

Knocking at Debt's Door

Laws Should Protect the Spouse Who Didn't Incur Unpaid Bill

By Fred Silberberg

Most California law students learn that, if a lender looks to community property in extending credit, that is one factor in determining a community obligation, for which the spouses are equally liable. Moreover, everyone understands that a liability incurred during the course of a marriage is, but for a written agreement to the contrary, a community obligation for which both spouses are equally liable.

What many people do not know, however, is that, after the division of community property, the creditor still can collect from either spouse regardless of which spouse received the liability in the divorce judgment. If the creditor secures payment from the spouse not assigned responsibility for the debt by the court, then that spouse's remedy is to seek reimbursement from the spouse who was supposed to pay the liability but did not. Family Code Section 916(b).

One must question this rule in an era of legislation to protect naive or "innocent" spouses from the sins of their significant other. Clearly, the law now protects a creditor. However, the efficacy of such a rule as it pertains to the spouse who seeks reimbursement is questionable if the other spouse did not have the assets to satisfy the creditor in the first place.

Moreover, in light of a growing body of legislation that seeks to protect spouses from the misdeeds of their marital partners, perhaps creditors need to take responsibility for their failure to investigate properly a credit applicant, rather than allowing that creditor to hold the other spouse liable.

In the past decade, legislation has protected the spouse not in control of the finances or the family business. Other new legislation required divorcing parties to file declarations disclosing all assets and liabilities in which each party has an interest, as well as all investment opportunities which have arisen and which may affect property acquired during the course of the marriage.

In fact, this same legislation allows a party to petition the court to set aside judgments entered after an improperly completed dis-

closure. This legislation prevents the spouse who controls assets and information from taking advantage of the other spouse.

The amended Internal Revenue Code broadens the relief that an "innocent" spouse may obtain in order to protect that spouse from the Internal Revenue Service. Under current legislation, a spouse, who would otherwise be responsible for taxes, penalties and interest arising out of a failure to disclose properly taxable income on a joint return, easily can be "innocent" and responsible only for the taxes due on that spouse's share of income, as shown on a return filed on a nonjoint basis. Internal Revenue Code Section 6015.

This legislation apparently protects the millions of spouses who stay at home and raise the children, not those out in the business

world. Most of the time but not always, that spouse is the wife and mother. The argument advocated should apply regardless of gender.

With all of these protections, why would we not also pass some type of legislation to protect these spouses from the dangers of a creditor? In many cases, with the estate's division, spouses who stayed home are dependent on those assets and any support that may come to provide for themselves and the family.

If a creditor seizes those assets to satisfy a debt that the spouse had nothing to do with, it could have a significant deleterious effect. Is telling the financially devastated spouse to seek redress from the ex logical? Many times, spouses who incurred the liability are savvy enough to figure out how to protect themselves. Why wouldn't we shift the burden of obtaining

satisfaction of the debt to the creditor? Wasn't the creditor in a better position to investigate the parties' financial situation before extending credit?

If we really want to protect spouses, we should enact legislation that accomplishes that goal. We should require creditors to investigate an applicant in more detail and limit the creditor's collection to the spouse who incurred the debt. Yes, that may make obtaining credit harder, but when people frequently live above their means, that may not be all bad. Most important, this type of legislation also may protect spouses who really are "innocent."



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