



AMERICAN
BANKRUPTCY
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2019 Hon. Steven W. Rhodes Consumer Bankruptcy Conference

Bankruptcy and State Law: Like Oil and Water?

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The Bankruptcy Code is
layered above state law.

Most of the debts, rights, and
obligations at issue in a Bankruptcy
proceeding are created by state law.



The Bankruptcy Code is layered above state law.


The Code and other Federal laws give us the framework to deal with these competing interests in an organized manner.



The Bankruptcy Code is layered above state law.

The key is to understand how the particular state law interest at issue interacts with the Code.

Where does the Code override applicable state law, and where does the Code defer to state law?





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For each state law interest in a Bankruptcy proceeding, we need to ask three questions:



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For each state law interest in a Bankruptcy proceeding, we need to ask three questions:

1. How is it affected by the Automatic Stay?
2. Is it subject to discharge?
3. Can its terms be changed?

Other Federal laws also affect state law interests in Bankruptcy

Under the *Rooker-Feldman* Doctrine, Federal Courts may not sit in direct review of state court decisions unless Congress has expressly authorized such relief.

- *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)
- *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)

Other Federal laws also affect state law interests in Bankruptcy

Under the *Rooker-Feldman* Doctrine, Federal Courts may not sit in direct review of state court decisions unless Congress has expressly authorized such relief.

For example, if a property has been foreclosed for property taxes, and the state law appeal and redemption periods have expired, a Bankruptcy Court cannot revisit the foreclosure judgment except in very limited circumstances.

Property Taxes in Bankruptcy

The Bankruptcy Code is fairly deferential to state law ad valorem property taxes.

The Automatic Stay

- The making of an assessment and the issuance of a tax bill for ad valorem real property taxes does not violate the automatic stay. 11 USC § 362(b)(9)(D).
- The automatic stay does not prevent the creation and attachment of a tax lien for ad valorem real property taxes. 11 USC § 362(b)(18).

The Automatic Stay

- In Michigan, the Automatic Stay does not prevent property taxes from being returned to the County Treasurer as delinquent.
- The Automatic Stay does prevent foreclosure if the case is filed before the foreclosure judgment is entered.

The Automatic Stay

- The Automatic Stay does not prevent foreclosure if the case is filed after the foreclosure judgment is entered, but before the expiration of the redemption period. In that case, the redemption period is extended to 60 days after the petition filing date. 11 USC § 108(b).
- The Automatic Stay does not prevent foreclosure if the case is filed after the redemption period expires. The Debtor no longer has an interest in the property under 11 USC § 541(a)(1).

Generally, the Court cannot change the terms of a property tax obligation in a Chapter 13 or 11 Plan, other than to extend the time for payment up to the length of the Plan.

- In a Chapter 13 proceeding, the creditor's lien must be retained, and the creditor is entitled to receive at least the full value of their interest in the property over the life of the Plan. 11 USC § 1129(b)(2)(A) and 1325(a)(5).
- In a Chapter 11 proceeding, secured tax claims are entitled to be paid in regular installments over no more than 5 years, and in a manner not less favorable than the most favored nonpriority unsecured claim under the Plan. 11 USC §§ 1129(a)(9)(D).
- Interest is payable on the claim. 11 USC § 506(b). The interest rate is set at the state statutory rate. 11 USC § 511.

Bankruptcy Court Review of Property Taxes

- Pursuant to Section 505(a)(1) of the Bankruptcy Code, the Court may determine the amount or legality of a tax.
- If the Debtor has already contested the tax before a state court or administrative tribunal, the Bankruptcy Court lacks jurisdiction. 11 USC § 505(a)(2)(A).

