



Bankruptcy and Family Law By Jodi Wyman

One of the most common reasons people file for bankruptcy is a result of a marital breakdown. It is only common sense that turning one household into two with the same amount of family income will be a strain. As well, there can be travel costs for access to children, the expense of new assets and accountant and legal fees. A separation can often be the financial breaking point.

It can be frightening when your former spouse files for bankruptcy. Given that generally all marital assets and debts are shareable, does this now make you liable for the debt?

A bankruptcy by your spouse does not make you automatically liable for their debts. Although the debt balances are usually taken into account in the calculation of a family property equalization, it does not make you liable for the debt. Your spouse's bankruptcy also will not affect your credit rating.

The problem however is that many marital debts are joint

debts, meaning both parties applied and signed for them. Often there is a joint mortgage, joint line of credit, both spouses have credit cards on the same account, the joint bank account has an overdraft etc. For joint debts, or ones that the spouse has co-signed for or guaranteed, the non-bankrupt spouse will be called upon by the creditors to pay. This can then sometimes force the remaining spouse into bankruptcy as well.

One other major concern when your spouse files for bankruptcy is with regard to support. Will the other parent still have to pay child or spousal support?

Claims for child and spousal support are not extinguished by a bankruptcy. The payor's income is still used to determine an appropriate amount of support. In fact, the custodial parent's claim for support can actually be better. The payor will have more income to direct to support payments instead of to his or her creditors. Because one of the tests for spousal support is whether the spouse has the ability to pay, clearly

their ability will be far better once free of substantial debt.

A third common question is how will a spouse's bankruptcy affect the division of family property? What assets do the creditors take and what happens to your interest? The issues become far more complicated here. If an asset has very little equity, such as a home with a large mortgage, it is sometimes possible for the non-bankrupt spouse to pay the Trustee and retain the asset (and the corresponding debt). Other assets are exempt from creditors, such as pensions, and must be dealt with in other ways. The bankruptcy can however have the effect of wiping out any claim the other spouse has to a division of the remaining family property if it has not yet been split.

There are strict rules about transfers of assets just prior to bankruptcy. It could be seen as fraudulent to transfer a major asset, such as the house or a large investment, to your spouse just months before filing for bankruptcy. If the asset was

transferred as part of an informal marital property settlement, this could create problems for both parties. It is important to talk over these issues with the lawyer handling your separation.

For the spouse considering filing for bankruptcy, or the one suspecting their spouse may do so, it is important to contact a Bankruptcy Trustee, most of whom offer a free consultation.