

# Bankruptcy – Don't Worry, Be Happy

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## General Information

- 2 Major Types of Debt
  - Dischargeable
  - Non-dischargeable
    - Child Support
    - Maintenance Support
    - Taxes
    - Amounts owed due to fraud or personal injury settlement claim

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## 3 Different Types of Debt Categorization

1. Secured Claim
  - Mortgage
  - Loan
2. Unsecured Priority Claim
  - Child Support
  - Maintenance
  - Taxes to Federal or State Governments
3. Unsecured Non Priority Claim
  - Credit Cards
  - Utilities

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## Exempt Property

Debtor not be required to liquidate if the equity in the property is under certain limits.

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## Chapter 7 Bankruptcy

- Chapter 7 is also known as a straight bankruptcy
  - Liquidate non-exempt assets of debtor
  - Pay off creditors with funds
  - Discharge rest of his/her debt
  - Limited in duration, 3-6 months
  - I/W can continue at 120%
  - Child support and maintenance cannot be discharged

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## Chapter 13 Bankruptcy

- Debtor pays off his/her debt through a bankruptcy plan
- Debtor's income is tallied up, monthly expenses are subtracted, and difference is paid to the trustee to pay off the debts
- Secured debts and priority debts get paid during the plan
- Unsecured, non-priority debts (if dischargeable) can be paid just a portion of their value
- Lasts 3-5 years
- I/W can continue
- All disposable income must be applied to payments under the plan

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## New Bankruptcy Law

- Major changes to US Bankruptcy Code effective October 17, 2005, which made child support collection significantly easier.
  - Child support is the number one priority among unsecured priority claims.
  - PA and NPA are both now priority claims.
  - I/W no longer violates the automatic stay.
  - Arrears are to be paid off during course of Chapter 13, but if all debtor's income is applied to payments under the plan, it may be acceptable not to pay in full.

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## New Bankruptcy Law *(continued)*

- We can proceed with DL, recreation license, and professional license suspension.
- We can intercept all tax refunds.
- Statute tries to ensure payment of ongoing support during bankruptcy.
  - Provides for dismissal of bankruptcy if debtor does not pay current support after filing and requiring debtor to certify that all current support paid since date of filing before being discharged of other debt.
- Contempts and FIDM hits are still stayed.

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## Authority Delegation

- 11 USCA 101 (14a)
  - Domestic support obligation now includes PA and NPA amounts.
- 11 USCA 507 (a) (1)
  - Child support is now the first priority claim.
- 11 USCA 1322 (c) (11)
  - Bankruptcy can be dismissed if any child support is not paid after the date of filing.
- 11 USCA 1325 (a) (7)
  - Requires all current support to be paid between filing of bankruptcy and confirmation of plan.

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## Authority Delegation *(continued)*

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- 11 USCA 1328 (a)
  - Debtor must certify that all child support was paid during plan before they can be discharged of other debt under the plan.
- 11 USCA 362 (b) (2) (A)
  - This permits the commencement or continuation of an action or proceeding for the establishment of paternity; or the establishment or modification of an order for alimony, maintenance, or support.
- 11 USCA 362 (b) (2) (B)
  - This section allows income withholding to continue as well as suspension of any license, credit bureau reporting, and interception of tax refunds.

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## Questions?

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