

137-055-2380

Obligor Chapter 12 and Chapter 13 Bankruptcy Situations

This rule details the Child Support Program's responsibilities in situations of obligor bankruptcy and applies to Chapter 12 and Chapter 13 bankruptcies filed on or after October 17, 2005. For bankruptcies filed prior to October 17, 2005, the Bankruptcy Code in effect at the time the bankruptcy was filed applies, as does the prior version of OAR 137-055-2380 in effect at the time the bankruptcy was filed.

(1) Upon receiving notification of bankruptcy, the administrator will:

(a) Stop any legal action that is pending and not initiate any new legal action, except:

(A) Initiating or proceeding with the establishment of paternity;

(B) Initiating or proceeding with the establishment or modification of a child support order;

(C) Changing the support award based on a change in the child's physical custody as authorized by ORS 25.525; or

(D) Processing a notice suspending or reinstating support pursuant to OAR 137-055-3300 or 137-055-5400.

(b) Not file any document in circuit court in a county in which the debtor owns real property that creates a lien by its terms or by operation of law without first obtaining relief from the automatic stay.

(c) Leave any existing income, unemployment, workers' compensation, or Paid Leave Oregon withholding orders for current support only in place. If there is an ongoing support obligation and income withholding is in place that includes arrears, the administrator will send an amended withholding order for current support only. When the bankruptcy plan is confirmed, the administrator may issue a withholding order for current support and arrears to the extent authorized in the bankruptcy plan.

(d) Determine if there are any other enforcement actions in process that may need to be stopped due to the stay or which may involve property of the bankruptcy estate, such as a writ of garnishment or contempt of court action; and

(e) Terminate any action that involves property of the bankruptcy estate and is not excepted from the automatic stay and send any such property of the estate that has not been distributed to the bankruptcy trustee.

(2) The administrator will file a Proof of Claim for current support and arrears owed at the time the petition was filed, in any, if the time period for filing a Proof of Claim has not passed. However, if it will not be feasible for the debtor to pay the entire support

obligation during the duration of the bankruptcy plan, the administrator may negotiate with the debtor a stipulation in the bankruptcy plan to collect a lesser amount of support through the plan. Any such stipulation will specify that the remaining debt will be paid outside the plan and the support is nondischargeable.

(3) The administrator will respond to any objections filed to the Proof of Claim.

(4) The administrator will review the Summary of Plan or proposed Plan and the Debtor's Schedule J, if available, for the repayment of arrears and for payment of ongoing support; and

(a) If the time period for filing objections has not passed, the administrator may file an objection to a Plan if the Plan is not feasible.

(b) If the Plan does not provide for pre-petition arrears, the administrator may file an objection to have the pre-petition arrears included in the plan if the time period for filing an objection has not passed.

(5) After confirmation, if the property of the estate has reverted in the debtor, the administrator will resume collection on current support and post-petition arrears. If the Plan provides for the pre-petition arrears, collection of the pre-petition arrears will be governed by the terms of the Plan.

(6) If the debtor fails to make timely support payments after filing the bankruptcy petition, the administrator may petition the bankruptcy court for relief from the automatic stay or move for dismissal of the bankruptcy.

(7) The administrator will continue to certify a case for federal and state tax refund intercept unless otherwise provided by the bankruptcy plan. However, if it is determined that an intercepted tax refund is the property of the estate and the bankruptcy trustee requests the money, the administrator will forward the money to the bankruptcy trustee and notify the parties.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Effective Date: March 1, 2024