

What Happens to Debt in Divorce if a Spouse Files Bankruptcy?

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Divorce and bankruptcy are both stressful on their own, but when they overlap, things can become especially complicated. Understanding how these two legal processes interact is critical, particularly when dividing debt.

Divorce cases are handled in family court, where a judge determines how marital property and debt should be divided. Bankruptcy, on the other hand, is handled in federal court and focuses on eliminating or restructuring debt.

Because these are separate legal systems, one does not automatically control the other, but bankruptcy can significantly impact the outcome of a divorce.

In many states, debts incurred during marriage are generally considered marital debt, regardless of whose name is on the account. The court may assign responsibility for certain debts to one spouse, but bankruptcy may impact things.

If your spouse files for bankruptcy, especially Chapter 7 or Chapter 13, it may affect debts addressed in your divorce. For instance, if your spouse is assigned a marital debt in the divorce but later files for bankruptcy, they may be able to discharge (eliminate) their obligation to pay. Even if the divorce decree says your spouse must pay a debt, creditors are not bound by that order. If your name is also on the account, the creditor may still pursue you for payment. If your spouse discharges the debt in bankruptcy, the creditor may turn to you for full payment, even if the divorce said otherwise.

Not all debts may be discharged through bankruptcy. Under federal law, certain divorce-related debts, like child support, alimony/spousal support, and some other obligations arising from a divorce agreement, may not be dischargeable.

The timing of a bankruptcy filing is also important. Filing for bankruptcy before filing for divorce may simplify the divorce by eliminating certain debts ahead of time, or it may appear fraudulent and complicate the matter. A bankruptcy filing can pause parts of the divorce proceedings, particularly those involving property division. A spouse may try to discharge debts assigned to them, potentially shifting financial responsibility back to the other spouse.

If bankruptcy is a possibility in your divorce, you should discuss strategies with your family and bankruptcy attorneys, such as closing joint accounts, refinancing/transferring debt into one name when possible, and seeking indemnification clauses in the divorce agreement.

While a divorce decree may assign responsibility for debt, it does not eliminate your liability to creditors. If your spouse files for bankruptcy, you could still be on the hook for joint debts, regardless of what your divorce agreement says.