Bankruptcy Court Review of Property Taxes

- The Bankruptcy Court lacks jurisdiction to determine any amounts related to property taxes if the time for contesting that amount under state law has passed. 11 USC § 505(a)(2)(C).
- Under Michigan law, a challenge to a property tax assessment for commercial or industrial property must be filed with the Tax Tribunal on or before May 31 of the year in which the taxes are levied or the challenge is waived. MCL 205.735a(6).
- A challenge to a property tax assessment for residential or agricultural property must be filed with the Tax Tribunal on or before July 31 of the year in which the taxes are levied or the challenge is waived. MCL 205.735a(6).

Condominium and Homeowners' Association Claims

In General:

1. Ask your client if they have a Condominium or Homeowners' Association. Clients may forget to mention these Creditors and they do not normally show up on a credit report. Remember even if your client lives in a single family home that home can still be considered a condominium.
2. Do a title search on your client's real property. The Deed can help you in determining whether or not there is an Association and you will find any liens the Association has filed.
3. Ask your client how they are billed for water. Some Association's include water in the Association fee, some bill separately for water. Some municipalities bill the individual Unit/Lot owner for water. If the Association is billing for water separately, these claims should be listed in addition to the ongoing assessment claims.

Condominium and Homeowners' Association Claims

4. Please list the Association as the Creditor. The property management company is the Association's agent, not the Creditor. The address for the property management company can be listed as a service address for the Creditor. To determine the proper address for notice, do a search in the state's corporate database.

5. Condominium Association claims are secured claims. The Michigan Condominium Act provides Condominium Associations with a Statutory Lien on the Condominium Unit for all "sums assessed to a co-owner by the association of co-owners that are unpaid together with interest on such sums, collection and late charges, advances made by the association of co-owner for taxes or other liens to protect its lien, attorneys fees, and fines in accordance with the condominium documents..."

6. Homeowners' Association claims are secured claims to the extent the Association documents provide for a lien on the unit or a lien is recorded on the unit prior to the bankruptcy filing.

The Automatic Stay

Condominium and Homeowners' Association Claims

1. Stops all pending Court or incomplete foreclosure actions.
2. Stops all collection actions on any pending judgments.
3. Does not stop any foreclosure actions if the case is filed after the sale is completed.
4. Prevents the Association from suspending the Debtor's privileges in the Association pursuant to the Association documents (i.e. pool, clubhouse rental, voting, etc.) due to a delinquency in assessments.
5. Arguably prevents the Association from taking adverse actions with respect to fining the Debtor for violations of the Association documents.
6. Does not prevent the Association from assessing Condominium or HOA assessments, additional, or special assessments as allowed by the Michigan Condominium Act and the Association documents.

Condominium
and
Homeowners'
Association
Claims

**TREATMENT OF CONDOMINIUM AND HOMEOWNERS' ASSOCIATION
ASSESSMENTS**

CHAPTER 7

1. Surrender of Property

*Note: Pursuant to 11 U.S.C. s. 523(a)(16), a Debtor will remain liable for all post-petition assessments and fees until such time as the mortgage lender forecloses on the debt or the Debtor is otherwise divested of title to the Unit.

2. Reaffirm the Debt

*Allows the pre-petition debt to be paid while maintaining the post-petition debt. A Reaffirmation Agreement can be used to negotiate a payment plan with the Association.

Condominium
and
Homeowners'
Association
Claims

Chapter 13

1. Surrender the Property:

*Note: Per the opinion in *In Re: Ezroy Spencer*, 457 B.R. 601(E.D. Mich 2011) post-petition assessments are not dischargeable and continue to be the Debtor's responsibility until the Debtor is divested of title to the property.

*The Debtor must pay or treat the ongoing obligation until the foreclosure sale takes place or the Debtor is divested of title by other means.

2. Treat ongoing assessments and arrearages in the same class with mortgage creditors

3. Strip the Association's Lien if there is not equity in the property after the first mortgage.

Condominium and Homeowners' Association Claims

Dischargeability

*Only the Debtor's Pre-Petition PERSONAL liability is discharged by the Bankruptcy Proceedings. Any statutory or recorded lien on the property is not extinguished.

*The Association may proceed to foreclose its pre-petition lien under state law *in rem*.

