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2016 Edition

Bankruptcy and the Family (2005 Public Law)

A Guide to Resources in the Law Library

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Introduction

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- Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, ([P.L. 109-8](#), 119 Stat. 23) was signed by the President on April 20, 2005 and is effective in cases commenced on or after October 17, 2005.
- **DOMESTIC SUPPORT OBLIGATION:** "Section 211 of the Act [P.L. 109-8 (2005)] amends section 101 of the Bankruptcy Code to define a domestic support obligation as a debt that accrues before, on, or after the date of the order for relief and that it includes interest that accrues pursuant to applicable nonbankruptcy law. As defined in the Act, the term includes a debt owed to or recoverable by: (1) a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative; or (2) a governmental unit. To qualify as a domestic support obligation, the debt must be 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. It must be established or subject to establishment before, on, or after the date of the order of relief pursuant to: (1) a separation agreement, divorce decree, or property settlement agreement; (2) an order of a court of record; or (3) a determination made in accordance with applicable nonbankruptcy law by a governmental unit. It does not apply to a debt assigned to a nongovernmental entity, unless it was assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt." [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256] pp. 59-60.
- **NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT:** "Section 215 of the Act [P.L. 109-8 (2005)] amends Bankruptcy Code section 523(a)(5) to provide that a 'domestic support obligation' (as defined in section 211 of the Act) is nondischargeable and eliminates Bankruptcy Code section 523(a)(18). Section 215(2) amends Bankruptcy Code section 523(c) to delete the reference to section 523(a)(15) in that provision. Section 215(3) amends section 523(a)(15) to provide that obligations to a spouse, former spouse, or a child of the debtor (not otherwise described in section 523(a)(5)) incurred in connection with a divorce or separation or related action are nondischargeable irrespective of the debtor's inability to pay such debts." [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256] p. 61.
- "BAPCPA was intended to strengthen the rights of a spouse and children by redefining their support as a 'domestic support obligation' regardless whether 'established or subject to establishment before, on, or *after*' bankruptcy § 101(14A)(C)." [In re Peterson](#), 410 B.R. 133, 135 (Bkrcty. D. Conn. 2009).

Section 1: Domestic Support Obligation

A Guide to Resources in the Law Library

- SCOPE:**
- Bibliographic sources relating to the definition of a domestic support obligation under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective in cases commenced on or after October 17, 2005.
- SEE ALSO:**
- [Section 10: Bankruptcy and Child Support](#) (Child Support Research Guide)
- DEFINITIONS:**
- **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, that is—
 - (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;
 - (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
 - (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.” [11 U.S.C. § 101\(14A\)](#).
- STATUTES:**
- [Title 11 — Bankruptcy](#) (2016)
- Exceptions to Discharge — [11 U.S.C. § 523\(a\)\(5\)](#)
 - *Chapter 13 – Discharge* - [11 U.S.C. § 1328](#)
- COURT RULES:**
- Federal Rules of Bankruptcy Procedure (2015)
- [Rule 4007](#). Determination of dischargeability of a debt
- CASES:**
- [In re Peterson](#), 410 B.R. 133, 135 (Bkrtcy. D. Conn. 2009). “BAPCPA was intended to strengthen the rights of a spouse and children by redefining their support as a ‘domestic support obligation’ regardless whether ‘established or subject to establishment before, on, or *after*’ bankruptcy § 101(14A)(C).”
- ENCYCLOPEDIAS:**
- 9D [Am. Jur 2d](#) Bankruptcy (2006).

§§ 3635-3652 Debts for Domestic-Support Obligations

**TEXTS &
TREATISES:**

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- [Collier Family Law and the Bankruptcy Code](#) (2015).
 - Chapter 1. An overview of the bankruptcy process as it affects family law issues
 - Chapter 2. Property interests of the debtor and other family members affected by a bankruptcy case
 - Chapter 3. Liabilities arising in a marriage or family relationship
 - Chapter 4. Special issues involving community property
 - Chapter 5. Jurisdiction of the bankruptcy court in domestic relations matters and applicability of the automatic stay
 - Chapter 6. The dischargeability of marital obligations in bankruptcy
 - Chapter 7. Lien and transfer avoidance in connection with marital or family obligations
 - Chapter 8. Chapter 13 and the divorced or separated debtor
 - Chapter 9. Effects of bankruptcy on nonmarital family relationships

- 1 National Consumer Law Center, [Consumer Bankruptcy Law & Practice](#) (11th ed. 2016).
 - § 15.4.3.5. Domestic support obligations—11 U.S.C. § 523(a)(5)
 - § 15.4.3.5.1. In general
 - § 15.4.3.5.2. Support debts owed to governmental units
 - § 15.4.3.5.3. Determination of whether debt is a domestic support obligation
 - § 17.5.8. Additional protections for domestic support obligations

- 2 [Collier Bankruptcy Manual](#) (4th ed. 2015)
 - Chapter 523. Exceptions to discharge
 - § 523.08. Discharge Exception for Domestic Support Obligations, Property Settlement Agreements; §523(a)(5)
 - § 523.20. Discharge Exception for Certain Property Settlement and “Hold Harmless” Agreement Debts Incident to Divorce and Separation; § 523(a)(15)

