Dividing credit card debt in divorce

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Joint debts don't go away when the marriage does

By Amy Buttell Crane

You can divorce your spouse, but unless you take extra steps to protect yourself, ditching debt from jointly held cards is more difficult. Credit card companies aren't bound by divorce decrees, so they can go after you for jointly incurred debt if your former spouse doesn't pay.

This is why divorce attorneys, financial planners and credit counselors recommend that you leave your marriage with no joint debt. By either paying off the joint cards together or dividing up the debt on joint cards and transferring it to cards in each partner's name, the goal is to remove your liability for your partner's debts. It's also important to inventory your wallet and make sure all joint credit cards are canceled during the divorce process.

The consequences of going into your newly single life with jointly held debt are potentially painful: Should your ex file for bankruptcy or just not pay what he or she is supposed to pay, your creditors can go after you for the full amount of the debt, plus interest and penalties. You can include provisions in the divorce agreement to force your ex to pay up, but going back to court is expensive and time-consuming.

"For many couples, it becomes an emotional game of, 'If he -- or she -- can spend money, I can, too,' and each of them runs up the credit cards," safys Tina Tessina, author of "Money, Sex and Kids: Stop Fighting About the Three Things that Can Ruin Your Marriage." "Ultimately, you can save yourself a huge amount of money if you can work out an agreement about who pays off the cards together. If not, get help from a mediator or a financial planner, which is cheaper than an attorney."

The basics

Debt incurred during a marriage is generally the joint responsibility of both parties, as long as both are co-signers on the credit cards, says Bill Glassner, a financial planner with Glassner Carlton Financial Planning in Cedar Knolls, N.J. "However, if the credit card is in one spouse's name but the other is just an additional cardholder, that spouse isn't responsible. "

One exception is community property states, where both are responsible, even for debt incurred by one partner. States with community laws are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Alaska is an "opt-in" community property state, in which spouses may agree to be jointly responsible for all debts.

Once the parties are separated, debt incurred on credit cards is the responsibility of the spouse who made the purchases charged on the card. "You need to keep good records of your own charges after this date, so you can prove what's yours and what's not," says Brette Sember, an attorney and author of "The Divorce Organizer and Planner." The moment of "separation" depends on the state. In some states there is no legal separation; you are separated the day you begin living apart. In others you need to legally separate.

Your options

There are several options for handling joint credit card debt. Which one you employ depends on the state of your relationship with your spouse. One way to be sure that no more joint debt is run up is to cancel all joint cards, says Lynn Gold-Bikin, chairman of the family law department at WolfBlock, a Norristown, Pa., law firm specializing in family issues.

"Cancel all the cards you're aware of and put them in your own name," she says. "That way, you protect yourself from having more debt run up. You can resolve the question of how much your spouse is responsible for in equitable distribution." Equitable distribution is one of the last phases in the divorce process under which the distribution of marital assets and debts to each partner is finalized.

Gold-Bikin recommends filing documentation with the court about the joint credit cards and the debt owed on them early in the separation to get it on the record, which is another way to prevent your spouse from running up debt that you might ultimately have to pay. Ellen Craine, a lawyer and social worker who runs Craine Mediation in Farmington Hills, Mich., recommends that you work with your spouse to set a date after which agreed-upon portions of joint debt are to be transferred onto new cards in each person's name and joint cards canceled.

Other options for paying off jointly incurred debt include using joint savings or tapping a home equity line of credit in a jointly owned house. If you are in financial trouble, visit an accredited credit counseling agency for assistance in figuring out your options.

If you are drowning in debt and can't extricate yourself, even with the help of a credit counselor, you may need to file for bankruptcy to get out from under your credit card and other debts. If so and you're still married, you should file at the same time so that neither of you gets stuck with joint debt, says Craine.

In the event that you can't avoid carrying joint debt into your post-divorce life, you can structure your divorce agreement to protect yourself. "If the cards are in both names and the divorce decree directs one person to pay them, that person is responsible for the debt in the eyes of the divorce court," attorney Sember says. "If the creditor comes after the other person, he or she can go back to divorce court and require the responsible person to indemnify him or her."

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