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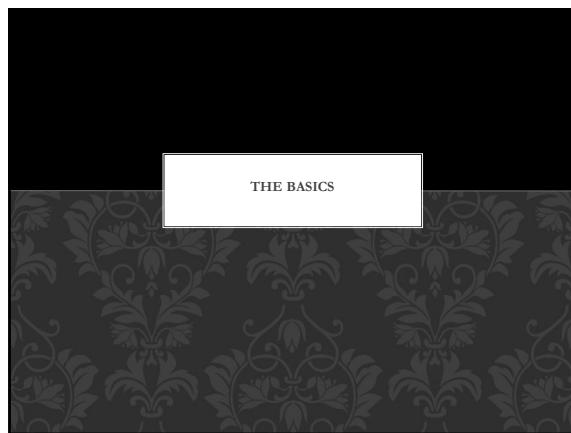
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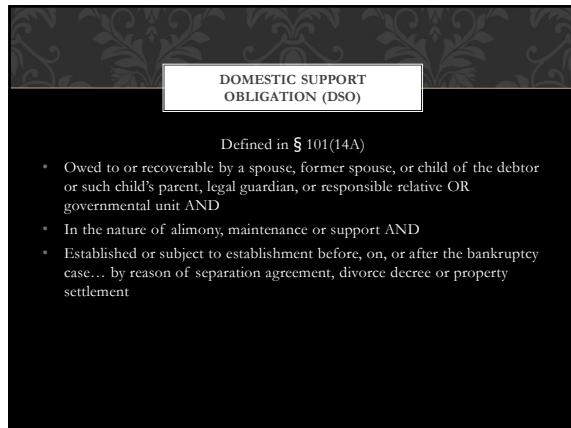
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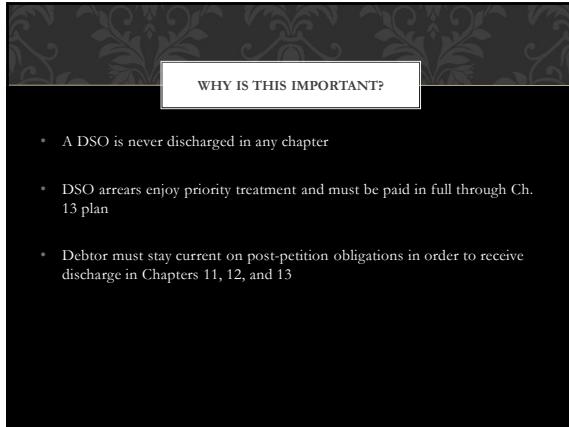
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- A DSO is never discharged in any chapter
  - DSO arrears enjoy priority treatment and must be paid in full through Ch. 13 plan
  - Debtor must stay current on post-petition obligations in order to receive discharge in Chapters 11, 12, and 13

**UNITED STATES BANKRUPTCY COURT**  
**DOVER, DELAWARE**

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**CHAPTER 13 DEBTOR'S CERTIFICATION REGARDING  
THE USE OF PROFESSIONAL ATTORNEY**

I, John Doe, certify that:

1. I am not a lawyer and have not been retained by a lawyer to help me with my case.
2. I have not retained or engaged anyone else, including non-lawyers, to help me with my case.
3. I have not paid or agreed to pay anyone else, including non-lawyers, for help with my case.
4. I have not received or given anyone else, including non-lawyers, any gift, favor or gratuity because of my case.

I declare under penalty of perjury that the foregoing is true and correct.