- 4 [Collier on Bankruptcy](#) (16th ed. 2014).
 - Chapter 523. Exceptions to discharge
 - § 523.11. Discharge exception for domestic support obligations, property settlements; § 523(a)(5)
 - [1] Relationship of a “Domestic Support Obligation” to Section 523(a)(15); Dischargeability**
 - [2] Broad construction given to terms alimony and support
 - [3] Requirement that obligation be in connection with or subject to establishment in a separation agreement, divorce decree or court order
 - [4] Requirement that debt be to a spouse, former spouse, child, **child’s parent, legal guardian,** responsible relative or governmental unit

- [5] Requirement that debt be in nature of alimony, maintenance or support
- [6] Factors considered in distinguishing alimony, maintenance and support claims from property settlement claims
- [7] Distinguishing interests in property from dischargeable debts; pensions
- [8] Status of assigned debts under section 523(a)(5)

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#)

- David C. Hoskins and Ellen R. Welner, [Bankruptcy and Divorce: What Divorce Counsel Should Know About Bankruptcy](#), 37 THE COLORADO LAWYER 35 (October 2008).
- Nathalie Martin, *Winners And Losers In Bankruptcy Reform: Do Women Or Children Really Come Out On Top?* 41 [Family Law Quarterly](#) 219 (Summer 2007).
- Janet Leach Richards, *A Guide To Spousal And Property Division Claims Under The Bankruptcy Abuse Prevention And Consumer Protection Act Of 2005*, 41 [Family Law Quarterly](#) 227 (Summer 2007).
- James L. Musselman, *Once Upon A Time In Bankruptcy Court: Sorting Out Liability Of Marital Property For Marital Debt Is No Fairy Tale*, 41 [Family Law Quarterly](#) 249 (Summer 2007).
- Michael Satz and Elizabeth Barker Brandt, *Representing Victims Of Domestic Violence In Property Distribution After The Bankruptcy Abuse Prevention And Consumer Protection Act Of 2005*, 41 [Family Law Quarterly](#) 275 (Summer 2007).
- Michaela M. White and James P. Caher, *The dog that didn't bark: Domestic support obligations and exempt property after BAPCPA*, 41 [Family Law Quarterly](#) 299 (Summer 2007).
- Philip L. Strauss and Karen Cordry, *Domestic Support Issues From A Governmental Perspective*, 41 [Family Law Quarterly](#) 321 (Summer 2007).
- Claude R. Bowles, *Expecting The Unexpected: Unusual Domestic Relations Law Issues That May Arise Under BAPCPA*, 41 [Family Law Quarterly](#) 343 (Summer 2007).
- *American Bar Association Child custody and Adoption Pro Bono Project*, 41 [Family Law Quarterly](#) 365 (Summer 2007).
- Barbara H. Katz, *So You Think You Still Want to Practice Consumer Bankruptcy Law?* 16 [Connecticut Lawyer](#) No. 3, pg. 18 (2005).

Section 2: Nondischargeability of Domestic Support Orders

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the dischargeability of a domestic support obligation under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective in cases commenced on or after October 17, 2005.
- SEE ALSO:**
- [Section 10: Bankruptcy and Child Support](#) (Child Support Research Guide)
- DEFINITIONS:**
- **NONDISCHARGEABLE:** "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual from any debt
(5) for a domestic support obligation
(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) [above] that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record or a determination made in accordance with State or territorial law by governmental unit" [11 U.S.C. § 523\(a\)](#)
- STATUTES:**
- [Title 11 — Bankruptcy](#) (2016)
- Exceptions to Discharge — [11 U.S.C. § 523\(a\)\(5\)](#); [11 U.S.C. § 523\(a\)\(15\)](#)
 - *Chapter 13 – Discharge* - [11 U.S.C. § 1328](#)
- LEGISLATIVE:**
- Sec. 215. **Nondischargeability of Certain Debts for Alimony, Maintenance, and Support.** "Section 215 of the Act amends Bankruptcy Code section 523(a)(5) to provide that a `domestic support obligation' (as defined in section 211 of the Act) is nondischargeable and eliminates Bankruptcy Code section 523(a)(18). Section 215(2) amends Bankruptcy Code section 523(c) to delete the reference to section 523(a)(15) in that provision. Section 215(3) amends section 523(a)(15) to provide that obligations to a spouse, former spouse, or a child of the debtor (not otherwise described in section 523(a)(5)) incurred in connection with a divorce or separation or related action are nondischargeable irrespective of the debtor's inability to pay **such debts.**" [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256] p. 61.
- CASES:**
- [In re Vann](#), 13-51364, 2014 WL 505257 (Bankr. D. Conn. Feb.6, 2014). "However, *under* BAPCPA, all debts owed to a spouse, former spouse, or child of a debtor **are nondischargeable if incurred in the course of a divorce proceeding, notwithstanding the debtor's ability to pay the debt or the relative benefits and detriments to the parties.**"