*See *In re: Byron G. Jackson*, 554 B.R. 156 (B.A.P. 6th Cir., 2016).

Divorce and Bankruptcy

Questions to Answer Before Filing:

- What Chapter?
- Whether to file before divorce or after?
- Who files first?
- Do both spouses file, or just one?

To answer these questions, we examine the client's assets, debts, income, and overall situation.

Divorce and Bankruptcy

Whether to file before or after divorce?

- Chapter 7 filings are generally resolved within several months.
- A joint Chapter 7 filed first can simplify divorce by discharging qualifying debts of both spouses.
- A joint Chapter 7 costs less than separate filings.

Divorce and Bankruptcy

Assets and Liabilities

- Joint filing can give extra protection in the form of double exemptions.
- If bankruptcy precedes divorce, divorce distribution may be delayed until the bankruptcy completes.
- Bankruptcy debts are tied to an individual's name or SSN and can affect how debts are treated after a divorce.



Divorce and Bankruptcy

Income Considerations

- Chapter 7 income limits are based on household size.
- Joint filing may not be possible pre-divorce if the joint household income is too high.



Divorce and Bankruptcy

Situational Considerations

- The attorney should carefully consider the relationship between the spouses.
- Can the soon-to-be ex-spouses communicate with each other effectively?
- If filing jointly, the clients will need to work together closely. If they can't do that, separate filings are more appropriate.

Divorce and Bankruptcy

Marital Debts

- Division of marital debts is a costly and time-consuming process.
- A divorce judgment ordering one spouse to pay a joint debt does not relieve the other spouse from his or her obligation to pay if the paying spouse defaults.
- Spousal support can help the receiving spouse become financially independent after bankruptcy.

Divorce and Bankruptcy

The 1994 Bankruptcy Code Amendments and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) sought to ease the impact of competing interests by providing enhanced protections to non-debtor spouses and dependents.

Divorce and Bankruptcy

There are four areas of enhanced protection:

- Diminished applicability of the Automatic Stay to Domestic Support Obligations (DSOs)
- Elevated priority status of DSOs
- Expanded non-dischargeability of DSOs and other divorce-related debts
- Heightened requirements for notice to DSO creditors

Divorce and Bankruptcy

The Automatic Stay

- In general, actions involving the granting of a divorce, resolution of custody or parental rights, and other non-monetary issues are not stayed.
- Actions involving the division of property or debt are subject to the Automatic Stay.

Divorce and Bankruptcy

The Automatic Stay

- State courts have concurrent jurisdiction with the Bankruptcy Court to determine whether a particular divorce-related proceeding is subject to the Automatic Stay.
- If the state court exercises jurisdiction, it must apply federal law in making the determination.

Divorce and Bankruptcy

Divorce-Related Exceptions to the Automatic Stay

- Income deduction orders
- Establishment of paternity
- Establishment or modification of DSOs
- Child custody or visitation
- Terminating marital status
- Domestic violence proceedings
- DSO collection from non-estate property

Divorce and Bankruptcy

Domestic Support Obligations (“DSOs”)

- A debt ... that is owed to or recoverable by a spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or responsible relative; or a governmental unit;
- Is in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) ... without regard to whether such debt is expressly so designated;
- ... set forth in a separation agreement, divorce decree, or property settlement agreement; an order of a court of record; or a determination made in accordance with applicable non-bankruptcy law by a governmental unit

§101(14A)

Divorce and Bankruptcy

Domestic Support Obligations

- DSOs are never discharged, regardless of Chapter.
- Pre-petition DSO payments are not a preference under §547(c)(7).
- DSO arrearages are afforded priority treatment under §507(a)(1).
- To be confirmed, a Chapter 11, 12, or 13 Plan must pay all DSOs in full (§§ 1129, 1222, 1225 and 1322 and 1325).
- Some DSO collections are exempted from the Automatic Stay.

