

## **Domestic Support Obligations**

By: William “Trip” Nix, Texas Tech School of Law, May 2014  
william.r.nix@ttu.edu<sup>1</sup>

In 2005, Congress amended the Bankruptcy Code by passing the Bankruptcy Abuse Prevention & Consumer Protection Act (“BAPCPA”). BAPCPA, directly affecting family law, defined the term “domestic support obligation” and used the newly defined term throughout the Bankruptcy Code.<sup>2</sup> Pursuant to 11 U.S.C. § 101(14A), the following elements must be satisfied for a domestic support obligation to arise:

(i) the payee of the obligation must be either a governmental unit or a person with a particular relationship to the debtor or a child of the debtor; (ii) the nature of the obligation must be support; (iii) the source of the obligation must be an agreement, court order, or other determination; and (iv) the assignment status of the obligation must be consistent with paragraph (D).

*In re Anthony*, 453 B.R. 782, 786 (Bankr. D. N.J. 2011) (citing *In re Vanhook*, 426 B.R. 296, 300–301 (Bankr. N.D. Ill. 2010)). This paper will discuss provisions dealing with the priority status and dischargeability of domestic support obligations, as well as case law that addresses debts owed to third parties on behalf of a debtor’s ex-spouse.

### **I. Priority of Domestic Support Obligations**

Before Congress enacted BAPCPA, claims for alimony maintenance or support were listed as “seventh priority under § 507(a)(7).” *In re Sanders*, 341 B.R. 47, 50 (Bankr. N.D. Ala. 2006). Now, domestic support obligations are entitled to first priority, subject only to the expenses of a trustee in administering property that might otherwise be used to pay the support obligations. *Id.* Depending on whether a bankruptcy case is filed under Chapter 7 or Chapter 13, the distribution and payment scheme differs for domestic support obligations.

---

<sup>1</sup> This article was edited by Trinitee G. Green, law clerk to the Honorable Harlin D. Hale.

<sup>2</sup> According to § 362(b)(2)(B), the automatic stay does not apply to domestic support obligations. Also, under § 507(a)(1), BAPCPA gave domestic support obligations first priority treatment among unsecured creditors. Lastly, § 523(a)(5) excepts domestic support obligations from discharge.

## Chapter 7

Under Chapter 7 of the Bankruptcy Code “[p]roperty of the estate shall be distributed . . . first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title.” 11 U.S.C. § 726. Thus, in a Chapter 7 bankruptcy, priority claims must be paid in the order specified in § 507. *Ala. Dep’t of Human Res. v. Boler (In re Boler)*, No. 06-30049, 2008 WL 205579 at \*2 (M.D. Ala. 2008). If the property of the estate is insufficient to pay all priority claims in full, then higher priority claims must be paid in full before lower priority claims can receive a distribution. *In re Reid*, No. 06-50147, 2006 WL 2077572 at \*2 (M.D. N.C. 2006). Domestic support obligations are entitled to first priority under § 507. Therefore, pursuant to § 726, domestic support obligations must be paid first and in full before lower priority claims can be paid.

## Chapter 13

Chapter 13 does not include a hierarchy provision like the one found in § 726 of the Bankruptcy Code. *Boler*, 2008 WL 205579 at\*2 (M.D. Ala. 2008). The sequence of payments to creditors, including unsecured creditors with § 507 priority claims, is governed by 11 U.S.C. §§ 1322(a)(2) and (b)(4). *Id.* Section 1322(a)(2) controls the amount of payment required and § 1322(b)(4) dictates the timing of such payments. Accordingly, a Chapter 13 plan must “provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim.” 11 U.S.C. § 1322(a)(2). Thus, if a claim has priority status, it must be paid in full under the plan. *Boler*, 2008 WL 205579 at \*2 (M.D. Ala. 2008). Furthermore, § 1322(b)(4) states that “[s]ubject to subsections (a) and (c) of this section, the plan may . . . provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other

Also available as part of the eCourse

[Consumer Bankruptcy Hot Topics: Rule 3002.1 Interpretations and Actions; Home Loan Modifications and Loan Forgiveness; Reaffirmation Agreements; and the Collision of Family Law and Bankruptcy](#)

First appeared as part of the conference materials for the  
9<sup>th</sup> Annual Consumer Bankruptcy Practice session

"Topic D: Family Law and Bankruptcy—No Love (or Money) Lost"