

## **Myths About Divorce Decrees and Your Credit Report**

Divorce lawyers may tell you that your creditors will accept the divorce decree and relieve you of your ex's debt. Don't believe them.

When two people jointly apply for credit, they sign a legal agreement to the creditor to pay back the debt. If one can't pay, the other is still responsible. A court cannot overturn contracts between individuals unless they are fraudulent or not lawful. A divorce does not fit either of these definitions, so the contract remains in tact until the contract ends (i.e. when the debt is paid off).

We have seen many scenarios that go basically like this:

"I was divorced 4 years ago, and in the division of our debts, my divorce decree specified that my ex-wife was responsible for the mortgage. She gave up some equity in investments so she could keep the house, which I Quit Claimed over to her.

"My new wife and I applied for a mortgage recently. To my surprise, we were turned down because my ex is currently 90 days late on the mortgage, and it's showing up on my report. I contacted the credit bureaus to dispute this, but they won't take it off. What can I do to get this off my report? The debt isn't mine. "

The answer to this problem is always:

Unfortunately, you can't do anything. If the mortgage is still in your name, you are still legally responsible, no matter what the divorce decree says.

So what's the deal here?

***Myth #1: A divorce decree can relieve a spouse from financial obligations of joint debts.***

**Fact:** Debts that were obtained in the name of both spouses before a divorce (meaning both the husband and wife signed a document or application saying that they were both responsible for the debt) remain the obligation of both parties after a divorce, no matter what a divorce decree says.

Why? Because both of you signed a legally binding contract with the creditor, and the divorce decree does not amend this contract. Amendment of any contract requires agreement by all parties (including the creditor). Proof of the amendment requires the signature of all parties. During a divorce, the creditors are not even consulted, let alone a part of the divorce courts, and therefore the original agreements/contracts stand. Consequently, if your ex-spouse does not pay a debt that he was assigned in a divorce decree, then you are responsible for it.

***Myth #2: A divorce decree protects my credit if my ex-spouse doesn't pay the debts they were assigned in the divorce.***

**Fact:** If you have a joint financial obligation with your ex-spouse, and your divorce decree states that your ex-spouse is responsible, and your ex-spouse is delinquent on paying, your credit as well as his is affected. As stated above, your legal responsibility for a debt does not go away because a divorce decree assigns responsibility for a debt to your ex-spouse. Along with a legal responsibility to pay comes the right of the creditor to report a debt delinquent on your credit report if it is not paid as agreed in the original contract. Period.

Especially tragic are situations where one ex-spouse files bankruptcy and includes many joint debts in the bankruptcy. The spouse not filing bankruptcy is left holding the bag for these joint debts, and many times is not notified of the ex-spouse's filing until months or years down the road when it is too late to correct the situation. So not only is the spouse who didn't file bankruptcy responsible for the unpaid debts (and can be legally sued for them), but the non-filing spouse's credit also is ruined - something that cannot be corrected - because the credit bureaus have the right to report them delinquent.

My name is Jim Casler and I own Pinnacle Financial Corporation in Traverse City. We are mortgage lenders that specialize in working with clients in the process of divorce. We have been in business since 1993 and quite frankly, we do a good job. My goal is to help you through his process. In return, we hope that you honor us with any mortgage business you may have in the future.

Chances are we may already be working with your attorney. Ask about us or call us for a confidential conversation about your specific situation at 231-947-4840.

Very truly yours,

Jim Casler  
President



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# **Special Report**

## **How do I protect my credit when I get divorced?**

Divorce decrees do not relieve either party of joint financial responsibility. The purpose of divorce is to split off emotionally, and financially, from your ex-spouse. If you aren't careful, your spouse's handling of your once joint accounts can haunt you for years. If you had joint debts which existed before your divorce, and these accounts are not both paid off and closed, you may be asking for trouble.

Although some divorcing couples definitely are out to get each other, most problems with joint accounts prior to divorce are caused by ignorance, not malicious intent. Don't think that just because your split is amicable problems can't occur. Taking precautions can protect BOTH of you.

Here are the typical joint accounts which many married couples share and what you need to do with each before you get divorced.

**Your Home/Mortgage:** This should be your first priority. It is vital to not walk away from a divorce with the mortgage in both of your names. Here are possible ways to cope with joint home ownership, listed from most preferable to least:

**Refinance:** Have one spouse refinance the home into his/her own name alone. If one spouse is to keep the house after the divorce, insist that your soon-to-be-ex obtain new financing in his/her own name. You can't just call up the mortgage company and say, "Hey, I'm getting divorced, can you take my spouse off the loan?" The lender is going to insist on having your ex go through the formal loan process to qualify. Do not let the final gavel sound on your divorce papers before the house has been through the refinancing process. Having your spouse show you loan approval papers is not enough either as last minute glitches can prevent loans from closing.

