

Domestic Support Obligations

Presented by:

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I. DOMESTIC SUPPORT OBLIGATION DEFINED

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 introduces the term “domestic support obligation”. The definition is set forth in §101(14A) and states:

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,

(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;

I. DOMESTIC SUPPORT OBLIGATION DEFINED ...cont.

(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

I. DOMESTIC SUPPORT OBLIGATION DEFINED ...cont.

(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.

II Changes in the Automatic Stay

There have been several changes to the automatic stay provisions of §362 that will impact domestic support creditors. Specifically, §362(b)(2) has been rewritten expanding the current provisions excepting actions from the automatic stay. **The following additional actions are exempt from the automatic stay of Section 362:**

II Changes in the Automatic Stay ..cont.

- the commencement or continuation of a civil action or proceeding
- for the establishment of paternity;
- for the establishment or modification of an order for domestic support obligations;
- concerning child custody or visitation;
- 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
- regarding domestic violence

II Changes in the Automatic Stay ..cont

- of the collection of a domestic support obligation from property that is not property of the estate;
- 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 statute;
- 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;
- of the reporting of overdue support owed by a parent or any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

II Changes in the Automatic Stay ..cont

- 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
- of the enforcement of a medical obligation, as specified under Title IV of the Social Security Act.

Exemptions & Preferences

Michael Stevenson

III. EXEMPTIONS

A. 11USC§ 522(c)(1)

1. Clarifies that property claimed as exempt is liable during and after the case for a debt of a kind specified in paragraph (5) of section 523(a).
2. Establishes that property claimed as exempt is liable for a debt of a kind specified in paragraph (5) of section 523(a), notwithstanding any provision of applicable nonbankruptcy law to the contrary.

III. EXEMPTIONS ..cont.

B. 11 USC § 522(f)(1)

1. Clarifies that notwithstanding any waiver of exemptions but subject to paragraph (3), the Debtor may not avoid the fixing of a lien on an interest of the Debtor in property irrespective of whether the lien impairs an exemption to which the Debtor would have been entitled under subsection (b) of this section if the judicial lien secures a debt of a kind that is specified in section 523(a).

II. PREFERENCES

A. 11 USC § 547(c)(7)

1. The Trustee may not avoid under this section a transfer to the extent such transfer was a bona fide payment of a debt for a Domestic Support Obligation, whether or not the payment is designated as such.
 - a. Clarifies that payments to a spouse, former spouse, child of the Debtor, such child's parent, legal guardian, responsible relative, or governmental unit (that made direct support payments) for alimony or support are included in the definition of Domestic Support Obligation under 11 USC§ 101(14).

II. PREFERENCES ..cont

b. Clarifies that payments voluntarily assigned by the spouse, former spouse, child of the Debtor, such child's parent, legal guardian or responsible relative to a nongovernmental entity for the purpose of collecting the debt are included in the definition of Domestic Support Obligations under 11 USC § 101(14).

B. 11 USC § 547(h)

1. Establishes that the Trustee may generally recover payments resulting from a property division. However, if the payments are made pursuant to a plan arranged by a non-profit credit-counseling agency, the Trustee may not recover them.

Priority & Dischargeability

Terri Sutton

III. Priority

A. Under section 507(a)(1)(A) domestic support obligations have first priority.

Within that priority there is a confusing breakdown:

First, those obligations owed as of the date of filing the petition, to a spouse, former spouse, or child of the debtor or such child's parent, legal guardian or responsible relative; or to a governmental unit, 507(a)(1)(A).

III. Priority ..cont

This includes the trustee fee to the extent that the trustee administers assets “that are otherwise available for the payment of such claims”. 507(a)(1)(C)

B. Second, non-voluntarily assigned obligations that are owed to a governmental unit. 507(a)(1)(B)

VI. Dischargeability

A. 523(a)(5) provides that any domestic support obligation is excepted from discharge. The definition provided in 101(14A) includes support debts owed to governmental units. 523(a)(5), then, excepts from discharge assigned support obligations.

B. 523(a)(15) provides that debts owed to a spouse, former spouse, or child of the debtor that are not of a kind described in paragraph 5 are excepted from discharge. The balancing provision has been deleted; there is no ability to pay or hardship test.

VI. Dischargeability ..cont

C. 523(a)(15) debts are still dischargeable in a #13 under 1328(a)(2).

D. 523(c) is the section that lists the debts that require notice and hearing in order to be excepted from discharge. That section is amended to delete 523(a)(15) debts.

V. Chapter 13 and Discharge

11 USC 1328 (a) Discharge shall enter only if

DSO Current support paid in full

See attached certifications

See attached form and proposed procedure by the Genesee County Friend of the Court.

DSO past due obligations due prior to the date of filing is paid in full “*but only to the extent provided for in the plan*”. 11 USC 1328(a)

Trustee to provide notice of the Discharge to DSO Creditor and support enforcement agency

DUTIES OF THE TRUSTEE
DOMESTIC SUPPORT
OBLIGATION
(DSO)

10/4/2005

New Bankruptcy Legislation

10/17/2005

1

TRUSTEE'S NOTICE OF BANKRUPTCY FILING **AT INCEPTION OF CASE**

- † The Trustee shall provide written notice to all Support Enforcement Agencies of filing of bankruptcy (even if different States). Agency addresses and phone numbers must be provided by debtor in plan and schedule E.
- † The Trustee shall provide written notice to all support obligation claim holders of filing of bankruptcy. All claimant (custodial parent or alimony recipient name, addresses and phone numbers must be provided by debtor in plan and schedule E.
- † Purpose: To ensure support is received by claim holders.
- † Upon notice to the support agencies and claimants, the trustee will provide Notice of Service with the Court.