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [In re Barbuaito](#), 10-21676 ASD, 2012 WL 3229060 (Bankr. D. Conn. Aug. 6, 2012). “The material facts do not, however, so clearly establish that the debts are or are not ‘domestic support obligations’ within the meaning of §§ 523(a)(5) and 101(14A). However, if the debts are not ‘domestic support obligations,’ then the debts are non-dischargeable under § 523(a)(15). If they are ‘domestic support obligations’ then they are non-dischargeable under § 523(a)(5). Therefore, it is not necessary for the Court in the context of this Chapter 7 case to determine whether they are non-dischargeable under §§ 523(a)(5) or 523(a)(15). See, *Tarone v. Tarone*, 434 B.R. 41, 49 (Bankr.E.D.N.Y.2010), ([I]t is irrelevant whether those awards constitute true support obligations, because even if not encompassed within § 523(a)(5), they are nondischargeable pursuant to § 523(a)(15)’); *Gilman v. Golia*, 393 B.R. 56, 62 (Bankr.E.D.N.Y.2008)3 and *Monastra v. Monastra* (In re Monastra), Adv. No. 10–090, 2010 Bank. LEXIS 3616, 2010 WL 3937354 (Bankr.E.D.Pa., October 6, 2010).”
- [In re Rubenstein](#), 09-22124 ASD, 2012 WL 837339 (Bankr. D. Conn. Mar. 9, 2012). “The Debtor's position is that the ‘faulty reasoning,’ Def.'s Mem., ECF No. 88 at 6, of the Second Circuit in *Spong* and its progeny have been somehow superseded by BAPCPA; she argues that the Plaintiff is not the child's ‘legal guardian,’ and that the **GAL Fee** is not recoverable from the child under applicable nonbankruptcy law. Such arguments are unavailing. Rather than reducing the scope of the § 523(a)(5) exception to discharge, BAPCPA expanded it to encompass family situations that did not fit neatly into the earlier language; none of the terms at issue in *Spong*, *Peters*, or *Maddigan* were eliminated under BAPCPA and nothing in either the language or the legislative history of BAPCPA indicates any intent to displace the long-established case law.

This Court joins other bankruptcy courts in this Circuit in concluding that *Spong* and its progeny remain just as applicable after BAPCPA as they were before it. See, e.g. *In re Rogowski*, 462 B.R. 435 (Bankr.E.D.N.Y.2011); *In re Tarone*, 434 B.R. 41 (Bankr.E.D.N.Y.2010); *In re Golia*, 393 B.R. 56 (Bankr.E.D.N.Y.2008); *In re Schenkein*, 2010 WL 3219464 (Bankr.S.D.N.Y.2010).” [Emphasis added.]

- [Musolino v. Musolino](#), 121 Conn. App. 469, 997 A.2d 599 (2010). “The court expounded on that finding in its April 8, 2009 memorandum of decision. It stated in relevant part: ‘The court . . . finds that the defendant's share of the balance on the Visa credit card is a domestic support order and, therefore, is not dischargeable in bankruptcy. . . .Under 11 U.S.C. § 523 (a) (5), a debtor may not discharge a debt to a former spouse that is for a domestic support obligation. . . .After an application of the five factors from *Lewis v. Lewis*, [35 Conn. App. 622, 627-28, 646 A.2d 273 (1994)], that are used to distinguish a domestic support obligation

from a property settlement in the dissolution action and a careful review of the evidence and facts, this court concludes that the defendant's obligation to pay the Visa credit card bill is a domestic support obligation. As a result, [that] debt is not dischargeable and the defendant must pay his share of that debt.”

- [Boyne v. Boyne](#), 112 Conn. App. 279, 962 A. 2d 818 (2009). **“The defendant next claims that the court improperly declared that all of its financial orders were in the nature of support and, therefore, not dischargeable in bankruptcy. Although the court does not have the authority to determine the nature of a debt in contravention of a determination by the federal Bankruptcy Court, it was well within its discretion to indicate in its judgment that it was intending all of the orders to be in the nature of support as guidance to the Bankruptcy Court because ‘[t]he main principle guiding bankruptcy courts in determining whether a debt is nondischargeable alimony, maintenance or support is the intent of the parties or the state court in creating the obligation and the purpose of the obligation in light of the parties' circumstances at the time.’ 4 W. Collier, Bankruptcy (15th Ed. Rev. 2003) § 523.11[6]. Accordingly, although the ultimate question of dischargeability rests with the Bankruptcy Court, it was not improper for the trial court to posit that all of its financial orders were in the nature of support.”**

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 - Chapter 6. The dischargeability of marital obligations in bankruptcy**
 - Chapter 7. Lien and transfer avoidance in connection with marital or family obligations
 - Chapter 8. Chapter 13 and the divorced or separated debtor
 - Chapter 9. Effects of bankruptcy on nonmarital family relationships
- 1 National Consumer Law Center, [Consumer Bankruptcy Law & Practice](#) (11th ed. 2016).
 - § 15.4. Exceptions to discharge
 - § 15.4.1. Differences between Chapter 7 and Chapter 13
 - § 15.4.2. How exceptions to discharge are raised
- 2 [Collier Bankruptcy Manual](#) (4th ed. 2015)
 - Chapter 523. Exceptions to discharge

- § 523.08. Discharge Exception for Domestic Support Obligations, Property Settlement Agreements; 523(a)(5)
- § 523.20. Discharge Exception for Certain Property Settlement and "Hold Harmless" Agreement Debts Incident to Divorce and Separation; § 523(a)(15)

- 4 [Collier on Bankruptcy](#) (16th ed. 2014)
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 - [5] Requirement that debt be in nature of alimony, maintenance or support
 - [6] Factors considered in distinguishing alimony, maintenance and support claims from property settlement claims
 - [7] Distinguishing interests in property from dischargeable debts; pensions
 - [8] Status of assigned debts under section 523(a)(5)

ENCYCLOPEDIAS:

- 9D [Am. Jur 2d](#) Bankruptcy (2006).
§§ 3635-3652 Debts for Domestic-Support Obligations

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- Barbara H. Katz, *So You Think You Still Want to Practice Consumer Bankruptcy Law?* 16 [Connecticut Lawyer](#) No. 3, pg. 18 (2005).