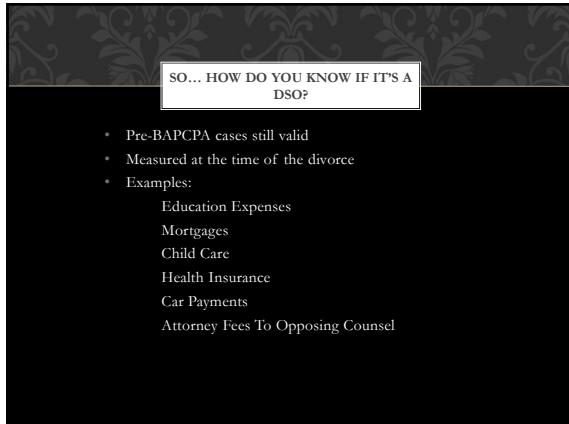
John Doe  
Debtors Signature

John Doe  
Printed Name

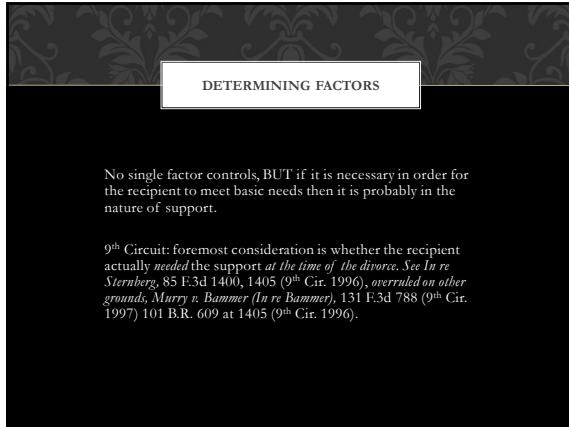
10/04/2002  
Date

I declare under penalty of perjury that the foregoing is true and correct.  
  
John Doe  
Debtors Signature  
John Doe  
Printed Name  
10/04/2002  
Date

I declare under penalty of perjury that the foregoing is true and correct.  
  
John Doe  
Debtors Signature  
John Doe  
Printed Name  
10/04/2002  
Date



- Pre-BAPCPA cases still valid
  - Measured at the time of the divorce
  - Examples:
    - Education Expenses
    - Mortgages
    - Child Care
    - Health Insurance
    - Car Payments
    - Attorney Fees To Opposing Counsel