TRUSTEE'S NOTICE OF DISCHARGE AFTER COMPLETION OF CASE

- * The Trustee shall provide written notice of last known recent name and address of debtor to all Domestic Support Obligation claim holders.
- * The Trustee shall provide written notice of last known recent name and address of debtor to all Domestic Support Obligation Enforcement agencies.
- * The notice by the Trustee shall provide the name of all creditors that hold claims that were not discharged under paragraphs (2) and (4) of section 523(a) or that was reaffirmed by debtor under section 524(c).

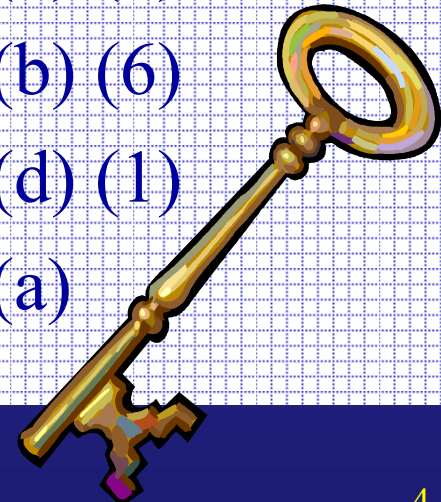
DUTIES OF THE TRUSTEE
DOMESTIC SUPPORT OBLIGATIONS (DSO)
Key Sections of the Code

Chapter 7 Trustee

- ❖ 704 (a) (10)
- ❖ 704 (c) (1)

Chapter 13 Trustee

- ✓ 1302 (b) (5)
- ✓ 1302 (b) (6)
- ✓ 1302 (d) (1)
- ✓ 1328 (a)



CHANGE IN TRUSTEE PROCEDURES

Chapter 7 Trustee

- Notice of bankruptcy filing
- 341 Hearing Inquiries
- Request for verification of information
- Notice of Discharge and Non-dischargeable debts

Chapter 13 Trustee

- ✓ Notice of bankruptcy filing
- ✓ 341 Hearing Inquiries
- ✓ Request for Verification of information
- ✓ Confirm support payments up to date up to confirmation of plan.
- ✓ Periodic Update of information during plan
- ✓ Update of information near completion of plan.
- ✓ Notice of Discharge and Non-dischargeable debts.

WHERE TO MAIL NOTICES

- The Office of Child Support in Lansing will serve as a **conduit** for receipt of all bankruptcy notices for all 83 counties in the State of Michigan.
- Until further notice, they would like the attorneys and trustees to send notices to one address:

Office of Child Support – **ATTN. Bankruptcy**
235 S, Grand Avenue
P.O. Box 30478
Lansing, MI 48909

- **Debtor Attorneys:** If your client is dealing with a civil warrant at the time of the filing of the bankruptcy, the bankruptcy notice should be sent to the local office **AND** the State office. You should also contact the local agency directly.
- The contact person for the State of Michigan is Jennifer Nelles, her phone number is 517-373-0547 or contact the appropriate local Friend of the Court office.

Some Local Contacts

If you have questions or need accounting information, you can contact your local Friend of the Court. Listed below are some agencies at the county level. Attached to your handout is an entire list of all 83 counties in Michigan. **If the debtor has a civil warrant you should contact the local agency directly.**

Bay County		P.O. Box 831	Bay County, MI	989-895-4295 IVR:989-895-4220
Genesee County		1101 Beach Street	Flint, MI	810-257-3300 IVR: 810-257-3244
Jackson County		P.O. Box 1070	Jackson, MI	517-788-4470 IVR: 517-788-4101
Macomb County		Macomb Cty Court Bldg, 40 North Main St	Mt. Clemens, MI	586-469-5160 IVR: 586-469-7618
Oakland County		P.O. Box 436012	Pontiac, MI	248-858-0424 IVR: 248-858-1565
Washtenaw County		P.O. Box 8645	Ann Arbor, MI	734-222-3050 IVR: 734-994-9261
Wayne County	Carl Meyer	P.O. Box 31-0920	Detroit, MI 48231	313-224-6754 IVR: 313-224-5300 Fax: 313-967-3587

WHAT THE DEBTOR AND DEBTOR'S ATTORNEY CAN DO TO AVOID DELAYS TO CONFIRMATION OF THE CASE

- At inception of the case, establish pin# for your client for local friend of the court's phone IVR (interactive voice response) system to obtain account information client and keep the pin# for future updates .
- Go to local friend of court and print out account information to confirm payments are up to date.
- Contact Friend of the Court representative for bankruptcy to obtain information.

**DOMESTIC SUPPORT OBLIGATION
(DSO)
PRESENTERS:**

- Barbara Foley, Staff Attorney Carl Bekofske, Trustee
 - Paul Groth, Attorney at Law
 - Michael Stevenson, Attorney at Law
 - Terri Sutton, UAW Staff Attorney
 - Patricia Waller, Operations Manager, Tammy Terry Trustee
- **SPECIAL THANKS TO CARL MEYER, STAFF ATTORNEY FOR THE FRIEND OF THE COURT FOR WAYNE COUNTY.**