

"Always plan ahead, it wasn't raining when Noah built the ark." R. C. Cushing

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Debt and Community Property

Introduction

Whether a person is responsible for the debts of their spouse will largely depend on when the debt was incurred and the type of debt that was incurred.

Debts / Liabilities Incurred Before Marriage

The debts or liabilities of a spouse incurred before marriage are deemed to be the separate debts of the spouse who incurred them. Unfortunately, the law permits the creditors of the spouse who incurred the debt to also reach the debtor spouse's contribution to the community property. This means that in addition to reaching any assets the debtor acquired before marriage, (e.g. a savings account) the creditors may also reach the debtor spouse's salary earned during marriage.

Debts / Liabilities Incurred During the Marriage

Debts incurred during marriage are presumed to be the debts or liability of the community so long as the spouse creating the debt was creating the debt with the intent to benefit the marital community. In the event debt is incurred during the marriage, the creditor can reach all of the community property as well as the separate property of the spouse who created the obligation. Further, if both spouses create the debt (e.g. both sign a promissory note), the obligation to pay back the debt goes to both spouses, meaning the creditor can reach both spouses' community property assets as well as both of their separate property assets.

Debt / Liabilities Incurred During a Divorce

In a divorce proceeding, the creditors of community property debt have the ability to pursue either spouse for purposes of collection. Even if a judge assigns certain debts between the spouses, community property creditors are not bound to the judge's assignment of community property debt because the creditor is not a party to the proceeding. Thus, the

creditor can pursue either spouse to collect a debt even if the judge ordered the other spouse to pay the debt. In the event the judge does not allocate community property debt between the spouses, each spouse is still responsible for the repayment of the debt.

Tort Liabilities Incurred During Marriage

Tort liability describes a civil wrong that is characterized by the breaching of a civil duty owed by one person to another. Negligence is an example of a tort. Put in context, a spouse causes a car accident after picking up their children from school. The spouse's negligence was the cause of the car accident. Therefore, an example of tort liability would be liability resulting from causing a car accident.

Regarding tort liability, community property assets are generally liable for the tortious acts of one spouse (i.e. causing a car accident) so long as the spouse causing the car accident was acting in the interest of the community. Further troublesome is the fact that community property assets remain liable for the damages caused by the negligent spouse even if the spouse does not survive the accident giving rise to the tort claim. As car accidents are unfortunately a common occurrence, individuals desirous of protecting their assets from creditor claims should consider implementing asset protection plans. Specifically, you do not want the actions of one spouse to result in both spouses' community property assets being lost to a creditor.

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