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Family Law  
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# Legal Matters®

## Divorcing spouses will need to think about their credit card debt

**M**ost married couples have at least one joint credit card. And a great many couples don't pay off their cards in full each month, so they have some credit card debt.

If you or someone you know is considering divorce, it's important to think about what will happen with a joint credit card.

Although there are exceptions, in many cases the wisest move is to pay off the joint card if possible, cancel it, and open up your own personal credit card account.

Here's why: In most states, if both spouses' names are on the account, each spouse is fully legally liable for the entire amount of the debt. So canceling the joint card prevents your spouse from running up a lot of debt – either out of spite or for whatever other reason – for which you'll then be legally on the hook.

Of course, joint credit card debt, like all other assets and obligations, will likely be

divvied up by the divorce judge. And it's possible that if a spouse wasted money or used a credit card for inappropriate purchases, a judge will decide that the spouse should be solely responsible for that portion of the debt. (An example might be if a spouse had an affair and charged flowers, dinners and hotel rooms to a joint credit card.)

But you can't always be sure what will happen, and in any event,

no matter what a judge says about how to divide up the debt, that's only binding as between you and your spouse – not as to the credit card company.

Typically, when you sign up for a joint credit card, you both sign a contract saying you'll be individually responsible for all

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## Who's getting divorced these days? People over 50

The new face of divorce has gray hair.

While divorce rates overall have stabilized and even inched downward in recent years, the divorce rate among couples who are 50 or older doubled between 1990 and 2010, according to a study by Ohio's Bowling Green State University.

What's more, these so-called "gray divorces" now account for more than 28% of all marital splits – up from just 10% back in 1990.

The reasons for this trend are unclear, although some people have speculated that

seniors are living longer and are more active than they used to be, and may be less willing to stick it out in a loveless marriage once their children are grown. Also, there's been a significant increase in divorces that are initiated by older women, who may be more independent than in an earlier generation.

What *is* clear is that there are many legal issues that have special relevance for seniors who are contemplating divorce.

Health care is one. People who are over 50 but not yet eligible for Medicare may have significant health care expenses, and it's important to plan carefully for these at the time of a breakup.

Retirement accounts also tend to be a more important issue for older divorcing couples, since they typically are a much bigger part of the pie than they are for young couples. Dividing a couple's interests in pensions, 401(k) accounts, IRAs and profit-sharing plans can be highly complicated. This is especially true if spouses have taken out loans against these accounts.

The issue of "who gets the house" is also more difficult because it may affect planning for government benefit programs such as Medicaid.

Older couples are more likely to have a vacation home or investment property, and splitting this type of property can have complex implications for capital gains taxes. That's because second homes and investment property don't get the same beneficial capital gains treatment as a primary residence.

It's also important to plan for Social Security. If you were married for 10 years or longer, then even if you get divorced, you may be able (in certain circumstances) to collect Social Security benefits based on your spouse's work record – even if your spouse hasn't retired, and even if your spouse remarries and his or her new spouse starts collecting benefits based on the same work record.

You might also be eligible for Social Security survivor's benefits even if you divorce your spouse, depending on your situation.



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## Financial relief may be available while divorce is pending

Divorce can be expensive and take a long time to get through. It can also create significant financial burdens for spouses who were not the primary breadwinner, and who are now forced to manage a household by themselves.

In some cases, it may be possible to get a court to order the other spouse to make temporary support payments while the case is underway.

Such an order is often called a *pendente lite* order, and it has two purposes: to help a financially strapped spouse keep up with expenses while the case is ongoing,

and to prevent the other spouse from gaining financial leverage in the divorce.

The exact requirements for such orders vary, but they're usually based on the couple's standard of living during the marriage, the spouse's current financial needs, and the other spouse's ability to pay.

Typically, a spouse will have to provide documentation of income, assets, debts and expenses. Once the divorce is final, the temporary order will end, and may be replaced by child support or alimony payments.

In case you were wondering, *pendente lite* is Latin for "during a lawsuit," and no, it wasn't a beer served at the Roman Coliseum.