**Sell the home.** Try to make sure the sale occurs before the divorce, especially if your ex is living in the house during the divorce proceedings. If the two of you have agreed to sell the home (but the buyer has not been located by the time of your final divorce), and your spouse is secretly opposed to selling it, he/she can make it very difficult for a Realtor to show or list the home, dragging out the sale indefinitely. Meanwhile, you are responsible for the payments and your credit is in jeopardy. It's actually best to have the house empty during the sale of the home (if possible) and both of you should be out of the house before it goes up for sale.

**Neither.** If selling or refinancing isn't an option. This is the worst possible option. Try to avoid it at all cost. If moving out of your joint home is going to cause hardship to your ex (and/or your kids), and he/she is unable to refinance the home on his/her own, here are some things you can do to protect yourself:

Don't take your name off the title. If you take your name off of title (using a quit claim deed), you are removing ownership but not loan responsibility, a very dangerous situation. This also means that you will not be able to split the equity in the home at the present time. Place a limit on how long your ex can stay in the house before it will be sold or refinanced.

Notify the mortgage company of your change of address and have all statements and payment statements sent to your new address (also, see if you can get your ex to mail the payments directly to you). At the very least, inform the lender that you wish to be notified if the payments is late. This way, if your ex is late on payments, you will be notified and have the chance to make up the payments in order to preserve your credit report.

**Car/Car Loans.** This is the second most important credit item in need of your attention, because car loans are the second most important kind of financing on your credit report. As you will notice, the suggestions for handling joint car loans are very similar to those for a joint mortgage. Here are possible ways to cope with joint car ownership, listed from most preferable to least:

**Refinance.** Have one spouse refinance the car in his/her own name. If one spouse is to keep the car after the divorce: Before you get divorced, insist that your soon-to-be-ex obtain new financing in his/her own name. As with a mortgage, your lender is going to insist on having your ex go through the formal loan process to qualify. Do not let the divorce process complete before the car loan has been completely through the refinancing process.

**Sell the car.** Make sure the sale occurs before the divorce. If the two of you have an agreement to sell the car, but the buyer has not been located yet, you are still responsible for the payments and your credit is in jeopardy. If the car is upside down (meaning you owe more than it is worth), it is still better to sell the car at a loss than to risk your credit. The difference between good and bad credit can be worth thousands of dollars in interest and fees per year on future financing.

**Neither.** If selling or refinancing isn't an option. This is the worst possible option. Try to avoid it at all cost. If selling the car is going to cause hardship to your ex (and/or your kids), and he/she is unable to refinance car on his own, here are some things you can do to protect yourself:

Again don't take your name off the title. If you take your name off of the title, you are removing ownership but not loan responsibility, a precarious situation to be in. Place a limit on how long your ex can have possession of the car before it will be sold or refinanced.

Notify the car finance company of your change of address and have all statements sent to your new address (also, see if you can get your ex to mail the payments

directly to you). At the very least, inform the lender that you wish to be notified if your ex isn't making the payments.

**Joint Credit Card Debt.** Most people think that "closing out" joint credit card accounts is the end of the headache. Unfortunately, they forget that the account is not really "closed" until any balances are paid in full. Even worse, it's often very easy to re-open accounts, especially if the accounts are being paid on time. Credit card companies often encourage this. If you cannot pay off and close the balances immediately (it may be difficult to legally divide up debts that have not been paid off, check with your attorney), here are some possible solutions, listed from best option to worst:

**Sell or refinance a joint asset** (perhaps your home - kill two birds with one stone) and pay off the debt, then close the account.

**Apply for a separate credit card** for each of you and have agreed-upon amounts transferred into these sole and separate accounts from the joint debt accounts.

**Neither.** If your spouse can't qualify for credit on his/her own, get one of his/her relatives to cosign on a new card, then transfer the balances.

Note: If you have debts that don't fit into the above categories, use this simple rule of thumb: After a divorce, all of the joint debts you had should be closed and paid off and all of the assets you owned jointly should be sold. No exceptions.

*Disclaimer: The information provided is solely for educational and informational purposes and does not constitute legal advice. Legal information is not the same as legal advice, which is the application of law to an individual's specific circumstances. Although we have attempted to make sure our information is accurate and useful, we recommend you consult an attorney if you want professional assurance that our information, and your interpretation of it, is appropriate to your specific situation.*



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