

It is common for a divorcing couple to decide about dividing their property and debts themselves (with or without the help of a neutral third party like a mediator), rather than leaving it to the judge. However, if a couple cannot agree, they can submit their property dispute to the court, which will use state law rules to divide the property.

Courts divide property under one of two basic schemes: community property or equitable distribution. Debts are divided according to the same principles. In Ohio, assets and earnings accumulated during marriage are divided equitably (fairly), but not necessarily equally.

Just as a divorcing couple must divide what they own, so they must divide what they owe. The piper must be paid.

Divorcing couples deal with debt in one of three ways: One, they pay it all off; two, they service it jointly; or three, they divide it and each take a share. While option one may be difficult, it makes for a clean break and fresh start without friction between former spouses. Options two and three not only make for continued contact, but also put one spouse's credit at risk.

Credit card companies are not bound by a divorcing couple's property agreement. In all jurisdictions, joint credit card debt is jointly owned because each spouse has joint and several liability for the obligation. Even when one spouse agrees to take on a debt, if it has the other spouse's name on it -- or in some cases, even it does not -- the creditor has the right to come after both spouses for payment.

When debt cannot be paid off, it must be divided. The classification of debt, like the classification of assets, is a preliminary to their distribution. In Ohio, the debts must be allocated between the spouses. In distribution, courts consider who incurred the debt and who benefited from it; which spouse is better positioned to pay it off; and the debt's relation to a particular asset. As a rule, secured marital debts must be offset by the value of the asset they encumber. Unsecured marital debt is allocated so that each spouse receives an equitable share of the net balance of the estate.

Generally, only marital debt is divided, which means any debt incurred for the joint benefit of the parties during the marriage. Joint benefit does not necessarily mean joint use. Debts incurred in the hope of creating marital property are marital.

Not all debts incurred during a marriage, however, are marital. Debt incurred through gambling, high living and reckless investment may not be a joint responsibility, even when the obligation occurred during the marriage. Debt caused by dissipation of assets is not marital.

The contour lines of debt division depend upon whether the divorcing couple live in a community property or equitable division jurisdiction. In a community property state, a spouse is responsible for debts incurred during the marriage and it does not matter whose name is on them. In an equitable distribution state, debts in one spouse's name are his or hers alone, but a

spouse is responsible for debts taken in his or her name, even those without his or her consent.

Grim as it may be to contemplate, many divorcing couples face not only the pain and suffering of marital collapse but also financial ruin that ends in bankruptcy, a legal proceeding in which a person who is financially insolvent requests the federal bankruptcy court to determine his or her debts and use his or her assets to pay those debts.

The premise of bankruptcy is the very American idea of a fresh start in a new place, but in practice, that fresh start is the beginning of a difficult march across rough terrain until the bankrupt reestablishes himself or herself as creditworthy.

Bankruptcy is a course of last resort because it can take years for a bankrupt to restore his or her credit rating, but many people find relief from bad decisions and just plain bad luck in a bankruptcy.

Crushing debt caused by high living often causes stresses that break a marriage, so many divorcing couples must face the possibility of bankruptcy at the same time their marriage collapses. Sometimes a couple file for bankruptcy as a preliminary to divorce and thereby clear the way for a fresh start financially as single people. Often a divorced person finds that the financial struggle after a marriage overwhelms him or her. In other words, bankruptcy is a factor to consider both before and after any divorce. Any of these steps requires good legal advice.

Depending on the type of filing, in bankruptcy debts are completely removed through liquidation, as in the case of Chapter 7, or partially and/or temporarily through rehabilitation and reorganization, as in the case of Chapters 11 and 13. Chapter 7, the so-called "fresh start," frees debtors of many unsecured liabilities like credit card debt and medical bills. Chapter 13, under which individuals or couples reorganize and repay over a three-to-five-year period, can save a house and automobiles from creditors, but it costs more to file and takes longer to work out. In both cases, however, once the bankruptcy petition is filed, the court has jurisdiction over all the debtor's debts, including collection suits, divorce actions and postjudgment motions to collect under the terms and conditions of a divorce decree.

Alimony, child support, student loans and attorney fees cannot be discharged by bankruptcy, but sometimes a property settlement can be. After a divorce, the financially dependent spouse who waives support in exchange for his or her partner's agreement to pay outstanding debts, such as mortgages or credit cards, may be at risk because a good faith bankruptcy after a divorce can derange the terms of the agreement.

Further, during the divorce process, there are references to three D-Days: the Date of Marriage, the Date of Separation, and the Date of Divorce. In reality, with respect to a marriage, the beginning of the end traditionally comes with the formal Date of Separation. Its impact can be far-reaching. The actual Date of Separation is quite critical and can have a dramatic effect on things such as credit, pension benefits, and other marital assets. From this date on, you and your ex-spouse to be are now in limbo both legally and financially, and will retain such status until the actual Date of Divorce. During this time period, there is quite literally a potentially large amount of money at stake, depending upon you and your spouse's particular

situation. You may still be held responsible for any debts incurred by your spouse after the DOS; the value of a retirement plan or other marital asset such as residential property can go up or down, often by thousands of dollars, contingent upon the applicable laws of your home state.

Some of your creditors will allow you to transfer or eliminate one spouse for the debt responsible, but this is not the case for all. You both will be instructed by the court to pay a certain portion of the debt and it is assumed that both spouses will do so in a fashion not to incur penalties and harm each other's credit history. There are steps you can take to help protect yourself from such harm by including a clause in the settlement agreement. If the clause is broken you would have the right to take legal action against your ex-spouse.

Often even more difficult than dividing the property in a divorce is deciding who will be responsible for the debt the couple has incurred. In order to do this, you'll need to know how much you owe. Even if you trust your spouse 100%, do yourself a favor and order your joint credit report from each of the three credit reporting agencies. People have been known to run up debt without their spouse's knowledge, especially when they're contemplating leaving the marriage. Overlooking this step could cost you years in debt repayments.

Next, go through the credit reports and identify which debt is shared and which is in your spouse's name only. At this point it's important to stop the debt from growing any larger while you're in the process of getting divorced. The best way to do this is to cancel most of your credit cards, leaving perhaps one to use for emergencies.

Once you've identified your debts and taken steps to ensure they don't increase, it's time to decide who will be responsible for what debt. There are several ways to do this, including:

- If possible, pay off the debts now. If you have savings or assets you can sell, this is the cleanest method. You don't have to worry that your spouse will leave you responsible for his/her portion of the debt, and you can start your new life debt-free.
- Agree to take responsibility for the debts in exchange for receiving more assets from the division of your property.
- Agree to let your spouse take responsibility for the debts in exchange for receiving more assets from the division of property.
- Agree to share responsibility for the debts equally. This leaves you the most vulnerable, because your spouse could stick you with the total debt. Legally, you are responsible if your ex-spouse doesn't pay up, even if s/he signs an agreement taking responsibility for the debt.