FORMS:

- [Bankruptcy and Domestic Relations Manual](#), Appendix A A: 8, *Complaint [into Bankruptcy Court] to Determine That Debt Is Not Dischargeable*

Section 3: Priority for Claims for Domestic Support Orders

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the priority for claims for a domestic support obligation under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective in cases commenced on or after October 17, 2005.

DEFINITIONS:

• **PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS:**

"(1) First:

- (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.
- (B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.
- (C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims." [11 U.S.C. § 507](#)(a)(1)

STATUTES:

[Title 11 — Bankruptcy](#) (2016)

- Priorities — [11 U.S.C. § 507\(a\)\(1\)](#)

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 - Chapter 6. The dischargeability of marital obligations in bankruptcy
 - Chapter 7. Lien and transfer avoidance in connection with marital or family obligations
 - Chapter 8. Chapter 13 and the divorced or separated debtor
 - Chapter 9. Effects of bankruptcy on nonmarital family relationships
- 1 National Consumer Law Center, [Consumer Bankruptcy Law & Practice](#) (11th ed. 2016).
 - § 17.5.8. Additional protections for Domestic Support Obligations
- 4 [Collier on Bankruptcy](#) (16th ed. 2014).
 - Chapter 507. Priorities
 - § 507.01. Overview of section 507
 - § 507.02. Function and purpose of priorities
 - [1]—Purpose of priorities
 - [a]—Purpose of first priority
 - § 507.03. First priority: Domestic support obligations
 - §507(a)(1)

ENCYCLOPEDIAS:

- 9D [Am. Jur 2d](#) Bankruptcy (2006).
 - §§ 3635-3652 Debts for Domestic-Support Obligations

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- Barbara H. Katz, *So You Think You Still Want to Practice Consumer Bankruptcy Law?* 16 [Connecticut Lawyer](#) No. 3, pg. 18 (2005).

Table 1: Domestic Support Order and Bankruptcy

Excerpts from [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256]
[Pages 59-62]

and defenses that are related to such assets to the same extent as that person would be subject to if the sale was not conducted under section 363.

Sec. 205. GAO Study and Report on Reaffirmation Agreement Process. Section 205 of the Act directs the Comptroller General of the United States to report to Congress on how consumers are treated in connection with the reaffirmation agreement process. This report must include: (1) the policies and activities of creditors with respect to reaffirmation agreements; and (2) whether such consumers are fully, fairly, and consistently informed of their rights under the Bankruptcy Code. The report, which must be completed not later than 18 months after the date of enactment of this Act, may include recommendations for legislation to address any abusive or coercive tactics found in connection with the reaffirmation process.

Subtitle B. Priority Child Support

Sec. 211. Definition of Domestic Support Obligation. Section 211 of the Act amends section 101 of the Bankruptcy Code to define a domestic support obligation as a debt that accrues before, on, or after the date of the order for relief and that it includes interest that accrues pursuant to applicable nonbankruptcy law. As defined in the Act, the term includes a debt owed to or recoverable by: (1) a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative; or (2) a governmental unit. To qualify as a domestic support obligation, the debt must be 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. It must be established or subject to establishment before, on, or after the date of the order of relief pursuant to: (1) a separation agreement, divorce decree, or property settlement agreement; (2) an order of a court of record; or (3) a determination made in accordance with applicable nonbankruptcy law by a governmental unit. It does not apply to a debt assigned to a nongovernmental entity, unless it was assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.

Sec. 212. Priorities for Claims for Domestic Support Obligations. Section 212 of the Act amends section 507(a) of the Bankruptcy Code to accord first priority in payment to allowed unsecured claims for domestic support obligations that, as of the petition date, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether such claim is filed by the claimant or by a governmental unit on behalf of such claimant, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Subject to these claims, section 212 accords the same payment priority to allowed unsecured claims for domestic support obligations that, as of the petition date, were assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless the claimant assigned the claim voluntarily for the purpose of collecting the debt), or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds

received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Where a trustee administers assets that may be available for payment of domestic support obligations under section 507(a)(1) (as amended), administrative expenses of the trustee allowed under section 503(b)(1)(A), (2) and (6) of the Bankruptcy Code must be paid before such claims to the extent the trustee administers assets that are otherwise available for the payment of these claims.

Sec. 213. Requirements To Obtain Confirmation and Discharge in Cases Involving Domestic Support Obligations. With respect to chapter 11 cases, section 213(1) adds a condition for confirmation of a plan. It amends section 1129(a) of the Bankruptcy Code to provide that if a chapter 11 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all amounts payable under such order or statute that became payable postpetition as a prerequisite for confirmation.

