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**THE DOMESTIC SUPPORT OBLIGATION IN CHAPTER
13 AND 7 BANKRUPTCY: The Obligation and Claim
the Debtor Must Satisfy**

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I. Introduction

Most debtors think of the domestic support obligation as merely another debt to either be paid or discharged at the end of the bankruptcy case. However, a domestic support obligation has special status under the Bankruptcy Code. In addition, state statutes often provide special status for domestic support obligations. Because of this, unsuspecting debtors discover that payment avoidance of a domestic support obligation is difficult to do. A debtor or creditor attorney should be familiar with the special protections afforded domestic support obligations and the potential effects that such protections might place on litigation of the consumer bankruptcy case.

This paper will review selected collection measures granted to recipients, or claimants, of domestic support obligations in bankruptcy litigation, with particular focus on Chapter 13 litigation. The discussion in this paper will also touch on the interplay between domestic support obligations and Chapter 7 bankruptcy litigation in a more limited fashion with a hint at some applicability to Chapter 11 litigation, as well. Finally, the paper will review features of relevant federal and state statutes with regard to domestic support obligations and consumer bankruptcy litigation.

II. Requirements for Confirmation of the Plan and Considerations for the Claimant, Debtor, and the Debtor's Attorney

To begin, a fundamental requirement for a debtor's Chapter 13 plan to confirm is that a debtor must pay all amounts that are required to be paid under a domestic support obligation that first becomes payable after the date of filing of the bankruptcy petition.¹ This requirement remains throughout the debtor's Chapter 13 bankruptcy litigation. After confirmation of the plan, the requirement applies to modifications of a confirmed plan² and is a condition precedent to obtain a discharge.³

A second requirement for confirmation of the plan concerns the treatment of the domestic support claim. Pursuant to 11 U.S.C. 1322(a)(2), the plan must provide for the full payment of the domestic support obligation claim unless the claimant agrees to a different treatment of such claim.⁴ The exception to the plan providing for full payment of the domestic support obligation under Section 1322(a)(4)⁵ may exist only to the extent that the domestic support

¹ 11 U.S.C. 1325 (a) Except as provided in subsection (b), the court shall confirm a plan if –

...
(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and . . .

² 11 U.S.C. 1329(b)(1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

³ 11 U.S.C. 1328 (a) Subject to subsection (d) as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order of relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt ---. . .

(2) of the kind specified in section 507(a)(8)(C), or in paragraph (1)(B), (1)(C), 2, 3, 4, 5, 8, or of section 523(a);

⁴ 11 U.S.C. 1322 (a) The plan—

...
(2) shall 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; . . .

⁵ 11 U.S.C. 1322(a) The plan—

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