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Collier Family Law and the Bankruptcy Code

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CHAPTER 6 The Dischargeability of Marital Obligations in Bankruptcy

*1-6 Collier Family Law and the Bankruptcy Code P 6.02*

### **P 6.02 The Bankruptcy Discharge.**

The ultimate goal of most bankruptcy cases is the discharge of indebtedness. The discharge is the primary vehicle for accomplishing the fresh start purpose of the bankruptcy laws, which is to "relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes."<sup>1</sup>

#### **[1] How Discharge Is Obtained.**

The method of obtaining a discharge varies depending upon the Bankruptcy Code chapter selected by the debtor. In chapter 7 cases, debtors receive a discharge shortly after the section 341 meeting of creditors,<sup>2</sup> once the time for objections to discharge, normally 60 days,<sup>3</sup> has expired.<sup>4</sup> Creditors may attempt to prevent the discharge, if appropriate, by filing objections to discharge under section 727(a), which lists various circumstances in which a debtor is not entitled to a discharge.<sup>5</sup> In some cases of higher income debtors, a creditor may file a motion to dismiss the case if the debtor is alleged to have abused the provisions of chapter 7.<sup>5a</sup> A creditor may also file an adversary proceeding seeking a determination that his or her particular claim is not discharged.<sup>6</sup> In either type of proceeding the bankruptcy court will decide the discharge and dischargeability issues raised.

In chapters 11, 12 and 13, a discharge is normally obtained upon completion of the debtor's confirmed plan.<sup>7</sup> In some cases in which the debtor cannot complete the plan, a "hardship discharge" may still be obtained if the debtor's inability to complete the plan is due to circumstances for which the debtor should not justly be held accountable and unsecured creditors have already received as much as they would have received in a chapter 7 liquidation case.<sup>8</sup> The creditors have no opportunity to object to the entry of a discharge once the debtor has completed the plan, except in limited circumstances. The time for creditors to raise objections, if they have any, is when the plan is before the court for confirmation.<sup>9</sup> Creditors may, of course, dispute whether a debtor applying for a hardship discharge has met the requirements for obtaining one.<sup>10</sup> They may also seek dismissal of the case if the debtor falls behind in payment of postpetition domestic support obligations.<sup>11</sup> In<sup>12</sup>

#### **[2] Effect of the Discharge on Prepetition Debts.**

The bankruptcy discharge's principal effect is to eliminate the personal liability of the debtor for the prepetition debts which are discharged.<sup>13</sup> It is effectuated by several provisions of section 524(a).<sup>14</sup> That section automatically voids any judgment to the extent it is a determination of the debtor's personal liability for a discharged debt, whether that judgment is obtained before or after the bankruptcy case.<sup>15</sup>

In some cases, there may be disputes about whether any debt exists at the time the bankruptcy petition is filed, especially if a divorce is pending. If a debt only comes into being after the discharge, it is not affected by the discharge.<sup>n15a</sup>

Section 524(a) also provides that the discharge operates as a broad injunction against the commencement or continuation of any action or act to collect, recover or offset any discharged debt as a personal liability of the debtor.<sup>n16</sup> The discharge injunction, therefore, permanently stays not only legal proceedings, but also all other collection efforts with respect to discharged debts. As discussed above,<sup>n16a</sup> in many states with community property laws, the discharge also operates as an injunction against proceeding against any interest of a nondebtor spouse in community property.<sup>n16b</sup> Violation of this injunction, like the automatic stay, is contempt of court, punishable by awards of damages and attorney's fees.<sup>n17</sup>

Thus, for example, a nondebtor spouse may not offset postpetition alimony payments the nondebtor owes against a property settlement debt discharged in the bankruptcy case of the nondebtor's spouse and thereby subvert the discharge. In *Nichols v. Nichols* <sup>n18</sup> the Supreme Court of Appeals for West Virginia held that the nondebtor spouse could not, in effect, collect on the discharged obligation through withholding the alimony payments he was otherwise obligated to make. The court did, however, agree with a prior bankruptcy court determination that, to the extent that the alimony obligation had already accrued at the time of bankruptcy, it was permissible to offset it against the property settlement claim against the debtor to reduce the balance of that claim.<sup>n19</sup> Similar results were reached by the bankruptcy court in *In re Hart*,<sup>n20</sup> in which, due to the contingent and modifiable nature of the nondebtor spouse's child support obligation, he was not permitted to offset it against a dischargeable property settlement claim.

