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What happens if an ex-spouse files bankruptcy?

It's fairly common for spouses who have recently been through divorce to encounter financial problems. Sometimes, a former spouse will file bankruptcy as a result.

This often makes the other spouse very nervous. Will the bankrupt spouse continue to pay alimony or child support? What if the bankrupt spouse still owes money to the other spouse, or agreed to pay off a joint debt?

If your ex-spouse has filed bankruptcy, or is thinking of doing so, it's wise to speak to an attorney right away. There are some general rules governing what will happen, but only an attorney can tell you exactly how they apply to your specific situation.

As a general rule, debts that a spouse has incurred as a result of a divorce can't be avoided in bankruptcy. So for instance, spouses who have been ordered to pay alimony or child support must continue to do so even if they go bankrupt.

What if a spouse owes money to the other spouse as a result of a property settlement? Generally, the spouse can't avoid this debt either.

This was not always the case. Before 1994, spouses who went bankrupt could avoid, or "discharge," a property settlement. Congress then changed the law, but it still said that a spouse could avoid a property settlement if the benefit to the bankrupt spouse outweighed the harm to the other spouse. It was only in 2005 that Congress made a clear rule that property settlement debts couldn't be avoided.

Since 2005, the courts have been very strict about not letting spouses get out of their divorce obligations through bankruptcy. For instance, in one recent case, a wife loaned her husband $24,000 before the marriage to

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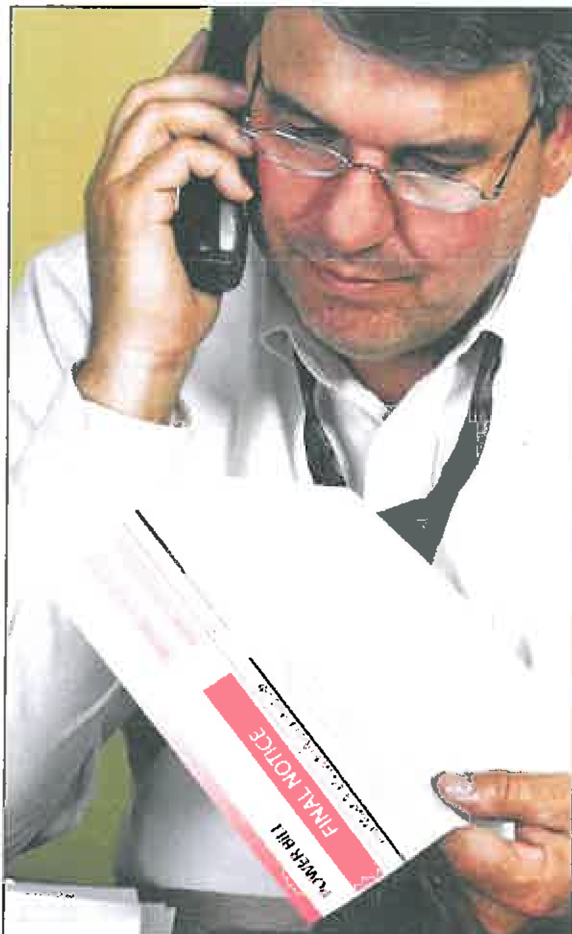

Law Offices of
GRAHAM & HUBBERT
2525 South Telegraph Road, Suite 100, Bloomfield Hills, MI 48302
(248) 454-1860
jh@hubbertlaw.com • www.hubbertlaw.com

Successful lawsuits for not having an AED available have been brought against the Morial Convention Center in New Orleans and the Busch Gardens theme park in Tampa, Florida.

Defibrillators in public places can prevent heart attack deaths

Sudden heart attacks kill as many as 400,000 people a year in the U.S. Yet many of these deaths could be prevented with automated external defibrillators, or AEDs.

AEDs are portable electronic devices that can treat a person who is in sudden cardiac arrest due to arrhythmia, or irregular heartbeat. An AED delivers an electric jolt that allows the heart to reestablish its rhythm, potentially saving the victim's life.

AEDs usually cost less than $1,000, they're small and portable, and they're easy for anyone to use with simple training. Because they're so valuable, all 50 states now have regulations requiring them to be available in certain public places. Some states require all physical fitness facilities to have at least one AED. Others require them at all school-sponsored events, and some even require them in dentists' offices.

In fact, it's just common sense for defibrillators to be available anywhere that large numbers of people regularly congregate – such as concert halls, airports, schools and colleges, convention centers, sports stadiums, government buildings, amusement parks, shopping malls, and factories and office buildings.

It makes so much sense that many courts are now deciding that there's a legal responsibility to have an AED on hand whenever the cost is relatively negligible compared to the likelihood of saving a life.

One of the first of these cases happened several years ago, when the family of a student sued the University of Pittsburgh after their daughter suffered brain damage from a cardiac arrest. The campus police had no AED on hand when she suffered arrhythmia and collapsed in class, despite the fact that the university had required all police to carry them. The university chose to settle the case with the family rather than go to court and let a jury hear what happened.

Successful lawsuits for not having an AED available have now been brought against many organizations, including the Morial Convention Center in New Orleans and the Busch Gardens theme park in Tampa, Florida.

Lawsuits such as these help the grieving families who have lost loved ones, but they also serve to get the word out to other institutions in society about the importance of making this medical equipment available, thus preventing injuries and saving lives.

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Government workers can sue because of political retaliation

The First Amendment of the Constitution says that the government can't punish you for your political views. But did you know that that means that if you're a public employee, your employer can't mistreat you for supporting the "wrong" candidate?

