DEBT & DIVORCE

prepared by

MOUNTAIN HOME AFB
GUNFIGHTER LEGAL OFFICE

INTRODUCTION

Jane and John recently divorced. Their divorce decree stated that John would pay the balance of their three joint credit card accounts. Some months later, after John neglected to pay off these accounts, all three creditors contacted Jane for payment. She referred them to the divorce decree, insisting that she was not responsible for the accounts.

The creditors stated, correctly, that they were not parties to the divorce decree and that Jane was still legally responsible for paying off the couple's joint accounts. Jane later found that the late payments appeared on her own credit report.

If you have recently been through a divorce -- or are contemplating one -- look closely at issues involving credit. As the above example illustrates, you may discover unanticipated problems.

Understanding the different kinds of credit accounts opened during a marriage may illuminate the potential benefits and pitfalls of each.

There are two types of credit accounts: individual and joint. With either type, you can permit authorized users to use the account. When you apply for credit you will be asked to select one kind.

APPLYING FOR AN INDIVIDUAL OR JOINT ACCOUNT

INDIVIDUAL ACCOUNT: When you apply for an individual account, only your own income, assets, and credit history are considered by the creditor. Whether married or single, you alone are responsible for paying off the debt on this account. The account will appear on your credit report.

However, in Idaho, a community property state, **both spouses are responsible for debts incurred during the marriage** -- even if the account is acquired in the name of only one spouse. Because of this, Idaho creditors may require financial information from both spouses even for individual accounts.

JOINT ACCOUNT: The income, financial assets, and credit history of both spouses are taken into consideration for a joint account. No matter who actually handles the household bills, both spouses are responsible for seeing all debts are paid. A creditor who reports the credit history of a joint account to credit bureaus must report it in both names (if the account was opened after June 1, 1977).

A joint application combining the financial resources of two people may present a stronger case to a creditor for granting a loan or credit card. But because two people apply for the credit, each spouse is legally responsible to the creditor for the entire debt accumulated. This is true even if a divorce decree assigns separate debt obligations to each spouse. A former spouse can adversely affect another spouse's credit history on a jointly-held account, for example, by running up bills and not paying for them.

ALLOWING "USERS" ON YOUR ACCOUNT

If you open an individual or joint account, you may authorize another person to use that account. You apply for credit based on your own financial information and are fully responsible for paying any debt. If you authorize your spouse to "use" your individual account, a creditor who reports the credit history to a credit bureau must report it in the name of your spouse as well as in your name.

WHAT TO DO IN THE EVENT OF DIVORCE

If you are contemplating divorce or separation, pay attention to the status of your credit accounts. If you maintain joint accounts during that time, it is important to make regular payments -- so your credit record won't suffer. As long as there is an outstanding balance on any joint account, both you and your spouse are liable for it.

You should also ask creditors to close any joint accounts or accounts in which your former spouse was an authorized user. Or, preferably, ask the creditor to convert these accounts to individual ones or to the name of the spouse handling that debt.

By law, a creditor cannot close a joint account because of a change in marital status, but can do so at the request of either spouse. A creditor, however, does not have to agree to change joint accounts to individual ones. The creditor can require you to reapply for credit on an individual basis and then, based on your new application, extend or deny you credit. In the case of a mortgage or home equity loan, a lender is likely to require refinancing to remove a spouse from the obligation.

CARS

Spouses often buy automobiles together, listing both of their names on the financing agreement. One way to avoid potential joint accountability following a divorce is to require one spouse to refinance the car in his or her name alone. Although this is not always possible, it's worth considering.

WHAT GOOD IS THE DECREE?

As illustrated in the example at the beginning of this handout, creditors are not bound by divorce decree divisions of debt. The divorce decree is only binding on Jane and John, the former spouses. As such, the creditor can require Jane to pay, even though the decree obligates John with the debt. Once Jane pays, her only recourse is reimbursement from John via lawsuit or agreement.

For additional information on this and other legal topics, see the Air Force Legal Assistance Website: https://aflegalassistance.law.af.mil