BREAKING UP IS HARD TO DO:

Everything you need to know about Bankruptcy and Family Law

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We're not in Kansas anymore

- Divorce is very different from bankruptcy
- Different Issues
 - Equity
- Different Forms
 - DRFA
 - Child Support Worksheet
 - Settlement Agreement
 - Orders









Domestic Relations Financial Affidavit

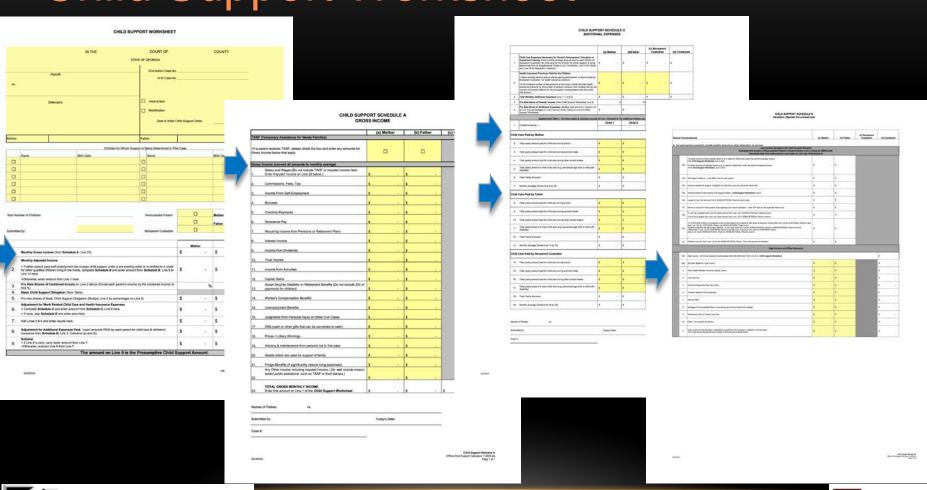
	interest and it/ividends	•						- 3-
(b) Net monthly income (from item 3B) (c) Average monthly expenses (item 5A) Monthly payments fo creditors Total monthly expenses and payments to creditors (item 5C)	Overtime Payments Severance Pay Recurring Income from Pensions or Retirement Plans Interest and Dividends	ss ss	Retirement Pensions, 401 K, IRA, Profit Sharin Money owe	ng S	_		Jewelry: Collectibles: Other Assets:	s s s s
SUMMARY OF AFFIANT'S INCOME AND NEEDS (a) Gross monthly income (from item 3A)	ATTACH SHEET ITEMIZING YOUR CALCULATIONS Rental Income (gross receipts minus ordinary and necessary express required to produce income) ATTACH SHEET ITEMIZING YOUR CALCULATIONS Bonuses	s s	Bank Accou				Vehicle 2: debt owed: Life Insurance (net cash value): Furniture/furnish	\$ \$ s ngs: \$
Names and birth dates of affiant's other children: Name Date of Birth 1	(All income must be entered based on monthly average regardless of data Salary or Wages ATTACH COPIES OF 2 MOST RECENT WAGE STATEMENTS Commissions, Fees, Tigs Income from self-employment, partnership, close corporations, and independent contracts (gross receipts minus ordinary and necessary expenses required to produce income)	ss	Cash Stocks, bon CD's/Mone Market Accounts		the Husband	the 1	home: debt owed: other: debt owed: Automobiles/Vel Vehicle 1: debt owed:	\$ \$ \$ icles: \$
In the Superior Court ofCounty,	3. A. AFFIANT'S GROSS MONTHLY INCOME (complete this section schedule A)		Assets which ar Fringe Benefits Any other incor Public assistanc GROSS MONT) B. Afflant's Net (deducting only Afflant's Pay pp Number of exer (If you claim or under the approx	Monthly Income from state and federal taxes: cried (i.e., weekly, mont aptions claimed agree that all or part of priate spouse's column cree of funds, etc.).	mily living expenses) ans-tested d stamps) employment and FICA) hly, etc.) an asset is non-marit separate Asset of	Seps Asse	S S S S S S S S S S S S S S S S S S S	s







Child Support Worksheet









Family Law Basics

- Child Support
 - Blended Income
 - Formulaic
- Alimony
 - Equity and Needs
- Property Division
 - Equitable Division



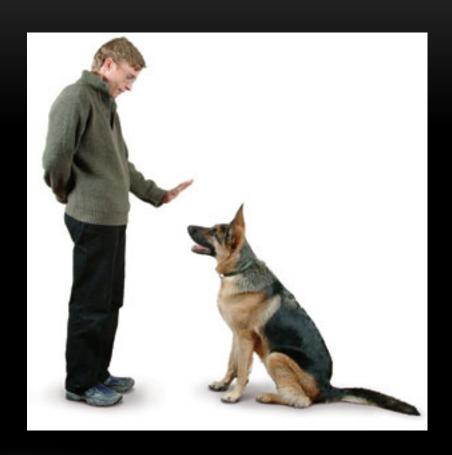






The Automatic Stay

- When does it apply?
 - Automatic
 - Semi-Automatic
- What does it stop?
 - Commencement or continuation . . .
- Exceptions









Exceptions

- Collection of DSOs
- Establishment or Modification of an Order for domestic support obligations
- Assets that are not property of the estate











DCSS is a state agency that can establish and enforce court ordered child support. If alimony has been ordered for the *support and maintenance* of a former spouse, the agency will also enforce those provisions so long as the non-custodial parent has an obligation to support the minor child.