For instance, four employees of the Michigan racing commission supported the Republican candidate for governor in the 2006 election – who went on to lose.

The employees claimed that after the election, their Democratic bosses retaliated against them by making negative changes to their job duties and working conditions, in one case eliminating a position. They sued the state for "political affiliation discrimination."

The state argued that the workers couldn't sue because they had no formal affiliation with the Republican Party or with the losing candidate.

But a federal appeals court sided with the workers, and said no formal affiliation is necessary as long as the bosses mistreated the workers because of a "perceived" political preference.

Take note, though – the First Amendment protects workers only from actions by the *government*. If a private company punishes workers for their political views, the First Amendment doesn't apply.

Private employees might have some recourse, however, especially if a company policy or union agreement bars retaliation for political activities.

What happens if a former spouse files for bankruptcy?

help his business, and another $20,000 during the marriage. When they divorced, a judge ordered the man to repay the $44,000. He then went bankrupt. He claimed that he should only have to repay $20,000, because the other loan happened before the couple got married.

But a federal appeals court in New Orleans said the man had to repay the entire amount. Even though the loan was made before the wedding, a divorce judge had ordered him to repay it as part of the divorce, and that made it a "divorce" debt.

Another issue is what happens if a divorce agreement requires one spouse to pay off a joint debt, such as a mortgage or a credit card. If that spouse goes bankrupt, can he or she avoid this obligation to a third party?

Typically, no. As long as the divorce papers require the spouse to assume the debt, the spouse can't get out of it with a trip to bankruptcy court.

For instance, a Missouri couple divorced recently and the husband was ordered to pay off $18,000 on a line of credit to a bank. Several months later, he filed for bankruptcy.

The Missouri Court of Appeals said the husband still had to pay off the debt to the bank. Even though the debt wasn't owed to his wife, it was still a divorce-related debt.

Other courts have required bankrupt spouses to pay off debts to other third parties, including credit cards, mortgages, homeowner's association dues, income taxes, car loans, and medical bills.

But while the law favors ex-spouses, it's still important to speak to an attorney, because you may need to take steps to protect yourself in the legal proceedings, especially if the bankrupt spouse stops paying a debt.

It's also possible that even though an ex-spouse can't legally avoid a debt through bankruptcy, the ex-spouse might stop paying anyway because he or she is truly broke and simply *can't* pay it off. If the debt is owed to a third party, in some cases the third party might be able to come after you for repayment – especially if it's a debt for which you co-signed during the marriage. While the divorce might have "assigned" the debt to the other spouse, typically the bank or other third party won't have been part of the divorce and won't have waived its rights.

In such a case, you'll want to speak to an attorney about what legal mechanisms could be available to protect you.

In some cases a third party might be able to come after you for repayment of a spouse's debt – especially if you co-signed for it during marriage.

'Do it yourself' will-writing websites panned by *Consumer Reports*

A growing number of websites now allow people to plug in information about themselves and write their own will. But doing so can be very dangerous and can lead to big problems, according to an independent review by *Consumer Reports.*

The magazine analyzed three such sites – LegalZoom, Rocket Lawyer, and Quicken WillMaker Plus – and ran the results by a law professor who specializes in tax and estate law. All three websites had a variety of problems, according to the study.

The problems included:

Outdated information. Two sites applied federal tax rules that were already months out-of-date.

Not state-specific. The law of wills varies from state to state, but the programs didn't take into account variations in state law.

No tax advice. None of the programs offered tailored advice on how to reduce taxes – a critical flaw

Incomplete. The websites often lacked provisions on how to handle business interests, electronic assets, trusts for children with special needs, domestic partnerships, multiple trustees, etc.

No flexibility. The websites frequently made arbitrary choices and didn't allow bequests to be handled differently. And some added additional provisions to trusts without any warning.

The professor described one will produced by Rocket Lawyer as "primitive," and another as "a mess."

Using a do-it-yourself website to write a will can be "like removing your own appendix," according to the *Consumer Reports* article. There's no substitute for a lawyer who can understand your wishes and goals, and provide legal and tax advice that's suited to your specific needs.

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Buying a condo? It's easier to get an FHA loan

One of the simplest ways to obtain a mortgage for a first-time homebuyer – or for anyone who might not have terrific credit and a big down payment – is a loan insured by the Federal Housing Administration.

The FHA doesn't make loans, but it insures them for lenders. This makes lenders much more willing to offer a mortgage, because if the borrower defaults, the FHA will be on the hook.

FHA loans often require a down payment of as little as 3.5 percent, and can be obtained in many cases by people who have iffy credit or who have a bankruptcy or foreclosure in their past. (The catch is that borrowers have to pay mortgage insurance.)

The FHA insures loans for both single-family homes and condominiums. And it recently broadened its coverage of condos, so many more people will be able to get an FHA loan for a condo than in the past.

For instance, previously the FHA wouldn't insure loans for any units in a condo if 15% of the unit owners were 30 days behind in their condo fee payments. This was a huge problem, because 30 days is a very short time. The new rule changes the 30-day period to 60 days.

Also, in the past, the FHA wouldn't back loans in a condo if a single person or entity owned more than 10% of the units. That meant that if one person bought three units in a 29-unit complex as an investment, every unit in the complex would be ineligible for an FHA loan. It also meant that if a developer had trouble selling all the units in a new building right away, and kept slightly more than 10% for rental purposes, the whole complex would be disqualified. Now, though, the FHA says a single investor can own up to 50% of the units.

The agency will also be more willing to back condo loans in mixed residential and commercial buildings, and will relax the requirements for boards to certify information about the condo management.