In *Egleston v. Egleston (In re Egleston)*,<sup>n20a</sup> the Court of Appeals for the Fifth Circuit analyzed a post-discharge state court judgment that awarded the debtor's former spouse damages for the debtor's failure to pay alimony. The court held that to the extent the damages occurred before the bankruptcy petition they constituted a discharged debt. The court also held that an award of attorney's fees was nondischargeable only to the extent the fees were incurred to collect alimony, and not to the extent they were incurred to obtain damages or to collect property settlement debts.

A slightly different situation arose in *Cohen v. Goldberg* <sup>n20b</sup> a case in which the debtor had discharged loans from his wife in a predivorce bankruptcy case. The wife argued that the trial court could consider the prior debts and reduce the debtor's share by way of equitable recoupment. The Pennsylvania Supreme Court held that the doctrine of recoupment was not applicable because considering the entire marriage as a single transaction would mean that any ongoing personal relationship could be considered a single transaction and the requirement of a single transaction would become meaningless. Therefore, the discharged debts could not be applied against the wife's obligations. Although the use of the recoupment doctrine, with the parties' marriage being considered the transaction or occurrence out of which both debts arose, was probably strained in this context, most state laws would allow consideration of the wife's contribution to the marriage through loans to her husband as part of the equitable distribution decision and the fact that those loans had been discharged prior to the divorce would not necessarily change the equities of the case.

However, although a court cannot continue civil proceedings to collect a discharged debt, criminal proceedings may not be similarly affected. The Georgia Supreme Court held that a criminal contempt order fining and incarcerating the debtor, intended simply to punish a willful refusal to obey a court order to pay a marital debt and to vindicate the authority of the court, was not barred by the discharge.<sup>n20c</sup>

### **[3] Distinction Between Debts and Property Interests.**

The discharge does not affect valid security interests or other liens which have not been specifically avoided<sup>n21</sup> or otherwise modified or provided for in the bankruptcy case.<sup>n22</sup> For example, a mortgage would normally survive the discharge in a chapter 7 case if the property subject to the mortgage was abandoned<sup>n23</sup> by the trustee and not

liquidated, and the mortgage holder could proceed to foreclose against the mortgaged property in the event of a default. But the discharge would protect the debtor against any deficiency claim on a mortgage or security interest, since such a claim would be an unsecured personal liability.

Normally, the discharge does not divest nondebtors of other property rights either.<sup>n23a</sup> For this reason, a critical question often arises as to whether the nondebtor spouse has a property right or only an unsecured claim. For example, if a spouse's rights to receive a portion of the pension payments due to the other spouse constitute an interest in the pension itself, that right usually cannot be defeated by a bankruptcy discharge.<sup>n24</sup> Similarly, in *Coffey v. Coffey (In re Coffey)*,<sup>n24a</sup> the court held that the nondebtor former spouse had a right to an equitable division of marital property and not a prepetition debt. That property right could not be extinguished by the debtor's discharge. On the other hand, if the obligation is characterized as a property settlement debt that the pensioner spouse was required to pay from his own pension property, it may well be dischargeable.<sup>n25</sup> In many cases, nondebtors may be able to argue that a judgment or agreement gave them a security interest or that an equitable lien in particular property protects them, in whole or in part, from the effects of the discharge.<sup>n26</sup>

Such issues often arise when a spouse has agreed to sell a home or business and remit some of the proceeds to the other spouse. If the sale is consummated and the nonselling spouse does not receive his or her share, that spouse may have only an unsecured property settlement claim, unless some sort of property interest in the asset sold can be shown.<sup>n27</sup> And for spouses who do successfully assert lien rights, there may be the additional hurdle of protecting those rights against the debtor's and the trustee's avoiding powers.<sup>n28</sup>