O.C.G.A. § 19-11-1 through § 19-11-39





ADDITIONAL EXCEPTIONS TO THE AUTOMATIC STAY:

- > COMPLAINTS FOR PATERNITY AND CHILD SUPPORT
- > SUBMITTING INCOME DEDUCTION ORDERS
- > SUSPENSION OF STATE LICENSES
- REPORTING DELINQUENCY TO CREDIT BUREAUS
- > INTERCEPTING STATE AND FEDERAL TAX REFUNDS
- ENFORCING OBLIGATION TO PROVIDE MEDICAL INSURANCE

11 USC 362 (b)











EXCEPTIONS TO THE EXCEPTIONS

Although certain actions may not violate the automatic stay, they can violate a confirmed plan. If the debtor's confirmed plan does not specifically state that DCSS can take the allowed actions in 11 USC § 362(b), the agency can be prohibited from taking the action after the plan is confirmed.

In re Rodriquez 367 Fed Appx 25, 27 (2010)







Eleventh Circuit Chimes in

The Eleventh Circuit allowed DOR to collect the DSO but did not allow plan interference In *Florida Dept. of Revenue v. Davis (In re Davis)*, 481 Fed. Appx. 492 (11th Cir. 2012)

In Florida Dept. of Revenue v. Diaz (In re Diaz), 647 F.3d 1073 (11th Cir. 2011) the 11th Circuit noted that only the Superior Court can modify a DSO and held that confirmed that the plan could not discharge a DSO, allowing post-confirmation collection.

"Discharge injunction prohibits collection only with respect to dischargeable debts and does not apply to nondischargeable debts." *United States v. White*, 466 F3d 1241, 1246 (11th Cir. 2006)







DEBTORS

If the child support obligation is over 36 months old, the agency will file a review and modification.

If bankruptcy is filed in good faith, agency will cooperate so that debtor can continue to support the children

Confirm debtor is in compliance with the DSO

CREDITORS

Receive notices

Locate employers and submit Income Deduction Orders

Review the bankruptcy plan and negotiate with debtor's attorney for treatment of child support/alimony claims in the child's best interest

File proofs of claim, motions for relief, motions to dismiss and objections to confirmation when necessary

Confirm debtor is NOT in compliance with the DSO







Dischargeability

- Domestic Support Obligations
 - NEVER dischargeable
- Property Division/Other
 - Discharged in a completed Chapter13 case only



No, you can't collect my client's soul. His personal bankruptcy wiped out <u>ALL</u> debts.







Labels? We don't need no stinkin' labels!

- Labels are not determinative
- Intent
- Factors
 - Length of payments
 - Tax treatment
 - Need for support
 - Disparate Incomes









Examples

- DSOs
 - Attorney Fees to Opposing Counsel
 - Guardian Ad Litem Fees
 - Education Expenses
- Intent
- Factors
 - Length of payments
 - Tax treatment
 - Need for support
 - Disparate Incomes









DETAILS CAN HELP OR HURT YOU

EXAMPLE 1

Intended as Alimony

Husband shall pay Wife the sum of \$25,000 in monthly installments of \$1000

<u>Alimony</u>

Due to the income disparity of the parties and their relative financial positions, the following is awarded as alimony: Husband shall pay Wife \$25,000 in monthly installments of \$1000

EXAMPLE 2

"Wife shall agree to pay \$60,000 in installments to Husband as enumerated in Exhibit C, which is attached and by reference made a part of the agreement. It is the intent of the parties that this shall regarded as periodic payments for debt initially incurred by Wife and transferred to accounts held by Husband. These loan repayments shall not be dischargeable in bankruptcy and shall not be terminated by the death or remarriage of the Plaintiff"







The "Preference Problem"

- Equitable division can equal a preference
- Preference ≠ Fraud
- Surface determination
- "Reasonably Equivalent Value"
- Cases that are tried rarely get reviewed.









Joint Representation: An Ethics Dilemma?

- Does the Chapter matter?
- Midstream changes
- Means Test concerns

Rule 1.7: Conflicts of Interest

- A lawyer shall NOT represent . . .
- "Significant Risk"
- "Materially and Adversely Affect"
- Informed Consent IN WRITING
 - Consultation
 - Written explanation of risks
 - Opportunity to consult with independent counsel







Details

- DRFA
- Child Support Worksheet
- Past Pleadings
- Ex-spouse









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