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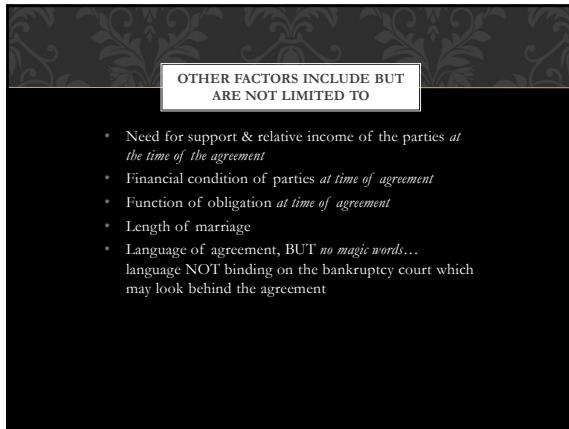
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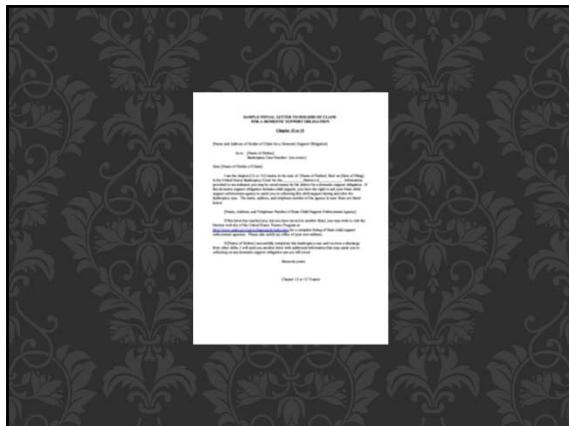
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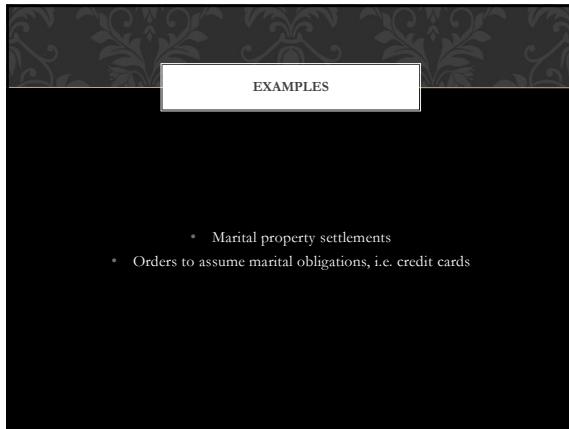
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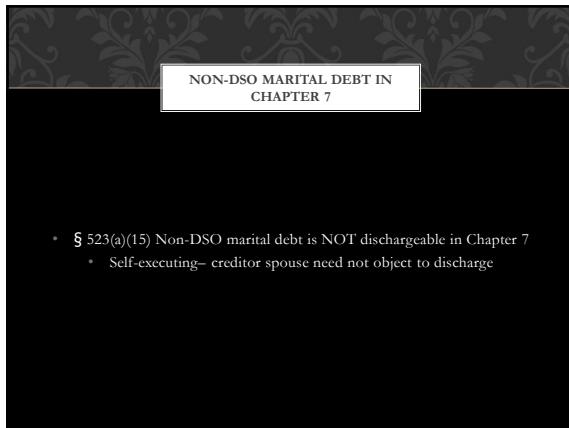
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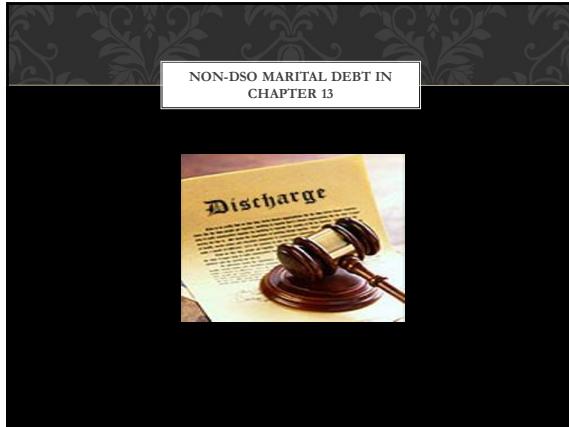
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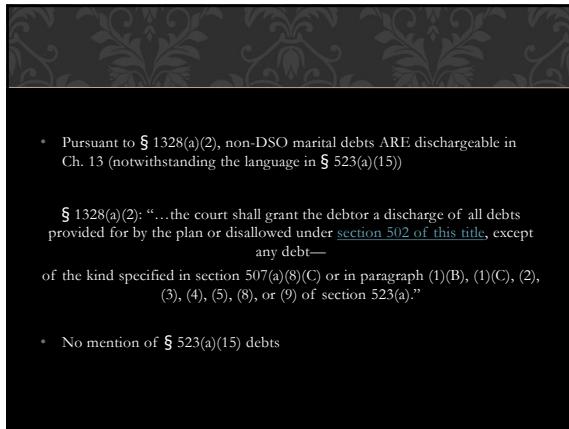
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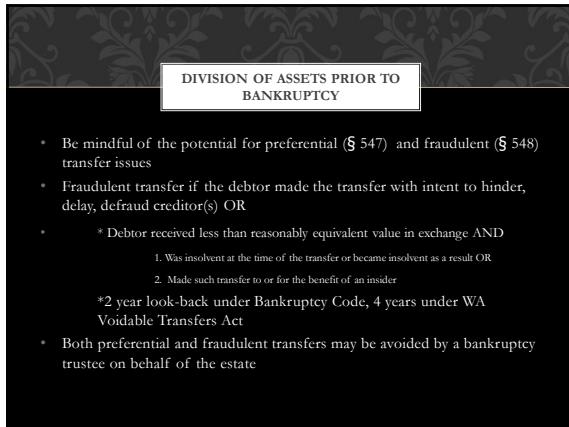
- Most divorce-related actions will proceed in spite of the stay
    - \*except division of property
  - See, i.e. *In re Macgibbon*, 383 B.R. 749 (Bankr. W.D.Wash. 2008) in which the debtor argued, among other things, that his former spouse violated the stay when she sought to modify an existing support order. The Court found this to fall squarely within the exceptions to the stay provided for under § 362(b)(2)(A).

**PROPERTY OF THE BANKRUPTCY  
ESTATE**

- § 541: commencement of the case creates “Bankruptcy Estate”
  - Includes all legal or equitable interests of debtor *including all in community property*
  - Community property is not defined in the Code—state law controls character
  - ALL COMMUNITY PROPERTY IS PROPERTY OF THE ESTATE, REGARDLESS OF WHETHER BOTH SPOUSES FILE
    - Common when spouses are separated but not divorced

## DIVISION OF MARITAL PROPERTY DURING BANKRUPTCY

- In re Teel, 34 B.R. 762 (BAP 9th Cir. 1983); If petition is filed prior to or during the dissolution action, the Bankruptcy Court has exclusive jurisdiction over the property.
  - Under § 362(a), division of estate property is stayed
    - \*must obtain limited relief from the stay for the purpose of dividing the property OR
    - \*decree should not be entered until after case closure
    - \*risk is that order is void or voidable See In re Willard, 15 B.R. 898 (BAP 9th Cir. 1981).