The distinction between debts and property interests can become particularly significant when a divorce proceeding is bifurcated and the court grants a divorce prior to deciding the distribution of property. A bankruptcy filing at this juncture would stay the state court from proceeding with the equitable distribution of property,<sup>n29</sup> leaving each spouse with the property owned by that spouse or titled in his or her name at that point in time. The equitable distribution claims of a dependent spouse, which otherwise might have been expected to result in title to the family's home or other property previously titled in both names or only the name of the other spouse, could well be treated simply as unliquidated property settlement claims dischargeable in the bankruptcy case unless they can be shown to be vested rights in property.<sup>n30</sup>

Courts struggling with such issues have often looked to the Bankruptcy Code's definition of claim, in *Code section 101(5)* as a

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.<sup>n30a</sup>

For example, the Supreme Judicial Court of Maine found that there was no prebankruptcy claim against the debtor in a case in which a divorce had been filed prior to the bankruptcy petition, but no order was entered in the divorce until after the bankruptcy discharge was entered.<sup>n30b</sup> The court rejected the debtor's argument that his spouse's contingent claim for alimony, maintenance and support was discharged because she did not file a proof of claim in the bankruptcy case, holding that there was not yet a right to payment until the state court ordered payment of alimony. Unfortunately, both the arguments made by the debtor and the opinion confuse several concepts. Whether or not a creditor files a proof of claim has no bearing on whether the claim is discharged. It determines only whether the creditor is entitled to participate in the distribution of property in bankruptcy.<sup>n30c</sup> The court could have reached the same result by recognizing that a claim for alimony is not dischargeable,<sup>n30d</sup> regardless of whether a proof of claim is filed in the bankruptcy case. It is difficult to see how, having asserted a claim for alimony prior to the bankruptcy, the debtor's

spouse did not have a contingent claim for alimony.<sup>n30e</sup> A similar result was reached in *In re Degner*,<sup>n30f</sup> with the bankruptcy court holding that a postpetition order that the debtor hold his wife harmless from a debt to a third party was a postpetition obligation and, therefore, was not discharged, even though debtor's liability to the third party had been discharged. However, it is not clear from the opinion whether the wife had asserted the hold-harmless claim prior to the bankruptcy case.

Somewhat less confused was the decision in *In re the Marriage of Seligman*.<sup>n30g</sup> In that case the wife filed a chapter 7 petition after the dissolution proceeding had begun. She scheduled as exempt all of the community property in her possession and listed a debt to her husband as unliquidated and being unknown in amount. After receiving her discharge, she argued to the state court that her husband was barred by the discharge from making any claim against the property she had claimed as exempt. The court held that a court ordered division of community property did not give rise to a right to payment because it required performance, not payment. The court also recognized that merely by filing a bankruptcy petition and claiming property as exempt the wife could not become the owner of property that she did not otherwise own. The property remained community property owned by both spouses. In essence, though without ever so stating, the court thus appeared to hold that, as of the filing of the bankruptcy petition, each spouse had a vested but indeterminate interest in the community property and that the subsequent order merely effectuated the distribution of those interests.<sup>n30h</sup> Otherwise, at least if some of the property were cash or its equivalent, a postdischarge divorce order would have been one giving rise to a right to payment and the result would have been different. Certainly, as a policy matter, it would make little sense to have the result turn on whether the marital property was in the form of cash.

Despite the difficulties with the Code's definition of claim, several other courts have also adopted the position that requests for alimony, support or property settlements asserted in a divorce but not yet decided at the time of the bankruptcy petition are not claims, because they are not enforceable obligations.<sup>n30i</sup> While this position is not necessarily inconsistent with the position that the filing of a divorce gives the nondebtor spouse a vested property interest in all marital property, it could endanger the collection of support from property of the estate. For example, if the debtor had substantial nonexempt assets that were not marital property (perhaps because of an agreement or the date they were acquired), a holding that a claim for alimony or support asserted prepetition is not a "claim" for bankruptcy purposes would mean that no assets of the estate would go toward payment of that alimony or support, even if it covered a prepetition period.