Divorce and Bankruptcy

Domestic Support Obligations

- In order to receive a discharge under Chapters 12 and 13, the Debtor must remain current on all post-petition DSO payments (See, §§ 1228 and 1328).
- The case may be dismissed or converted if on-going DSO payments are not made in Chapters 11, 12 and 13. (See, §§ 1112, 1208 and 1307).
- Interest is allowed on DSO arrearages if authorized under state law, § 1222 (b)(11); § 1322 (b)(10).

Divorce and Bankruptcy

Domestic Support Obligations

- Priority status of DSOs are elevated to 1 of 10. DSO creditors are paid as first priority.
- Trustee's "carve out" for administrative fees and expenses to liquidate assets for DSO creditor.
- Trustee must give special notices to DSO creditors.
- The Debtor has a limited ability to protect exempt assets from DSO creditors §522(c)(1), (f)(1).
- Debtor is precluded from avoiding a DSO lien and impairs exemption.

Divorce and Bankruptcy

Defense of Marriage Act ("DOMA") and Same-Sex Marriage

- Section 2 of the DOMA authorized states to refuse to recognize same-sex marriages performed in other states. This led to substantial uncertainty in bankruptcy proceedings.
- *Obergefell v. Hodges*, coupled with the repeal of the DOMA, resolved the uncertainty.

Divorce and Bankruptcy

Defense of Marriage Act ("DOMA") and Same-Sex Marriage

- Same-sex couples can file jointly in all states.
- Venue is proper as long as one spouse is domiciled or has assets in filing state.
- Can stack exemptions, utilize tenancy by the entireties, and community property laws.
- DSO provisions apply to same-sex marriages and divorces.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") made many significant changes in the arena of domestic relations law. Many domestic and bankruptcy practitioners opined that BAPCPA would decrease the litigation of domestic issues in the bankruptcy courts. The 1994 Bankruptcy Code Amendments and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) sought to ease the impact of competing interests by providing enhanced protections to non-debtor spouses and dependents through the addition of divorce-related Bankruptcy Code provisions.

These divorce provisions encompass four areas of enhanced protection: (1) diminished applicability of the automatic stay to domestic support obligation (DSO); (2) elevated priority status of DSOs; (3) expanded non-dischargeability of DSOs and other divorce-related domestic debts; and (4) heightened notice requirements to DSO creditors;

Type of bankruptcy your clients wish to file

Divorce can be a very challenging time for anyone especially when it is coupled with financial difficulties. It is not uncommon for divorcees to file bankruptcy at the same time. But the question is – which comes first? And does it even matter?

Sometimes, filing bankruptcy before a divorce is a good idea. In some cases, it is not. There are several factors that need to be considered. It depends on where you live, how much debt you have, and what type of bankruptcy you wish to file.

Below are the important factors to consider when deciding which to file first.

A major factor that should help you decide whether to file bankruptcy first before a divorce is the type of bankruptcy you are filing. If your client is filing for a Chapter 7, you can do it prior to the divorce as the entire process can be completed in several months. You also have an option

to file jointly. Many divorcing couples file jointly because it can discharge the qualifying debt of both spouses, which means they have one less problem to deal with during the divorce. Also, filing jointly costs lower than filing it apart.

Your client's assets

Another thing to consider is your client's assets. If your client jointly own a property, filing a joint bankruptcy can give you extra protection in the form of double exemptions. Also, if bankruptcy precedes divorce, it can delay the distribution of assets and liabilities until the bankruptcy is completed. Additionally, bankruptcy debts are tied to an individual's name or social security number and can affect how debts are treated after a divorce.

Your client's income

If your client's joint income is too high to qualify for Chapter 7, filing a divorce first is a better idea. Chapter 7 income limits are based on household size. However, if your income is less than what your spouse makes then you can go ahead with bankruptcy. If your clients will file jointly, you can save money on attorney's fees and filing costs. Still, the fact remains that all the legal work has a corresponding price and it can be difficult to get started when you are already in a deep financial mess.