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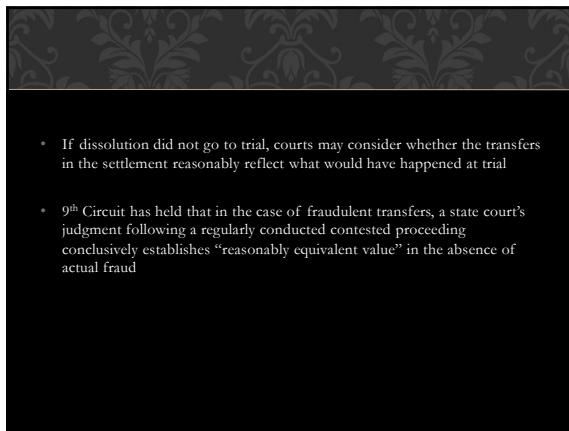
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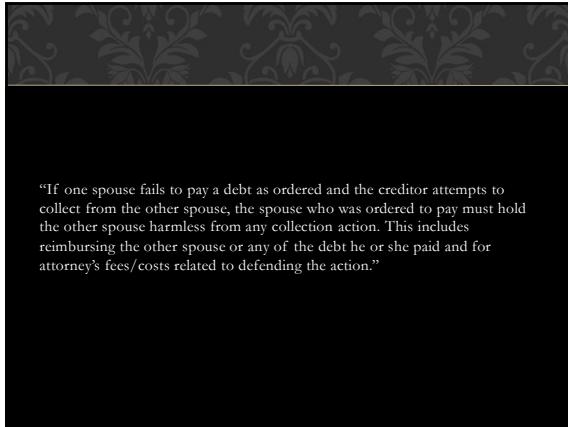
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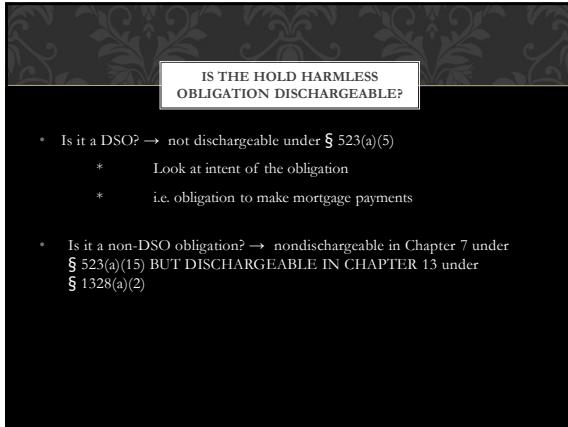
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- \* Is it a DSO? → not dischargeable under § 523(a)(5)
  - \* Look at intent of the obligation
  - \* i.e. obligation to make mortgage payments
- \* Is it a non-DSO obligation? → nondischargeable in Chapter 7 under § 523(a)(15) BUT DISCHARGEABLE IN CHAPTER 13 under § 1328(a)(2)

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- \* Understand whether a DSO and/or non-DSO marital debt exists.
  - \* explain what will or will not be discharged and how this can vary in different chapters
  - \* DOCUMENT
- \* Know what constitutes property of the bankruptcy estate and ensure schedules are accurate
  - \* Community property
- \* Understand automatic stay and family law exceptions, i.e. collection and enforcement of DSOs
- \* Be proactive
  - \* documentation intent to create support obligation
    - \* hold harmless provision in favor of your client
  - \* It is joint bankruptcy; prior to dissolution appropriate?
    - \* possible conflict for bankruptcy counsel to represent both debtors
      - \* chapter 13 not generally advisable
  - \* Watch for potentially preferential or fraudulent transfer issues to arise
  - \* Get relief from stay to effectuate property division
  - \* For the creditor spouse in Chapter 7, remember that nondischargeability of DSO and non-DSO marital debts is self-executing
  - \* For creditor spouse in Chapter 13, carefully examine schedules to be sure all assets are disclosed/properly valued. Understand how your client is provided for in the plan
    - \* object if appropriate
    - \* timely file claim
    - \* consider motion to dismiss if post-petition support obligations become delinquent

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