

# NH Supreme Court and Bankruptcy Court Clarify Divorce Obligations in Chapter 7 Bankruptcy

By: [Kelly Ovitt Puc, Esq.](#)

As any seasoned family law attorney will tell you, marital problems and financial difficulties frequently go hand in hand. Yet seven years after the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the courts are still clarifying how divorce related obligations are treated in bankruptcy. Coincidentally, both the New Hampshire Supreme Court and the Bankruptcy Court for the District of New Hampshire recently issued opinions on this topic.

In both cases, one of the former spouses had filed a chapter 7 bankruptcy and neither court discussed the distinction between how divorce related obligations are treated in chapter 7 versus chapter 13. While support obligations like alimony or child support survive either type of bankruptcy, this is not true for non-support divorce obligations. In a chapter 13 bankruptcy, which involves repayment of a portion or (in some rare instances) all of your debt over a 3-5 year period, obligations to a former spouse may be wiped out. Whether this distinction is significant enough to warrant filing a chapter 13 bankruptcy despite eligibility for chapter 7 can be determined by a qualified bankruptcy attorney.

## The Cases

In Robin Mason and Martin Mason, No. 2012-096 (N.H. Nov. 28, 2012), the parties' 2007 divorce decree ordered Robin to pay 50% of Martin's 2006 federal income taxes. In 2010, Robin obtained a chapter 7 bankruptcy discharge and listed both the IRS and Martin as creditors. She then sought and was granted innocent spouse relief from the IRS – eliminating her liability to the IRS.<sup>[1]</sup> Faced with paying the entire tax debt himself, Martin sought to enforce the divorce decree in state court. The court denied his request, finding that although Robin's obligation to pay 50% of Martin's tax debt was in fact owed to Martin rather than the IRS, that obligation had been wiped out by Robin's chapter 7 bankruptcy discharge. Martin appealed to the New Hampshire Supreme Court. The New Hampshire Supreme Court agreed that the debt was now owed to Martin, instead of the IRS, but held that it had nevertheless survived Robin's bankruptcy.

In Mindy B. Maville v. Richard Maville, 2012 BNH 007 (Bankr. D.N.H., Dec. 20, 2012), the Bankruptcy Court held that, despite the divorce court's statements that only Richard's child support and alimony obligations would survive a chapter 7 bankruptcy discharge, the divorce court had not actually determined this issue. The Bankruptcy Court went on to hold that all of Richard's divorce related obligations to Mindy had survived the bankruptcy, even those that were not support obligations.

## Key Points

- A divorce decree determines the obligations between the divorcing parties, but the obligations of the divorcing parties to third party creditors remain unaffected by the divorce. For example, if your divorce order states that your former spouse is supposed to pay the joint mortgage on the house that was awarded to him/her and he/she doesn't, the mortgage lender can still come after you for payments and report late or missed payments on your credit report.
- A chapter 7 bankruptcy discharge can wipe out debts owed to third party marital creditors for the person filing bankruptcy, but not obligations to a former spouse under a divorce order. As noted in the beginning of this article, it may be possible to wipe out such debts in a chapter 13 bankruptcy.
- Finally, a divorce order to pay a third party marital creditor may be construed under the Bankruptcy Code as an obligation to the former spouse. So if you think you're off the hook for all of the marital debt because you filed bankruptcy, you better take a look at your divorce order too.

For more information, please contact [Kelly Ovitt Puc](#), member of the firm's [Business and Private Clients Practice Group](#).

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[1] Tax debts are generally not dischargeable in bankruptcy under 11 U.S.C. § 523(a)(1).