follows:

"**(d)** On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

> **(1)** for cause, including the lack of adequate protection of an interest in property of such party in interest;
>
> **(2)** with respect to a stay of an act against property under subsection (a) of this section, if—
>
> > **(A)** the debtor does not have an equity in such property; and
> >
> > **(B)** such property is not necessary to an effective reorganization[.]"

In order to obtain relief from the automatic stay, the movant (usually the creditor) has to file a motion with the Bankruptcy Court and plead "for cause."

The burden of proof is provided in 11 U.S.C. § 362(g)(1) and (2) and is as follows:

"**(g)** In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

> **(1)** the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
>
> **(2)** the party opposing such relief has the burden of proof on all other issues."

For 362(d)(1): "for cause" has not been defined but is usually "determined on a case-by-case basis." *In re Wilson*, 536 B.R. 218, 222 (Bankr. N.D. Ill. 2015).

For 362(d)(2): both elements (1) and (2) must be met for the court to grant relief from the stay. In a Chapter 7 case, there is no reorganization, so the Bankruptcy Court looks to "whether the debtor had equity in the property." *In re Vitreous Steel Products Co.*, 911 F.2d 1223, 1232 (7th Cir. 1990).

Proof of Claim

Proof of Claims if governed by 11 U.S.C. § 501 and states as follows:

"**(a)** A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

(b) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

(c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.

(d) A claim of a kind specified in section 502(e)(2), 502(f), 502(g), 502(h) or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim."

The purpose of filing a Proof of Claim is "to alert the court, trustee, and other creditors, as well as the debtor, to claims against the estate." *Adler v. Sherman*, 230 F.3d 890, 896 (7th Cir. 2010).

Filing Proof of Claims are subject to a time frame to be considered allowed. The time to file a Proof of Claim is governed by Fed. R. Bankr. P. 3002. Most creditors have 70 days from the date of the filing of the Bankruptcy Petition to file their Proof of Claim. Fed. R. Bankr. P. 3002(c). Governmental units have 180 days to file its Proof of Claim from the date of filing of the Bankruptcy Petition. See 11 U.S.C. § 502(b)(9); Fed. R. Bankr. P. 3002(c)(1).

As to a Chapter 13, if the Proof of Claim is filed after the deadline, then the Claim may be disallowed if a party objects. See 11 U.S.C. § 502(b)(9). "As a general matter, late-filed claims are completely barred in a chapter 13 case." See *In re Tarbell*, 431 B.R. 826, 827 (Bankr. W.D. Wis. 2010). However, the debtor and the Trustee are allowed to file a Proof for Claim on behalf of a creditor.

Note: be an active participant in the debtor's bankruptcy. If you do not file a Proof of Claim for the non-debtor spouse (or ex-spouse), then they will be bound by the terms of the confirmed Chapter 13 Plan.

The Non-Filing Spouse's Interest in Marital Property

It has happened in the past where a spouse files for bankruptcy without their spouse and their joint/ marital property is subject to the Bankruptcy Court's jurisdiction. If there is equity in the joint/marital property, then the non-filing spouse should participate in the bankruptcy proceedings as they may be considered an interested party ("common species of ownership"). The non-filing spouse may need to review the bankruptcy petition, review the values, and determine if they need to object to the Trustee's asset administration.

As stated earlier, the Bankruptcy Court has jurisdiction over the debtor's property. See *In re Welsh*, 602 B.R. 682 (Bankr. N.D. Ill. 2019). Therefore, the Bankruptcy Court has jurisdiction to administer the property in the estate which may affect the non-spouse's interest. In some cases, the non-filing spouse may patriciate in the bankruptcy administration proceedings or may ask the Bankruptcy Court to abstain and request to have the state court determine the parties' marital property rights. See 28 U.S.C. § 1334(c)(1).

Note: The Bankruptcy Court can retain its jurisdiction to distribute the marital property even it is abstained to allow the state court to determine the parties' rights. See *In re Dzielak*, 435 B.R. 538 (Bankr. N.D. Ill. 2010).