#### **[4] Protection Against Discriminatory Treatment.**

A final protection emanating from the discharge is the prohibition of discriminatory treatment by governmental units and employers based upon the bankruptcy or the nonpayment of discharged debts contained in section 525.<sup>n31</sup> Specifically, that section prohibits government denial of or discrimination with respect to a "license, permit, charter, franchise, or other similar grant"<sup>n32</sup> and prohibits denial of or discrimination in employment by both public and private employers.<sup>n33</sup> In addition, a 1994 amendment clarified that section 525 also protects debtors and former debtors from discrimination when they apply for student loans or grants.<sup>n33a</sup> Courts have differed as to how broadly these provisions should be construed, but it is clear that they are intended to promote the debtor's fresh start and free the debtor from the consequences of unpaid debts.

In a domestic relations context, section 525 could possibly come into play when a government agency or even a court<sup>n34</sup> attempted to impose sanctions or condition a benefit to the debtor based upon the payment or nonpayment of a discharged marital obligation. Interpreting the terms "franchise" and "license" broadly,<sup>n35</sup> a host of governmental programs and actions are available, including tax interception of support arrears,<sup>n36</sup> withholding from paychecks, and other enforcement actions that could be implicated by this section. Many of these actions, of course, might also violate<sup>n37</sup> the discharge injunction<sup>n38</sup> as well.

#### **FOOTNOTES:**

(n1)Footnote 1. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S. Ct. 695, 699, 78 L. Ed. 1230, 1235 (1934) , quoting

*Williams v. U.S. Fid. & Guar. Co.*, 236 U.S. 549, 554-55, 35 S. Ct. 289, 290, 59 L. Ed. 713, 716 (1915) .

(n2)Footnote 2. *See P 1.03[8] supra.*

(n3)Footnote 3. *Fed. R. Bankr. P. 4004(a)*, as amended by the 1999 Amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 1999. *See 9 Collier on Bankruptcy, P 4004.02* (Matthew Bender 15th Ed. Revised). The time for objecting to discharge may in some cases be extended for cause. *Fed. R. Bankr. P. 4004(b)*. *See 9 Collier on Bankruptcy, P 4004.03* (Matthew Bender 15th Ed. Revised).

(n4)Footnote 4. *Fed. R. Bankr. P. 4004(c)*. *See 9 Collier on Bankruptcy, P 4004.04* (Matthew Bender 15th Ed. Revised).

(n5)Footnote 5. *See P 6.09 infra.*

(n6)Footnote 5a. *11 U.S.C. § 707*. *See P 1.03[b] supra.*

(n7)Footnote 6. *See PP 6.07- 6.08 infra* . A party may also seek a determination of the dischargeability of certain debts, including alimony, maintenance and support, in a state court, provided that action is not barred by the automatic stay. *See P 6.07[1] infra.*

(n8)Footnote 7. *11 U.S.C. §§ 1228(a) and 1328(a)*. *11 U.S.C. § 1328(a)* was amended in certain respects not pertinent to this discussion by the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394(effective with respect to cases commenced on or after October 22, 1994), *reprinted in* Vol. E Collier on Bankruptcy, App. Pt. 9(a) (Matthew Bender 15th Ed. Revised). *See 8 Collier on Bankruptcy, PP 1228.01 and 1328.02* (Matthew Bender 15th Ed. Revised).

(n9)Footnote 8. *11 U.S.C. §§ 1228(b) and 1328(b)*. *See 8 Collier on Bankruptcy, PP 1228.03 and 1328.03* (Matthew Bender 15th Ed. Revised).

(n10)Footnote 9. *See PP 8.03[3] and 8.04[3][a] infra* .

(n11)Footnote 10. *11 U.S.C. §§ 1228(b) and 1328(b)*. *See 8 Collier on Bankruptcy, PP 1228.03 and 1328.03* (Matthew Bender 15th Ed. Revised).

(n12)Footnote 11. *11 U.S.C. §§ 1208(c)(1), 1307(c)(11)*. *See P 8.09[5] infra.*

(n13)Footnote 12. [Reserved]

(n14)Footnote 13. As discussed below, to the extent property is liable for a debt by way of a lien, the discharge does not affect that liability. *See P 6.02[3] infra*. *See also 4 Collier on Bankruptcy, P 524.02* (Matthew Bender 15th Ed. Revised).

(n15)Footnote 14. *11 U.S.C. § 524(a)*.

