

By Christopher C. Carr, Esq

I am often asked: Should you file bankruptcy or divorce first?

I will give my colleague Bill Balena, a fellow member of the Ohio Bar, credit for the following Q & A regarding the timing of bankruptcy and divorce. (I have edited it extensively for readability and to draw out some of the more important points and in the process have injected my own points of view):

Divorce is not about splitting assets anymore, it is about splitting debt.

I don't see clients arguing over who gets to keep the house, or the car, because there isn't any equity in either anymore (unlike during the real estate boom) or when incomes were higher and everyone owned their cars outright.

So the question becomes who is going to be responsible for the note and mortgage on the home and the joint credit cards.

Could an ex-spouse ruin your credit? ABSOLUTELY. If the husband and wife are on reasonably good terms, I would suggest that filing bankruptcy together, then filing divorce is the best route. It will save money by eliminating debt (only one bankruptcy fee) and save money by narrowing the issues for the divorce as well.

Many spouses are confused as to who is personally responsible on the credit cards. Did you both sign the cardholder agreement, or is one of you only an authorized user. There is a huge difference. If you did not sign you are not liable even if an authorized user. If you both signed you will be jointly and severally liable for the debt however.

Did you both sign the mortgage note for the home? If one spouse continues to pay for the home after divorce, what happens if he or she falls behind later? The lender will certainly chase the spouse who hasn't lived there in months or years for any deficiency.

If you are jointly responsible for her car loan, and your spouse stops paying, or can't pay for the car, you are going to be on the hook.

A bankruptcy filing may clear up all of these nasty debt issues.

Discharge the debt on the house. So if your former wife still lives there, you aren't responsible if she later defaults.

Did your husband run up a credit card to get a business started? Then discharge the credit card in bankruptcy and you are no longer responsible for the credit card debt.

Same thing goes for each other's cars. Forget about retaining an ownership interest in each other's depreciating asset and discharge the debt of each other's car loan that you both signed for or for which you were a cosigner..

Here is the huge "Erroneous Zone" that gets so many ex spouses in trouble:

Too many times people tell me that the credit card company is chasing them but that "my spouse was ordered to pay the card in the divorce". Well that may lead to contempt of the divorce court order, but that does not prevent the credit card company from chasing everyone who is personally responsible for the credit card. Divorce and contractual obligations run on two entirely different tracks and have nothing to do with each other.

Perhaps the most important issue is qualifying for the type of bankruptcy that is best for you before the divorce.

Many times one spouse is the breadwinner. If the "family" were to file together as a household of four (husband, wife, and two kids), they might easily qualify for chapter 7. But what happens if husband has moved out and is relishing his newfound freedom? (Bankruptcy courts typically look at "Heads on Beds" in determining household size and this in turn determines the income cut off for a chapter 7.) That means you are now two separate households. Breadwinner spouse lives alone (household of 1) and he or she does not qualify for chapter 7 because of the income limit for a family of one is too low for that much income, whereas as above, it might have been OK for 4 and may have to file chapter 13. At the same time, the other spouse (with the two kids) is a household of 3 and maybe still easily qualifies.

You should have filed bankruptcy together before the divorce! Not only could you all have done a 7 and avoided the issues I mention herein but again you could have saved one of the two attorney fees and a Court imposed filing fee that would be your responsibility to pay if filing bankruptcy separately.

This is not to say that the divorce petition cannot be filed with the divorce court after you have filed for bankruptcy together in the bankruptcy court or even that the divorce itself may not be granted after a certain point in the bankruptcy proceedings.

We won't even talk about how much in divorce attorney fees each spouse will save because they are not spending countless billable hours fighting over who is responsible for each debt.

Divorce sucks bad enough by itself no matter who wants out! When you have moved on with your life and perhaps even started to rebuild your finances what could be worse than being blindsided when a long forgotten debt from the past resurfaces? And to make things even worse once the discharge has issued, you have to wait a varying number of years (depending on the types of bankruptcies involved) from the date you filed to file once again. You may be forced to pay a debt you thought was covered by the property settlement agreement because bankruptcy is now unavailable..

Conclusion:

When divorce is inevitable, you should first clean house by filing bankruptcy together. Who knows, maybe the inter-spousal cooperation required to carry it off and the mutual interest in reaching a common goal will allow you to at least to remain friends after the divorce (or perhaps even more?) Stranger things have happened!

~cCc~

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