

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;

(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.

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:**

- 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
- 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;

- 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.

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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.

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).

IV. **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).

- 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.

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V. 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).

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.

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.

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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.

Prepared by, and the below forms are supplied by:

Barb Foley

Staff Attorney

Chapter 13 Trustee, Carl Bekofske

FOC PROPOSED FORM

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF

IN RE:

CASE NO.

Debtor(s)

Chapter 13 Proceeding

BANKRUPTCY CERTIFICATION FOR CHAPTER 13 CONFIRMATION

Now comes Jennie E. Barkey, Genesee County Friend of the Court, who states for her Bankruptcy Certification as follows:

1. That the debtor has a domestic support obligation in Genesee County case number .
2. As of the date of filing the petition in this matter, the charges on debtor's account have been \$, and the payments have been \$.

Jennie E. Barkey
Friend of the Court, Genesee County

STATE OF MICHIGAN)
)ss
COUNTY OF GENESEE)

Subscribed and sworn to before me this ____ day of _____, A.D., 200__.

Connie S. Boniecki, Notary Public
Genesee County
My Commission Expires: 12-21-2010

FOC PROPOSED FORM

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF

IN RE:

CASE NO.

Debtor(s)

Chapter 13 Proceeding

BANKRUPTCY CERTIFICATION FOR CHAPTER 13 DISCHARGE

Now comes Jennie E. Barkey, Genesee County Friend of the Court, who states for her Bankruptcy Certification as follows:

1. That the debtor has a domestic support obligation in Genesee County case number .
2. That all payments as required by the Chapter 13 Plan have been paid.
3. All payments which became due on said domestic support order after the date of filing this Chapter 13, been paid.

Jennie E. Barkey
Friend of the Court, Genesee County

STATE OF MICHIGAN)
)ss
COUNTY OF GENESEE)

Subscribed and sworn to before me this ____ day of _____, A.D., 200__.

Connie S. Boniecki, Notary Public
Genesee County
My Commission Expires: 12-21-2010

Chapter 13 Trustee proposed form - completed by Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-FLINT**

IN RE: CASE NO.:
XXX-XX-1234 Judge
Debtors Chapter 13
_____ /

**COMBINED NOTICE TO DOMESTIC SUPPORT OBLIGEE AND CHILD SUPPORT
ENFORCEMENT AGENCY RE DISCHARGE OF DEBTOR(S)**

TO: Domestic support obligee and child support enforcement agency.

PLEASE TAKE NOTICE:

1. The debtor(s) named above received a discharge under § 1328 of the Bankruptcy Code on *[date of discharge].
2. The last recent known address of the debtor who owed the domestic support obligation is: *[Debtor's address – child support debtor only]
*[City, state, zip]
3. The last recent known name and address of the employer of the debtor named in ¶ 2 is: *[Child support debtor's employer]
*[Employer's address]
*[Employer's city, state, zip]
4. The name of each creditor holding a claim against the debtor named in ¶ 2 that was **not** discharged under 11 U.S.C. § 523(a)(2) or (4) is as follows: *[Name(s)] of creditor(s); if None, so state]
5. The name of each creditor whose claim was reaffirmed under 11 U.S.C. § 524(c) by the debtor named in ¶ 2 is as follows: *[Name(s) of creditors reaffirmed; if None, so state]

Dated: September 27, 2005

/s/ Carl Bekofske
Chapter 13 Trustee
510 West Court Street
Flint MI 48503