(n16)Footnote 15. *11 U.S.C. § 524(a)(1)*. *See 4 Collier on Bankruptcy, P 524.02* (Matthew Bender 15th Ed. Revised).

(n17)Footnote 15a. *In re Degner*, 227 B.R. 822 (Bankr. S.D. Ind. 1997) (order that debtor hold wife harmless from debt to third party was postpetition obligation and therefore was not discharged even though debtor's liability to third party had been discharged). *Cf. Fox v. Hoberg (In re Hoberg)*, 300 B.R. 752 (Bankr. C.D. Cal. 2003) (fees awarded postpetition pursuant to prepetition stipulated judgment were a prepetition debt). *See also P 6.02[3] infra.*

(n18)Footnote 16. *11 U.S.C. § 524(a)(2)*. *See 4 Collier on Bankruptcy, P 524.02* (Matthew Bender 15th Ed. Revised). Postpetition offset against the debtor's property is sometimes allowed, however. *See ns. 18-19 infra* and

accompanying text.

(n19)Footnote 16a. *P 4.08 supra* .

(n20)Footnote 16b. *Norwest Fin. v. Lawver*, 849 P.2d 324 (Nev. 1993) .

(n21)Footnote 17. *See, e.g., DiGeronimo v. Weissberg (In re DiGeronimo)*, 354 B.R. 625 (Bankr. E.D.N.Y. 2006) (punitive damages awarded for filing proceedings to collect property settlement in willful violation of discharge injunction); *Miles v. Clarke (In re Miles)*, 357 B.R. 446 (Bankr. W.D. Ky. 2006) (attorney's fees and damages awarded for ex-husband's attempt to collect discharged property settlement); *In re Fluke*, 305 B.R. 635 (Bankr. D. Del. 2004) (nondebtor spouse's attempt to modify property settlement decree to reinstate discharged property settlement was contempt of discharge injunction); *In re Tostige*, 283 B.R. 462 (Bankr. E.D. Mich. 2002) (debtor's ex-wife violated discharge injunction by seeking to have divorce court modify property settlement due to discharge of divorce settlement debts); *In re Ray*, 262 B.R. 580 (Bankr. D. Me. 2001) (debtor's former spouse and her attorney held in contempt for prosecuting state court action to enforce divorce-related debt after it was discharged); *In re Kiker*, 98 B.R. 103 (Bankr. N.D. Ga. 1988) (continued efforts of IRS to collect discharged tax debt warranted award of attorney's fees and costs); *In re Roush*, 88 B.R. 163 (Bankr. S.D. Ohio 1988) (actual damages and attorney's fees awarded against creditor who did not maintain procedures adequate to prevent collection efforts on discharged debts); *Behrens v. Woodhaven Ass'n*, 87 B.R. 971 (Bankr. N.D. Ill. 1988) (decision to sue debtors after discharge of prepetition contract obligation constitutes contempt of court). *But see Henderson v. Henderson (In re Henderson)*, 324 B.R. 302 (Bankr. W.D. Ky. 2005) (when debtor had not listed former spouse as creditor, there had been no prior determination that debt was discharged, and state court had already ruled in favor of former spouse, bankruptcy court could not review propriety of state court decision holding debtor in contempt); *In re Beardslee*, 38 C.B.C.2d 584, 209 B.R. 1004 (Bankr. D. Kan. 1997) (debtor could not seek to enforce discharge injunction in bankruptcy court after former spouse had already obtained state court order, affirmed on appeal, which implicitly found discharge inapplicable; bankruptcy court was prohibited from nullifying state court order, on matter within state court's jurisdiction, by *Rooker-Feldman* doctrine which precludes lower federal courts from reviewing state court judgments. 38 C.B.C.2d 584, 592-95, 209 B.R. 1004, 1010-1012) .

(n22)Footnote 18. *Nichols v. Nichols*, 391 S.E.2d 623 (W.D. Va. 1990) .