With respect to chapter 12 cases, section 213(2) of the Act amends section 1208(c) of the Bankruptcy Code to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the case. Section 213(3) amends Bankruptcy Code section 1222(a) to permit a chapter 12 debtor to propose a plan paying less than full payment of all amounts owed for a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if all of the debtor's projected disposable income for a five-year period is applied to make payments under the plan. Section 213(4) of the Act amends Bankruptcy Code section 1222(b) to permit a chapter 12 debtor to propose a plan that pays postpetition interest on claims that are nondischargeable under Section 1228(a), but only to the extent that the debtor has disposable income available to pay such interest after payment of all allowed claims in full. Section 213(5) amends Bankruptcy Code section 1225(a) to provide that if a chapter 12 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(6) amends Bankruptcy Code section 1228(a) to condition the granting of a chapter 12 discharge upon the debtor's payment of certain postpetition domestic support obligations.

With respect to chapter 13 cases, section 213(7) of the Act amends Bankruptcy Code section 1307(c) to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the debtor's case. Section 213(8) amends Bankruptcy Code section 1322(a) to permit a chapter 13 debtor to propose a plan paying less than the full amount of a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if the plan provides that all of the debtor's projected disposable income over a five-year period will be applied to make payments under the plan. Section 213(9) amends Bankruptcy Code section 1322(b) to permit a chapter 13 debtor to propose a plan that pays postpetition interest on nondischargeable debts under section 1328(a), but only to the extent that the debtor has disposable income available to pay such interest after payment in full of all allowed claims. Section 213(10) amends Bankruptcy

Code section 1325(a) to provide that if a chapter 13 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(11) amends Bankruptcy Code section 1328(a) to condition the granting of a chapter 13 discharge on the debtor's payment of certain postpetition domestic support obligations.

Sec. 214. Exceptions To Automatic Stay in Domestic Support Proceedings. Under current law, section 362(b)(2) of the Bankruptcy Code excepts from the automatic stay the commencement or continuation of an action or proceeding: (1) for the establishment of paternity; or (2) the establishment or modification of an order for alimony, maintenance or support. It also permits the collection of such obligations from property that is not property of the estate. Section 214 makes several revisions to Bankruptcy Code section 362(b)(2). First, it replaces the reference to "alimony, maintenance or support" with "domestic support obligations." Second, it adds to section 362(b)(2) actions or proceedings concerning: (1) child custody or visitation; (2) the dissolution of a marriage (except to the extent such proceeding seeks division of property that is property of the estate); and (3) domestic violence. Third, it permits 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 as well as the withholding, suspension, or restriction of a driver's license, or a professional, occupational or recreational license under state law, pursuant to section 466(a)(16) of the Social Security Act. Fourth, it authorizes the reporting of overdue support owed by a parent to any consumer reporting agency pursuant to section 466(a)(7) of the Social Security Act. Fifth, it permits the interception of tax refunds as authorized by sections 464 and 466(a)(3) of the Social Security Act or analogous state law. Sixth, it allows medical obligations, as specified under title IV of the Social Security Act, to be enforced notwithstanding the automatic stay.

Sec. 215. Nondischargeability of Certain Debts for Alimony, Maintenance, and Support. Section 215 of the Act amends Bankruptcy Code section 523(a)(5) to provide that a "domestic support obligation" (as defined in section 211 of the Act) is nondischargeable and eliminates Bankruptcy Code section 523(a)(18). Section 215(2) amends Bankruptcy Code section 523(c) to delete the reference to section 523(a)(15) in that provision. Section 215(3) amends section 523(a)(15) to provide that obligations to a spouse, former spouse, or a child of the debtor (not otherwise described in section 523(a)(5)) incurred in connection with a divorce or separation or related action are nondischargeable irrespective of the debtor's inability to pay such debts.

Sec. 216. Continued Liability of Property. Section 216(1) of the Act amends section 522(c) of the Bankruptcy Code to make exempt property liable for nondischargeable domestic support obligations notwithstanding any contrary provision of applicable nonbankruptcy law. Section 216(2) and (3) make conforming amendments to sections 522(f)(1)(A) and 522(g)(2) of the Bankruptcy Code.

Sec. 217. Protection of Domestic Support Claims Against Preferential Transfer Motions. Section 217 of the Act makes a conforming amendment to Bankruptcy Code section 547(c)(7) to provide that a bona fide payment of a debt for a domestic support obligation may not be avoided as a preferential transfer.

Sec. 218. Disposable Income Defined. Section 218 of the Act amends section 1225(b)(2)(A) of the Bankruptcy Code to provide that disposable income in a chapter 12 case does not include payments for postpetition domestic support obligations.

Sec. 219. Collection of Child Support. Section 219 amends sections 704, 1106, 1202, and 1302 of the Bankruptcy Code to require trustees in chapter 7, 11, 12, and 13 cases to provide certain notices to child support claimants and governmental enforcement agencies. In addition, the Act conforms internal statutory cross references to Bankruptcy Code section 523(a)(14A) and deletes the reference to Bankruptcy Code section 523(a)(14) with respect to chapter 13, as this provision is inapplicable to that chapter.