Your client's situation

If your clients are still in good terms, you may choose to file for bankruptcy before a divorce. However, if there is no chance that you can have good and open communication, it's better to do it the other way around. Take note that if you're filing jointly, you will have to work closely with the spouse and ask him/her to show up to court during the proceedings. When deciding whether to file a divorce or bankruptcy first, consider the status of the relationship with the spouse.

Your client's marital debts

Determining who is responsible for paying debts incurred during the marriage is a costly and time-consuming process. It's important to remember that ordering one spouse to pay a certain debt does not eliminate the other spouse's obligation towards that debt. That means if your spouse client incurred a debt on a joint credit card, and was ordered by the court to repay the loan, the client is still on the hook in case your ex-spouse does not do his obligations or does not file for bankruptcy. To resolve marital debts, filing for a Chapter 7 bankruptcy prior divorce is beneficial.

Recovering from bankruptcy after a divorce can be difficult. Good thing, substantial awards or spousal support helps the receiving spouse become financially independent after a divorce. In calculating substantial awards, there are many factors that courts consider, such as the spouses' income and property, length of the marriage, current and future earning capacity of both parties, and tax consequences to each spouse. Some common ways of calculating maintenance award are to take up to 40% of the net income of the paying spouse, less 50% of the net income of the supported spouse.

Divorce and bankruptcy go hand in hand. And in most cases, it is more beneficial to file for bankruptcy before a divorce to ensure that all assets and debts are taken care first and avoid potential issues concerning property division and marital debts. Additionally, divorce proceedings usually take longer than bankruptcy so it is not only convenient but also beneficial to file for bankruptcy first.

THE AUTOMATIC STAY

§362 describes the automatic stay and should be treated as a statutory injunction against the world. In the context of family and divorce law, the automatic stay applies to property divisions

where the divorce court is trying to modify marital property between the debtor and non-debtor - thus division of property and enforcement of property settlements are probably subject to the automatic stay.

All collection activity must cease unless there is an exception. *Income Deduction Orders are not stopped so get one if you can.*

Exceptions to the automatic stay §362(b)(2):

- a. • Establishment of paternity;
- b. • Establishment or modification of an order for domestic support obligations;
- c. • Child custody or visitation;
- d. Terminating marital status;
- e. • Domestic violence proceedings;
- f. • Collecting DSO obligation from property that is not part of estate. General rule is that collection and enforcement of all pre-bankruptcy claims is stayed
- g. • In the divorce proceeding: actions involving the granting of a divorce, resolution of custody / parental rights, and other non-monetary issues *ARE NOT STAYED* actions involving the division of property or debt *ARE STAYED*;
- h. • State Court has concurrent jurisdiction with the Bankruptcy Court to determine whether a particular divorce-related proceeding is stayed by §362 If State Court exercises jurisdiction, it must apply federal law in making the determination
- i. • Domestic support claims are unsecured in bk but are entitled to high priority [see § 507(a)(1)] Very important to understand difference between the applicability of the stay and the treatment to which a divorce-related claim is entitled in the bankruptcy case

- j. • Crucial that divorce attorneys (1) plan for the possibility that one of the divorcing spouses may file for bankruptcy in the future, when drafting divorce agreements; (2) participate (or hire special counsel to participate) in the bankruptcy case, if the other spouse does seek bankruptcy relief during or after the divorce; and (3) file a proof of claim for the spouse client in the other spouse's bankruptcy case

HOW IS A DSO TREATED IN BANKRUPTCY?

