

Divorce and bankruptcy

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If you're getting a divorce and you have a lot of debt, you might want to file for bankruptcy. You may file with your spouse, or separately. Read this to learn more.

We're divorcing and have a lot of debt. Is this a good time to consider bankruptcy?

If you're getting divorced, or are considering it, and you and your spouse have so much debt together that you can't pay it or are having a very hard time paying it, you should learn the basics about how bankruptcy generally works, whether you should file together (called jointly) with your spouse or separately, and whether your spouse can use bankruptcy to get out of paying what they owe you.

You should also try to talk to a lawyer. Divorce and bankruptcy can be complicated and have serious consequences. This is a general overview only.

Should we file for bankruptcy before or after we get divorced?

If you have a lot of debt together, you can file for bankruptcy before filing for divorce. Bankruptcy can discharge some debt and make it easier for you to negotiate dividing the rest of the debts between yourselves.

Can we file for bankruptcy together if we've already separated?

Yes. You don't have to live together or even have any real contact with your spouse to file jointly. It can be cheaper to file a joint bankruptcy instead of each of you filing separately.

But even for a joint filing, you each may need your own lawyer. What is good for one spouse may not be good for both.

Will filing for bankruptcy protect everything we own?

Maybe not. When one or both spouses file for bankruptcy, all the property you own together (called the “community property”) is available to pay community debts.

My spouse wants to file for bankruptcy, but I don't. What if my spouse files for bankruptcy after our divorce is final?

If your ex files for bankruptcy after your divorce, you'll still be responsible for community debts your spouse can't pay. You may have less community property then to pay them.

The wording of your divorce decree and settlement could matter in the bankruptcy. Try to get legal help during your divorce to help you plan for the effects of bankruptcy on your divorce settlement.

Can my ex-spouse file for bankruptcy to stop paying me?

Maybe. Your ex can't stop paying “domestic support obligations” like child support and spousal support. Expenses like mortgage payments and health insurance may also be domestic support obligations.

If your ex files for bankruptcy and gets behind on support, you must file a proof of claim (<https://www.uscourts.gov/forms-rules/forms/bankruptcy-forms>) (form B-410) with the bankruptcy court to claim the back support.

For other payments, it depends. **Chapter 7 won't** discharge non-support obligations from a divorce or separation. **Chapter 13 will discharge some** debts arising from property settlements that aren't dischargeable in Chapter 7.

Quickly file any objections to discharge when you get the notice of bankruptcy.

How will the bankruptcy court know my ex owes me anything?

The bankruptcy petition should list you as a creditor. The bankruptcy trustee should give you notice of the initial meeting of creditors (called a **341 meeting**) and your deadline for filing a claim.

Even if you don't get notice, if you know your ex is petitioning for bankruptcy, you should file a claim (<https://www.uscourts.gov/forms-rules/forms/bankruptcy-forms>)

to protect yourself. Talk to a lawyer.

Our divorce decree said my ex would pay certain debts and I would be “held harmless.” What if my ex files for bankruptcy?

You may have to repay certain debts and then seek compensation from your spouse.

Example: You have \$1,000 in credit card debt where you and your spouse both co-signed on the card. In your divorce decree, your spouse agreed to pay back \$1,000 in credit card debt. You agreed not to be responsible for the debt (called held harmless).

If your spouse discharges the debt in **Chapter 7 bankruptcy**, the credit card company can't go after your spouse. But they can go after you. If they do, you must repay the debt. And then, under the hold harmless provision of your divorce decree, you can sue your spouse to reimburse you for the \$1,000 debt you paid the creditor.

But if your spouse discharges the debt in **Chapter 13** and the credit card company later goes after you, you probably can't **sue** your spouse. But you can ask the divorce court to raise the amount of support you get because your financial circumstances have changed and you're now responsible for more debt.

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