Section 219(a) requires a chapter 7 trustee to provide written notice to a domestic support claimant of the right to use the services of a state child support enforcement agency established under sections 464 and 466 of the Social Security Act in the state where the claimant resides for assistance in collecting child support during and after the bankruptcy case. The notice must include the agency's address and telephone number as well as explain the claimant's right to payment under the applicable chapter of the Bankruptcy Code. In addition, the trustee must provide written notice to the claimant and the agency of such claim and include the name, address, and telephone number of the child support claimant. At the time the debtor is granted a discharge, the trustee must notify both the child support claimant and the agency that the debtor was granted a discharge as well as supply them with the debtor's last known address, the last known name and address of the debtor's employer, and the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or holding a debt that was reaffirmed pursuant to Bankruptcy Code section 524. A claimant or agency may request the debtor's last known address from a creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or that is reaffirmed pursuant to section 524 of the Bankruptcy Code. A creditor who discloses such information, however, is not liable to the debtor or any other person by reason of such disclosure. Subsections (b), (c), and (d) of section 219 of the Act impose comparable requirements for chapter 11, 12, and 13 trustees.

Sec. 220. Nondischargeability of Certain Educational Benefits and Loans. Section 220 of the Act amends section 523(a)(8) of the Bankruptcy Code to provide that a debt for a qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code) is nondischargeable, unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor's dependents.

Section 4: Automatic Stays in Domestic Support Proceedings

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to exceptions for automatic stays in domestic support proceedings under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective in cases commenced on or after October 17, 2005.
- DEFINITIONS:**
- **Automatic Stay (Domestic support obligation):**
“(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—
(2) under subsection (a)” [11 U.S.C. § 362\(b\)\(2\)](#)
- STATUTES:** [Title 11 — Bankruptcy](#) (2016)
- Automatic Stay — [11 U.S.C. § 362\(b\)\(2\)](#)
- LEGISLATIVE:** Sec. 214. *Exceptions To Automatic Stay in Domestic Support Proceedings.*
“Under current law, section 362(b)(2) of the Bankruptcy Code excepts from the automatic stay the commencement or continuation of an action or proceeding: (1) for the establishment of paternity; or (2) the establishment or modification of an order for alimony, maintenance or support. It also permits the collection of such obligations from property that is not property of the estate. Section 214 makes several revisions to Bankruptcy Code section 362(b)(2). First, it replaces the reference to ‘alimony, maintenance or support’ with ‘domestic support obligations.’ Second, it adds to section 362(b)(2) actions or proceedings concerning: (1) child custody or visitation; (2) the dissolution of a marriage (except to the extent such proceeding seeks division of property that is property of the estate); and (3) domestic violence. Third, it permits 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 as well as the withholding, suspension, or restriction of a driver’s license, or a professional, occupational or recreational license under state law, pursuant to section 466(a)(16) of the Social Security Act. Fourth, it authorizes the reporting of overdue support owed by a parent to any consumer reporting agency pursuant to section 466(a)(7) of the Social Security Act. Fifth, it permits the interception of tax refunds as authorized by sections 464 and 466(a)(3) of the Social Security Act or analogous state law. Sixth, it allows medical obligations, as specified under title IV of the Social Security Act, to be **enforced notwithstanding the automatic stay.**” [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256] p. 61.
- TEXTS & TREATISES:**
- [Collier Family Law and the Bankruptcy Code](#) (2015).
Chapter 1. An overview of the bankruptcy process as it

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affects family law issues
Chapter 2. Property interests of the debtor and other family members affected by a bankruptcy case
Chapter 3. Liabilities arising in a marriage or family relationship
Chapter 4. Special issues involving community property
Chapter 5. Jurisdiction of the bankruptcy court in domestic relations matters and applicability of the automatic stay
Chapter 6. The dischargeability of marital obligations in bankruptcy
Chapter 7. Lien and transfer avoidance in connection with marital or family obligations
Chapter 8. Chapter 13 and the divorced or separated debtor
Chapter 9. Effects of bankruptcy on nonmarital family relationships

- 1 National Consumer Law Center, [Consumer Bankruptcy Law & Practice](#) (11th ed. 2016).
 - § 9.4.6. Exceptions to the automatic stay
 - § 9.4.6.3. Family law exceptions
 - § 18.3. The automatic stay
 - § 18.3.2. Relief from the stay
- 2 [Collier Bankruptcy Manual](#) (4th ed. 2015)
 - Chapter 362. Automatic Stay
 - § 362.05. Exceptions to the stay
 - [2]—Family law proceedings; § 362(b)(2)
- 3 [Collier on Bankruptcy](#) (16th ed. 2014).
 - Chapter 362. Automatic stay
 - § 362.01. Overview of section 362
 - § 362.05. Exceptions to the stay; § 362(b)
 - [2]—Family law proceedings; § 362(b)(2)

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- David C. Hoskins and Ellen R. Welner, [Bankruptcy and Divorce: What Divorce Counsel Should Know About Bankruptcy](#), 37 *The Colorado Lawyer* 35 (October 2008).
- Barbara H. Katz, *So You Think You Still Want to Practice Consumer Bankruptcy Law?* 16 [Connecticut Lawyer](#) No. 3, pg. 18 (2005).

Section 5: Changes to Exemptions

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to changes in exempt property in domestic support proceedings under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective in cases commenced on or after October 17, 2005.

DEFINITIONS:

- **Property no longer exempt:** "a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph.)" [11 U.S.C. 522\(c\)\(1\)](#).

