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OPINION

Love, money and the perils of debt: a Valentine's Day tale of caution

By Lisa Spiwak

As the calendar turns to February, most of us are thinking about Valentine's Day and romance. This is a lovely thing for the most part. In the state of California, it can also ruin your life if you are not careful.

Everyone who lives in California knows that we are a community property state. The average person believes that community property means that one-half of your spouse's earnings belong to you. This is the positive side of the law. The negative side to community property law is that all of your spouse's debts become yours as well. This includes the debts that he or she racked up before you two even met.

When we are falling in love and melding our lives together, we do not think to ask to see our spouse's credit report. In fact, the topic of credit scores and debt are virtually never discussed until they arise as an issue. Typically, they become an issue when you both go to buy something together, such as a car or house.

Using an imaginary couple, Mary and John, let's say that Mary has always paid her bills and has a very high credit score — 830. Her new husband, John, has had some financial bumps in the road and his credit score is a low 540. If Mary goes to buy a new car for herself, the bank is still going to penalize Mary for John's bad credit, regardless of whether he ever drives the car or not. She will pay a higher interest rate on the car loan than she would have paid before she married a person with a low credit score.

Another common scenario that occurs when one spouse enters the marriage with financial debt is that creditors of the spouse with debt will actively pursue the other spouse to repay the debt. Most people do not know that the marital earnings can be used to satisfy the debts of one of the spouses prior to the marriage. So using our hypothetical couple, let's imagine that John had a judgment entered against him by a hypothetical institution called Bank of the Tri-Counties, prior to getting married. When BOTC takes action to collect on the judgment they have against John, they can garnish Mary's income to pay off the judgment.

Another thing that BOTC can do legally is levy on Mary's bank account. Mary does not have to have a joint account with John for John's creditors to levy on her money in the bank. As long as they are married, John's creditors can clear out any monies in her personal account. Trust me when I tell you that this is not going to go over well with Mary, regardless of how in love she is with John.

Another unpleasant and all too common scenario is one that occurs with spouses of people who own a small business. Most small businesses go through tough times at one point or another. During these tough times, it is the business owner who typically takes a hit on personal finances. This is because small business owners almost always have to guarantee the debts of their business to get credit terms extended.

Using our imaginary couple again, let's say that John owns a local furniture store. If business is bad and he has a line of credit that goes into default with the bank, the bank will go after John personally for this debt. Meaning even if Mary had nothing to do with John's business and he owned it for several years prior to getting married to Mary, her wages are going to be used to pay the bank back on John's obligation toward the credit line.

It is widely recognized that one of the most common reasons relationships fail is financial pressure. As a collection attorney who has been representing banks for over 28 years, I have seen this first-hand time and time again.

I believe that it is vital to address finances before entering into marriage in California. In fact, I propose that all people be required to show each other their credit reports before they can obtain a marriage license. At least this way, there are no unwelcome surprises down the road. Financial compatibility is as important as physical chemistry to the success of a marriage.

With that in mind, Happy Valentine's Day!

• Lisa Spiwak is a partner in the firm Spiwak & Iezza in Thousand Oaks specializing in commercial collection litigation. Reach her at LSpiwak@SpiwakandIezza.com

Viewpoint