- A DSO is NEVER discharged!!!! (Chapter 7, 11, 12 or 13);
- Pre-petition DSO payments are not considered a preference under §547(c)(7);
- Any DSO arrearage is afforded priority treatment under §507(a)(1);
- Any DSO must be paid in full to obtain a confirmed Chapter 11, 12 or 13 plan (§§ 1129, 1222, 1225 and 1322 and 1325);
- There are exceptions to the automatic stay to collect DSOs under §362;
- The Debtor must stay current on post-petition DSO payments in order to receive a discharge in Chapters 12 and 13; (See, §§ 1228 and 1328);
- The case may be dismissed or converted if on-going DSO payments are not made in Chapters 11, 12 and 13. (See, §§ 1112, 1208 and 1307).
- A debt that accrues before, on, or after the date of the order for relief in a case under this title, that is owed to or recoverable by a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or a governmental unit;

- Is 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;
- Established or subject to establishment before, on, or after the date of the order for relief in a case under this title, set forth in a separation agreement, divorce decree, or property settlement agreement; an order of a court of record; or a determination made in accordance with applicable non-bankruptcy law by a governmental unit; and not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily.

BAPCPA: • Defines DSO; Code §101(14A)

- Expands scope of protected obligations
- Priority status elevated to 1 of 10
- Trustee's "carve out" for administrative fees and expenses to liquidate assets for DSO creditor • Trustee must give special notices to DSO creditor
- Exempt property available to DSO creditor
- Limitation on debtor's ability to protect exempt assets from DSO creditors; §522(c)(1), (f)(1)
- Exempt property subject to execution
- Debtor precluded from avoiding DSO lien that impairs exemption
- DSO protection in reorganizations
- Plan confirmation requires DSO payments be current § 1129 (a)(14); § 1225 (a)(7); § 1325 (a)(8)

- Must certify post-petition DSO payments are current for discharge: § 1228(a); § 1328(a)
- DSO arrearage paid as 1st priority unless holder agrees otherwise: § 1322 (a)(2); § 1222 (a)(2)
- Interest allowed on arrearage if authorized under state law; all unsecured claims paid in full: § 1222 (b)(11); § 1322 (b)(10);
- Failure to pay DSO is “cause” to dismiss or convert: § 1112(b)(4)(P); § 1208(c)(10); § 1307(c)(1) • But post-petition DSOs need not be current for discharge of Chapter 11 individual debtor: § 1141(d)(2), (5)

Expanded Non-dischargeability of support, property settlement and divorce-related debts a.

Expanded Non-dischargeability of Support Claims; §523(a)(5)

- Precludes discharge of DSO claims • Federal law determines what debts are “in nature of alimony, maintenance and support;” bankruptcy court makes independent determination whether it’s support under federal definition
- Intent of parties at time of divorce
- Income/needs of parties
- Amount/type of property division 18 • Number/frequency of payments
- Waiver of alimony/maintenance
- Tax treatment; ability to modify b. BAPCPA revamped §523(a)(15) to further strength rights of domestic creditors
- Automatic exception for all non-support marital debts incurred in course of divorce or separation or in connection with divorce or separation related agreement or decree

- Excludes all marital and domestic relations debts from discharge
- Only requirement: Incurred in connection with separation or divorce or related action
- Expanded jurisdiction of family courts to adjudicate § 523(a)(15) claims
- Timing requirement deleted – now automatic, why would debtor or DSO creditor file adversary proceeding?
- Non-DSO marital debt still dischargeable in Chapter 13; § 1328(a)
- Non-DSO marital debt might be for fraud, breach of fiduciary duty (60 day deadline)
- Liquidation of exempt property to satisfy DSOs; § 522(c)(1)
- Burden of proof: preponderance of evidence for all elements on party seeking non-dischargeability
- To DSO creditor regarding right to use services of state's child support enforcement agency; § 704(c)(1)(A)
- To state's child support enforcement agency of DSO claim; § 704(c)(1)(B) b. When discharge granted • to DSO creditor and state's child support enforcement agency of granting of discharge, address of debtor and his/her employer, any non-dischargeable claims and/or reaffirmed debts; § 704(c)(1)(C)

Concurrent and Exclusive Jurisdiction of Bankruptcy and Family Courts

1. Jurisdictional rules potentially enable one court to revisit/invoke equitable results of the other
- General rule is bankruptcy court's role usually limited to determining state court decision's impact in debtor's case; state court decisions usually left undisturbed