STATUTES:

[Title 11 – Bankruptcy](#) (2016)

- Exemptions — [11 U.S.C. 522\(c\)\(1\)](#)
- Exceptions to discharge — [11 U.S.C. § 523\(a\)\(5\)](#)
- *Chapter 13 – Discharge* - [11 U.S.C. § 1328](#)

LEGISLATIVE:

Continuing Liability Of Property: "Section 216(1) of the Act [Bankruptcy Abuse Prevention and Consumer Protection Act of 2005] amends section 522(c) of the Bankruptcy Code to make exempt property liable for nondischargeable domestic support obligations notwithstanding any contrary provisions of applicable nonbankruptcy law. Section 216(2) and (3) make conforming amendments to sections 522(f)(1)(A) and **522(g)(2) of the Bankruptcy Code.**" [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256] p. 61.

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [In re Virgili](#), 09-31897 LMW, 2012 WL 694318 (Bankr. D. Conn. Mar. 1, 2012). "As noted above, the Debtor elected the Section 522(d) 'federal list' of exemptions pursuant to Bankruptcy Code § 522(b)(2). Section 522(d) provides in **relevant part:** 'The following property may be exempted ... (10) [t]he debtor's right to receive ... (D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor....' 11 U.S.C.A. § 522(d) (West 2012). What constitutes 'alimony' within the purview of Section 522(d)(10)(D) 'is a question of federal, not state, law,' *DeHart v. Miller* (In re Miller), 424 B.R. 171, 174 (Bankr.M.D.Pa.2010). The analysis of what constitutes 'alimony' for Section 522(d)(10)(D) purposes is the same as is used to determine what constitutes 'alimony' under the pre-BAPCPA version of 11 U.S.C. § 523(a)(5) and under the current version of 11 U.S.C. § 101(14A)(B). See *In re Joseph*, 157 B.R. 514, 518 (Bankr.D.Conn.1993) (Krechevsky, J.) ('There is no readily apparent reason why a bankruptcy court should use different standards in reviewing alimony awards in the nondischargeability instance and in the exemption instance.');
- *H.Rep. No. 95-595*, at 362 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6318 ('Paragraph (10) [of Section 522(d)] exempts certain benefits that are akin to future earnings of the debtor.').

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [Collier Family Law and the Bankruptcy Code](#) (2015).
 - Chapter 1. An overview of the bankruptcy process as it affects family law issues
 - Chapter 2. Property interests of the debtor and other family members affected by a bankruptcy case
 - Chapter 3. Liabilities arising in a marriage or family relationship
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 - Chapter 6. The dischargeability of marital obligations in bankruptcy**
 - Chapter 7. Lien and transfer avoidance in connection with marital or family obligations
 - Chapter 8. Chapter 13 and the divorced or separated debtor
 - Chapter 9. Effects of bankruptcy on nonmarital family relationships
- 1 National Consumer Law Center, [Consumer Bankruptcy Law & Practice](#) (11th ed. 2016).
 - § 10.2. What property is exempt
 - § 10.2.1. The choice of state or federal exemptions
 - § 10.2.2. The federal bankruptcy exemptions
 - § 10.2.2.2. Homestead—§ 522(d)(1)
 - § 10.2.2.3. Motor vehicle—§ 522(d)(2)
 - § 10.2.2.5. Jewelry—§ 522(d)(4)
 - § 10.2.2.6. Any property—§ 522(d)(5)
 - § 10.2.2.7. Tools of the trade—§ 522(d)(6)
- 4 [Collier on Bankruptcy](#) (16th ed. 2014).
 - Chapter 522. Exemptions
 - § 522.01. Overview of section 522
 - § 522.02. Exemptions under the Bankruptcy Code

ENCYCLOPEDIAS:

- 9D [Am. Jur 2d](#) Bankruptcy (2006).
 - §§ 3635-3652 Debts for Domestic-Support Obligations

LAW REVIEWS:

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- David C. Hoskins and Ellen R. Welner, [Bankruptcy and Divorce: What Divorce Counsel Should Know About Bankruptcy](#), 37 *The Colorado Lawyer* 35 (October 2008).
- Barbara H. Katz, *So You Think You Still Want to Practice Consumer Bankruptcy Law?* 16 [Connecticut Lawyer](#) No. 3, pg. 18 (2005).

Section 6: Preference Change

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to changes against Preferential Transfer Motions in domestic support proceedings under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective in cases commenced on or after October 17, 2005.

DEFINITIONS:

- **Protection of domestic support claims against Preferential Transfer Motions :** "The trustee may not avoid under this section a transfer—(7) to the extent such transfer was a bona fide payment of debt for a domestic support obligation" [11 U.S.C. 547 \(c\) \(7\)](#)

STATUTES:

- [Title 11 — Bankruptcy](#) (2016)
- Preferences — [11 U.S.C. 547 \(c\) \(7\)](#)

LEGISLATIVE:

- **Protection of Domestic Support Claims against Preferential Transfer Motion:** "§ 217 of the Act makes a conforming amendment to Bankruptcy Code section 547(c)(7) to provide that a bona fide payment of a debt for a domestic support obligation may not be avoided as a preferential transfer." [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256] p. 61.