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# Divorcing spouses need to think about credit card debt

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charges. And since the credit card company isn't part of the divorce proceeding, it isn't bound by what the divorce judge says.

So even if a divorce judge orders your spouse to pay the entire credit card debt, if the spouse refuses to pay – or doesn't have enough money to pay – the credit card company can still come after you for the balance.

This is also true if a spouse files bankruptcy and has the debt legally discharged.

Therefore, canceling a joint card as soon as you can is a good way to prevent further charges from accruing for which you'll be responsible. It can also protect your own credit score in the event a spouse fails to pay.

If a spouse is cooperative, you might be able to agree to pay off the card balance and cancel it. If you don't have enough cash on hand to pay off the card, it might be possible to tap a home equity line of credit. Another option is to each open a separate credit card account, and transfer the debt on the joint card to the new separate accounts.

It's also a good idea to document things and keep careful records. A good first step is to contact each credit card company and determine exactly how much is owed on each card.

You'll also want to check whether an account is really a joint account, or if one spouse owns the account and the other spouse is merely an "authorized user." In most states, an authorized user can charge things to the card, but isn't legally on the hook for payment. If you're the owner and your spouse is an authorized user, you might want to call the credit card company and remove your spouse from the account. (Keep in mind that in some states, a spouse could still be liable for debt on a credit card even if he or she is merely an authorized user.)

If you still have a joint card at the time you separate, you'll want to carefully document your own expenses so you don't end up being charged for expenses incurred by your spouse.

But the most important thing is to talk with a divorce lawyer right away. While there are general rules, each situation is unique, and a lawyer can counsel you on how best to handle your particular situation in order to protect yourself.



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## 'No-fault divorce' doesn't mean it's okay to be at fault

Long ago, if a spouse wanted to end a bad marriage, he or she had to prove in court that the other spouse had engaged in some form of misconduct, such as adultery, cruelty, or abandonment.

Today, however, every state has some form of "no-fault" divorce, where a spouse can dissolve a marriage based on nothing more than "irreconcilable differences" between the couple.

But just because you no longer have to prove fault to get a divorce doesn't mean that fault is irrelevant. Depending on the state and the circumstances, a spouse's misconduct could result in losing child custody, paying the other spouse's attorney fees, or a lopsided alimony or support award in the other spouse's favor.

"Misconduct" can include any sort of behavior that undermines the marital relationship. Examples might include adultery, abandonment, physical or mental abuse, or alcohol or drug problems.

Misconduct can also include hiding or wasting

marital assets, using income to support a gambling or other addiction, fraudulently selling or transferring possessions, or doing anything else to prevent property from being divided fairly with the other spouse.

Often, a judge can take this kind of behavior into account when making decisions about support and property division.

Keep in mind, too, that misconduct can include things that a spouse does *after* the couple has separated and a divorce petition has been filed. Even after you're no longer living together, you still have a responsibility to make sure that your joint assets can be divided fairly.



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## Child support sometimes counts as part of your income

Do child support payments you receive count as part of your income? The answer varies a great deal depending on the context, and it's important to plan for this when you're getting divorced.

For instance, when you're calculating your federal income tax, child support payments do not count as income, which means you don't have to pay tax on them.

On the other hand, if you're buying a house and applying for a mortgage, a bank *might* consider child support to be income in deciding whether you're qualified for a loan. Each lender is different, but some

consider child support as a financial resource that's available to you.

The bank might take into account how much child

support you receive, how long you've been receiving it, and how long you expect to continue receiving it. It might also want to know if there's a significant chance that your custody arrangements could change in the future.

In most cases, child support counts as income for the federal Supplemental Nutrition Assistance Program (formerly known as food stamps). If child support boosts your income above the maximum amount, you won't be eligible for assistance. The same is true for many state-administered health insurance programs.

On the other hand, child support apparently does *not* count as income when determining if you're eligible for subsidies to buy health insurance under the Affordable Care Act, popularly known as Obamacare.

Many other contexts can arise where the treatment of child support will vary; you should talk to a family lawyer if you're uncertain.



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