2. Potential for results to collide • Collusion between debtor and spouse • Failure to adhere to state law guidelines/precedent • Federal definitions applicable • Trustee intervention to protect bankruptcy estate; reservation of final judgment in lift stay orders • Fraudulent conveyance and related claims under trustee's strong arm powers • State law defines property rights and interests

3. Exclusive Jurisdiction a. Bankruptcy Court • Exclusive jurisdiction to determine what constitutes property of the estate and modify or terminate automatic stay; §541; 28

U.S.C. §1334(b),(e) b. Divorce Court • Exclusive jurisdiction to establish/modify DSO or to collect DSO from property that is not property of the bankruptcy estate; §362 (b)(2); except that Divorce Ct bound by discharge injunction c. Intersection • Divorce court can order collection from property that is not property of the estate, but determination of what is property of the estate is within exclusive jurisdiction of bankruptcy court

4. Concurrent Jurisdiction of Bankruptcy and Divorce Courts – applying federal law a.

Automatic Stay; §362 • Divorce court can determine whether matter is subject to automatic stay but must rule on applicability of stay prior to acting on underlying domestic-relations matter; 28

U.S.C. §1334 20 • Intersection: Divorce court rules on applicability of stay but bankruptcy court retains exclusive jurisdiction to modify or lift the stay • Impact of divorce court's erroneous

ruling that stay not applicable; decision void as modification of stay without proper jurisdiction •

Impact of divorce court's correct ruling that stay not applicable; Rooker-Feldman bars

bankruptcy court's appellate review of state court judgment

b. Determining whether debt is DSO for ruling on dischargeability under §523(a)(5)

c. Adjudicating dischargeability of property settlement and non-support marital obligations under §523(a)(15); expanded by BAPCPA

d. Adjudicate/enforce bankruptcy discharge injunction; §524(a) III. Successive vs. Concurrent Proceedings 1. Benefits of joint petition • Ease of administration • stack exemptions; tenancy by entirety 2. Benefits of divorce decree before bankruptcy • Entry of final judgment/vesting of property 3. Impact of concurrent proceedings • Equitable liens and constructive trusts • Constructive trust established when divorce pending on petition date; Preferential and fraudulent transfers when divorce predates bankruptcy petition • Preference exception for DSOs; §547(c)(7) • Support, property settlement and related agreements or transfers subject to avoidance as fraudulent transfers; §548, §544 • Bankruptcy courts unravel transfers/obligations made w/intent to hinder, delay or defraud creditors even if property division/support obligation blessed by divorce court

5. DOMA, Same-Sex Marriage, Conflict of Law Issues

1. Diminishing conflict of law issues • Repeal of Defense of Marriage Act • §2 of DOMA authorized states to refuse to recognize valid same-sex marriages performed in other states, and the rights, claims, and judgments attendant to those marriages • Uncertainty surrounded recognition of these marriages and the rights, claims and judgment arising therefrom, in bankruptcy proceedings • Legalized same-sex marriage • Coupled with repeal of DOMA, removes much uncertainty • Conflict of law and other issues impacted by these developments • Joint filings; venue • Same-sex married couples can file jointly in all states • Proper venue for same-sex spouses filing jointly as long as one spouse is domiciled or has assets in filing state • Exemptions; special asset protections • Can stack exemptions; utilize tenancy by entirety if applicable; community property laws apply • Fraudulent transfer/resulting trust issues/presumptions • Presumption of gift between same-sex spouses • Dischargeability • Non-dischargeability protections for DSOs and other marital debts • Priority and enforcement of DSOs • DSO protections and enforcement

mechanisms; payment of DSO and establishment of lien for DSO immune from preference attack

- Automatic stay re: DSOs • Exceptions to stay for establishment and enforcement of DSOs apply

to same-sex spouses/ex-spouses