TEXTS & TREATISES:

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- [Collier Family Law and the Bankruptcy Code](#) (2015).
 - Chapter 1. An overview of the bankruptcy process as it affects family law issues
 - Chapter 2. Property interests of the debtor and other family members affected by a bankruptcy case
 - Chapter 3. Liabilities arising in a marriage or family relationship
 - Chapter 4. Special issues involving community property
 - Chapter 5. Jurisdiction of the bankruptcy court in domestic relations matters and applicability of the automatic stay
 - Chapter 6. The dischargeability of marital obligations in bankruptcy
 - Chapter 7. Lien and transfer avoidance in connection with marital or family obligations**
 - Chapter 8. Chapter 13 and the divorced or separated debtor
 - Chapter 9. Effects of bankruptcy on nonmarital family relationships
- 1 National Consumer Law Center, [Consumer Bankruptcy Law & Practice](#) (11th ed. 2016).
 - § 10.4. Making the most of exemptions
 - § 10.4.2.6.4. Preferences—§ 547
 - § 10.4.2.6.4.1. In general
 - § 10.4.2.6.4.2. Exceptions to preference avoiding power
 - § 10.4.2.6.4.3. Debtor's use of preference avoiding power**

- 5 [Collier on Bankruptcy](#) (16th ed. 2014).
Chapter 547. Preferences
§ 547.01. Overview of section 547
§ 547.04. Transfer may be exempt from avoidance under section 547(c)
[7]—Alimony, maintenance or support

ENCYCLOPEDIAS:

- 9D [Am. Jur 2d](#) Bankruptcy (2006).
§§ 3635-3652 Debts for Domestic-Support Obligations

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- Barbara H. Katz, *So You Think You Still Want to Practice Consumer Bankruptcy Law?* 16 [Connecticut Lawyer](#) No. 3, pg. 18 (2005).

Section 7: Collection of Child Support

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to collection of child support and changes in trustees duties (every chapter) under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective in cases commenced on or after October 17, 2005.
- SEE ALSO:**
- [Section 10: Bankruptcy and Child Support](#) (Child Support Research Guide)
- STATUTES:**
- [Title 11 – Bankruptcy](#) (2016)
- Duties of Trustee – [11 U.S.C. 704](#)
 - Duties of Trustee and Examiner – [11 U.S.C. 1106](#)
 - Trustee – [11 U.S.C. 1202](#)
 - Trustee – [11 U.S.C. 1302](#)
- LEGISLATIVE:**
- Collection of child support:** “Section 219 amends sections 704, 1106, 1202, and 1302 of the Bankruptcy Code to **require trustees in chapter 7, 11, 12, and 13 cases to provide certain notices to child support claimants and governmental enforcement agencies.** In addition, the Act conforms internal statutory cross references to Bankruptcy Code section 523(a)(14A) and deletes the reference to Bankruptcy Code section 523(a)(14) with respect to chapter 13, as this provision is inapplicable to that chapter.
- Section 219(a) requires a chapter 7 trustee to provide written notice to a domestic support claimant of the right to use the services of a state child support enforcement agency established under sections 464 and 466 of the Social Security Act in the state where the claimant resides for assistance in collecting child support during and after the bankruptcy case. The notice must include the agency’s address and telephone number as well as explain the claimant’s right to payment under the applicable chapter of the Bankruptcy Code. In addition, the trustee must provide written notice to the claimant and the agency of such claim and include the name, address, and telephone number of the child support claimant. At the time the debtor is granted a discharge, the trustee must notify both the child support claimant and the agency that the debtor was granted a discharge as well as supply them with the debtor’s last known address, the last known name and address of the debtor’s employer, and the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or holding a debt that was reaffirmed pursuant to Bankruptcy Code section 524. A claimant or agency may request the debtor’s last known address from a creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or that is reaffirmed pursuant to section 524 of the Bankruptcy Code. A creditor who discloses such information, however, is not liable to the debtor or any other person by reason of such disclosure. Subsections (b), (c), and (d) of section 219 of the Act impose **comparable requirements for chapter 11, 12, and 13 trustees.”** [House Report \(Judiciary Committee\) No. 109-31 \(Part 1\), April 8, 2005](#) [To accompany S. 256] p. 62. (Emphasis added.)

TEXTS & TREATISES:

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 - Chapter 2. Property interests of the debtor and other family members affected by a bankruptcy case
 - Chapter 3. Liabilities arising in a marriage or family relationship
 - Chapter 4. Special issues involving community property
 - Chapter 5. Jurisdiction of the bankruptcy court in domestic relations matters and applicability of the automatic stay
 - Chapter 6. The dischargeability of marital obligations in bankruptcy
 - Chapter 7. Lien and transfer avoidance in connection with marital or family obligations
 - Chapter 8. Chapter 13 and the divorced or separated debtor
 - Chapter 9. Effects of bankruptcy on nonmarital family relationships
- 1 National Consumer Law Center, [Consumer Bankruptcy Law & Practice](#) (11th ed. 2016).
 - § 2.6. The bankruptcy trustee
- 6 [Collier on Bankruptcy](#) (16th ed. 2014).
 - Chapter 704. Duties of trustees
 - § 704.01. Overview of section 704
 - § 704.13. **Trustee's duty to give notice regarding domestic support obligations; § 704(a)(10) & (c)**
 - [1]—Notice of child support enforcement agency service and bankruptcy rights; 704(c)(1)(A)
 - [2]—Notice to state child support agency; § 704(c)(1)(B)
 - [3]—Notice at time of discharge; § 704(c)(1)(C)
 - [4]—Request for address of debtor; § 704(c)(2)

ENCYCLOPEDIAS:

- 9D [Am. Jur 2d](#) Bankruptcy (2006).
 - §§ 3635-3652 Debts for Domestic-Support Obligations

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