(n23)Footnote 19. *Nichols v. Nichols*, 391 S.E.2d 623 (W.D. Va. 1990) . The court found that the prepetition debts and the discharged obligations were mutual debts which could be set off under section 553. Generally, under this provision debts which are not absolutely due and owing prior to the bankruptcy filing, such as postpetition obligations for support that are contingent or modifiable, are not considered mutual debts that may be set off against dischargeable prepetition debts. *Accord In re Ketelsen*, 282 B.R. 208 (Bankr. E.D. Tenn. 2001) (nondebtor spouse could offset discharged debt against prepetition child support payments he had not made). *See 5 Collier on Bankruptcy*, P 553.03 (Matthew Bender 15th Ed. Revised).

(n24)Footnote 20. *In re Hart*, 13 C.B.C.2d 190, 50 B.R. 956 (Bankr. D. Nev. 1985) .

(n25)Footnote 20a. 448 F.3d 803 (5th Cir. 2006) .

(n26)Footnote 20b. *Cohen v. Goldberg*, 554 Pa. 201, 720 A.2d 1028 (1998) .

(n27)Footnote 20c. *Ward v. Ward*, 409 S.E.2d 518 (Ga. 1991) .

(n28)Footnote 21. *See Chapter 7 infra*.

(n29)Footnote 22. *In the Matter of Williams*, 210 B.R. 344 (Bankr. D. Neb. 1997) (award constituted lien against debtor's property and that lien was not affected by discharge). For example, if a confirmed plan provides specific treatment for a particular secured claim, the rights of the holder of that claim are determined by the plan, which is binding on all creditors. *See PP 8.03[3] and 8.04[3][a] infra* .

(n30)Footnote 23. See Chapter 2 *supra*.

(n31)Footnote 23a. See *Stephens v. Jensen-Carter (In re Stephens)*, 276 B.R. 610 (B.A.P. 8th Cir. 2002) , *aff'd*, 53 Fed. Appx. 392, 2002 U.S. App. LEXIS 26123 (8th Cir. Minn. 2002) (attempt of trustee in former husband's bankruptcy case to liquidate his ownership interest in property that his wife claimed as exempt in her bankruptcy case was not an attempt to collect debt discharged in wife's bankruptcy, but rather an attempt to liquidate property to extent that it was owned by husband and not wife).

(n32)Footnote 24. *Bush v. Taylor*, 912 F.2d 989, 23 C.B.C.2d 1294 (8th Cir. 1990) (*en banc*). See P 2.02[6] *supra* and P 6.05[8] *infra* .

(n33)Footnote 24a. 348 B.R. 775 (Bankr. E.D. Tenn. 2006) .

(n34)Footnote 25. See, e.g. *Bush v. Taylor*, 912 F.2d 989, 994, 23 C.B.C.2d 1294, 1302 (8th Cir. 1990) (dissenting opinion).

(n35)Footnote 26. See *Roshan v. Nouri (In re Nouri)*, 304 B.R. 155 (Bankr. M.D. Pa. 2003) (divorce decree creating obligation on part of debtor to transfer residential property to former spouse gave former spouse equitable interest in property, not a claim that could be discharged); P 6.05[8] *infra* .

(n36)Footnote 27. See, e.g., *In re Borman*, 886 F.2d 273 (10th Cir. 1989) (wife had equitable lien in property when source of money husband was obligated to pay her was clearly that property); *In re Donahue*, 862 F.2d 259 (10th Cir. 1988) (same); *In re Peterson*, 133 B.R. 508 (Bankr. W.D. Mo. 1991) (when property titled in husband's name was to be sold, with proceeds divided pursuant to divorce settlement agreement, husband held wife's share in constructive trust and no debt existed); *In re Elkhatib*, 21 C.B.C.2d 1438, 108 B.R. 650 (Bankr. N.D. Ill. 1989) (order requiring payment to former spouse for interest in business dischargeable and did not give rise to judicial or equitable lien); *In re Hart*, 13 C.B.C.2d 190, 50 B.R. 956 (Bankr. D. Nev. 1985) (equitable lien created when former husband transferred his interest in property in exchange for wife's obligation to pay money from proceeds of sale of property); *Leyden v. Citicorp Indus. Bank*, 782 P.2d 6 (Colo. 1989) (former wife had equitable lien on property when she received note from husband in exchange for quitclaim of her interest). Cf. *Martin v. Schindley*, 264 Ga. 142, 142 S.E.2d 239 (1994) (debtor who had option to purchase spouse's share of property but who had not exercised option prior to bankruptcy could not claim spouse's share of property as his and discharge debt that would have been owing had option been exercised; since option had not been exercised, spouse continued to own her share and there was no debt). See also P 6.05[6] *infra*.

