

Will a bankruptcy get rid of the payments to my ex-wife?

I got divorced three years ago and have to pay my ex-wife \$2,500 a month under our divorce agreement. If I file bankruptcy, will that go away?

That depends on what chapter of the bankruptcy code you use (7 or 13) and what that \$2,500 is for. Let's start with the difference between a Chapter 7 bankruptcy (gets rid of your debts quickly) and a Chapter 13 bankruptcy (you pay your debts, all or in part, over time).

Chapter 7 - Since the bankruptcy laws were changed in 2005, the following types of debts are not dischargeable (can't be eliminated) in a Chapter 7 bankruptcy: All debts to a spouse or former spouse or a child that were incurred in connection with a divorce or separation. It doesn't matter whether the amounts owed are a part of a property settlement or for support of the ex-spouse or children, they simply are not dischargeable. That means that none of that \$2,500 monthly payment would go away after a Chapter 7 bankruptcy.

Chapter 13 - Amounts owed for a "Domestic Support Obligation", whether called alimony, spousal support, or child support, are not dischargeable in a Chapter 13 bankruptcy. Amounts owed for other purposes, including as a part of a property settlement or distribution, can be discharged in a Chapter 13 bankruptcy.

What about an order or agreement to pay your ex's divorce attorney fees? Most courts find those to be in the nature of support. However, if they are a penalty, they may find not to be in the nature of support. We're now in a gray area for which you need to consult with your attorney.

In addition, if you're in a Chapter 13 bankruptcy, you need to keep up with your support payments owed after your filed bankruptcy or you may not be able to get your discharge of debts.

What that means is that it is very important to be clear about what your payments to your ex are really for. You need to get a copy of the settlement agreement or, if there was no settlement agreement, the court divorce judgment. Read it carefully and also give it to your bankruptcy attorney.

Malcolm Ruthven
Attorney at Law
San Francisco Bay Area
415.342.4666 Fax 415.869.6645
mruthven@mruthvenlaw.com
www.ca-bklaw



Click [bankruptcy](#) for more information from [Malcolm Ruthven](#)