(n37)Footnote 28. See Chapter 7 *infra*.

(n38)Footnote 29. See P 5.03[7] *supra*.

(n39)Footnote 30. See P 2.01[5] *supra*. See also *Schorr v. Schorr (In re Schorr)*, 299 B.R. 97 (Bankr. W.D. Pa. 2003) (property settlement claims asserted in divorce pending at time of bankruptcy petition were prepetition claims that were dischargeable).

(n40)Footnote 30a. 11 U.S.C. § 101(5).

(n41)Footnote 30b. *Harding v. Murray*, 623 A.2d 172 (Me. 1993) .

(n42)Footnote 30c. 11 U.S.C. § 727(b). Compare 11 U.S.C. § 726(a)(2). In fact, a claim for unmatured alimony or support must be disallowed pursuant to 11 U.S.C. § 502(b)(5). See P 8.03[1] *infra*.

(n43)Footnote 30d. 11 U.S.C. § 523(a)(5). See P 6.03 *infra*.

(n44)Footnote 30e. Cf. *Pawtucket Credit Union v. Haase (In re Haase)*, 306 B.R. 415 (B.A.P. 1st Cir. 2004) (a Maine court could retroactively modify its denial of the spousal support to create a prepetition priority support debt by

an order entered after the bankruptcy petition was filed).

(n45)Footnote 30f. *In re Degner*, 227 B.R. 822 (Bankr. S.D. Ind. 1997) .

(n46)Footnote 30g. *In re the Marriage of Seligman*, 14 Cal. App. 4th 300, 18 Cal. Rptr. 2d 209 (Cal. App. 1993) .

(n47)Footnote 30h. *See P 2.01[5] supra*.

(n48)Footnote 30i. *Nelson v. Miller (In re Miller)*, 268 B.R. 826 (Bankr. N.D. Ind. 2001) ; *Buglione v. Berlingeri (In re Berlingeri)*, 43 C.B.C.2d 1477, 246 B.R. 196 (Bankr. D.N.J. 2000) ; *Miller v. Miller (In re Miller)*, 44 C.B.C.2d 83, 246 B.R. 559 (Bankr. E.D. Tenn. 2000) ; *Antonino v. Kenny (In re Antonino)*, 241 B.R. 883 (Bankr. N.D. Ill. 1999) (postpetition attorney's fee award for work at least partially performed prepetition); *In re Compagnone*, 239 B.R. 841 (Bankr. D. Mass. 1999) (nondebtor spouse was not a creditor who could object to discharge or dischargeability).

(n49)Footnote 31. 11 U.S.C. § 525. *See* 4 Collier on Bankruptcy, ch. 525 (Matthew Bender 15th Ed. Revised).

(n50)Footnote 32. 11 U.S.C. § 525(a). *See FCC v. NextWave Pers. Communs., Inc.*, 537 U.S. 293, 123 S. Ct. 832 ; 154 L. Ed. 2d 863 (2003) ; 4 Collier on Bankruptcy, P 525.02 (Matthew Bender 15th Ed. Revised).

(n51)Footnote 33. 11 U.S.C. § 525(a), (b). *See* 4 Collier on Bankruptcy, PP 525.02[4] and 525.04 (Matthew Bender 15th Ed. Revised).

(n52)Footnote 33a. 11 U.S.C. § 525(c), enacted by the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394 (effective with respect to cases filed on or after October 22, 1994).

(n53)Footnote 34. A court would probably fall within the definition of "governmental unit" under 11 U.S.C. § 101.

(n54)Footnote 35. Black's Law Dictionary defines "franchise" as a special privilege conferred by government on an individual or corporation which does not belong to citizens generally of common right. The same source defines "license" as the authority or liberty given to do or forbear any act, permission by some competent authority to do some act which, without such permission, would be illegal, etc.

(n55)Footnote 36. *See P 5.03[6] supra*.

(n56)Footnote 37. [Reserved]

(n57)Footnote 38. *See P 6.02[2] supra*.