

Divorce, Debt, and Bankruptcy in Washington State

I am in a registered domestic partnership. Can I read this too?

Yes. “Spouse” here also means domestic partner. Washington law treats registered domestic partners like spouses.

What is community property?

It is usually property either/both spouses get during the marriage. One of you acting alone may manage/control community property as if it were your own. There are exceptions to this.

Example: you both must be involved to buy/sell real estate.

What is separate property?

- Property one of you got before you married.
- Gifts/inheritances one of you gets during your marriage.
- Property one of you gets after separation. “Separation” means one of you moves out or files for divorce.

You have complete control over your own separate property. **The spouse that does not own the separate property has no control over it.**

What is community debt?

It is typically debt created during the marriage, to benefit the marital community. It can include debts from

- Medical bills.
- Children’s education.
- Repairs to the family home.

You may be responsible for a community debt even if your name is not on it. You do not even have to know about the debt at the time your spouse incurred it.

A few debts made during marriage are **not** for the marital community’s benefit. Talk to a lawyer.

What is separate debt?

- Debt that you got before marriage **and/or** benefits your separate property. (**Example:** debt from repairs you made to a house you bought alone before you married.)
- Debt you got after separation.

Neither spouse is responsible for the other’s separate debts. You can only use your ex’s separate property to pay debts for community expenses like the children’s education.

You usually cannot use community property to pay separate debts. You **can** use community property to pay maintenance (alimony) and child support.

Does it matter if something is separate or community property?

State law protects separate property from community debt. If you mix (“commingle”) separate and community property, separate property can become community property. The court can use it to pay community debt.

What if we are still married but no longer live together?

There is no community debt without a marital community. Once you physically separate, the marital community no longer exists. You do not

have to file for legal separation or divorce for community debt purposes.

Exceptions:

- Even after you separate, you are still responsible for your spouse's debts on accounts that have your name.
- If you get back together later, you will be responsible for your spouse's debts during your separation.

Example 1: You separate. Your spouse buys a new car in their name only. The car is their separate property and debt. You are **not** responsible.

Example 2: You separate. Your spouse uses your joint credit card. You **are** responsible for those debts.

If you are separating or thinking about divorce, check any accounts in your name. You may be responsible for debt incurred on them. Contact the creditor in writing to get your name off the account. (Keep a copy for your own records.) This probably will not end your responsibility for past charges.

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- ❖ A creditor can refuse to close a joint charge/credit card account, especially one with a balance. Ask your spouse to transfer the balance to a credit card in their name alone OR ask the creditor to freeze the account. Then your spouse cannot keep making charges.
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What if we agree on how take care of our debt?

Ask the court to approve your agreed division. Even if you agree, a court must follow these rules dividing debts:

- A separate debt should be the responsibility of the spouse who incurred the debt.
- The division of community debts must be fair.
- The whole divorce must be fair to each of you.

The court will not approve an agreed debt division that is very unfair to one spouse. One of you should not have to pay more community debt just because the other has large separate debts.

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- ❖ A court will usually consider **asset** (property) division when deciding how to divide **debts**.
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What if we do not agree?

Ask the court, a mediator, or an arbitrator to divide the debt.

What if my ex does not pay the debts the court ordered them to pay in the divorce?

Both parties are responsible for community debt. The court-ordered debt division is between you, your ex, and the court only. **Creditors do not have to follow it.** If your ex does not pay the debts the court ordered them to pay, the creditor can come after you.

Think of it this way: Your cousins Amy and Beth are starting a business. You lend them \$100.

Each signs a written note, to you, to be liable for the full \$100. Each cousin alone should be good for about \$50.

A few months later, Beth decides to leave the business. Amy says she will keep all the business' assets and debts (including the loan to you). Beth agrees.

You ask Amy for the \$100 she owes you. Amy says she cannot pay you.

You ask Beth to repay the \$100. Beth says, "I am not responsible for that money. Amy and I agreed she would take the debt."

An agreement you had no part in has now limited your ability to collect your \$100! This is unfair. Both Amy and Beth agreed to repay you. You never agreed to anything different.

This shows why the law does not change the creditor's rights when there is a divorce. Like Beth, the divorcing parties cannot change the rights of creditors by their agreement with each other.

The divorce decree's debt division has some value. If your ex does not pay, you can sue him/her for damages (money) and contempt.

What if one of us files bankruptcy?

Some people who cannot pay their debts file for bankruptcy. This places your finances under the bankruptcy court's control.

The court decides which debts to pay first, and which to discharge (dismiss). If the court **discharges** a debt, a creditor can never recover the debt against you.

If you will probably divorce, and your marital community has lots of debt, you can file for bankruptcy before filing for divorce. The bankruptcy can discharge some of the debt and make it easier to negotiate the division of the rest.

You do not have to live together or even have any real contact with your spouse to file jointly. It might be the best solution to debt problems. It can be cheaper to file a joint bankruptcy instead of each of you filing separately.

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- ❖ What is good for one spouse may not be good for both. Even for a joint filing, you each may need a lawyer.
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When one or both spouses file for bankruptcy, **all** the community property is available to pay community debts. If your ex files for bankruptcy after your divorce, you will still be responsible for community debts your spouse cannot pay. You may have less community property then to pay them.

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- ❖ If there are few community debts, and your spouse has large separate or non-dischargeable debts, you may not want to join in the bankruptcy.
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Whether you can discharge a debt in bankruptcy may depend on the type of bankruptcy. Talk to a lawyer.

What is an automatic stay?

It is a delay or short-term-freeze on legal obligations. If one or both of you files for bankruptcy, an automatic stay immediately stops creditors from collecting on most debts.

The automatic stay does **not**:

- Affect criminal actions against the person filing for bankruptcy.
- Affect domestic violence charges.
- Apply to paternity cases.
- Stop your divorce. It only interferes to determine how to divide property. The superior court finalizes your divorce first. The bankruptcy court finalizes the bankruptcy and property division later.
- Apply to maintenance (alimony) or child support. A spouse filing for bankruptcy

must keep making any court-ordered maintenance or child support payments.

- Apply to modification of maintenance/child support/parenting plan cases.

If the stay does not apply to a particular situation, that case will go on as usual.

Can my ex file bankruptcy to stop paying me?

Maybe. S/he cannot stop paying “domestic support obligations” like alimony and child support. Expenses like mortgage payments and health insurance may be domestic support obligations.

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- ❖ If your ex files for bankruptcy and gets behind on support, you must file a [proof of claim](http://www.uscourts.gov/forms/bankruptcy-forms) with the bankruptcy court to claim the back support. The form is at <http://www.uscourts.gov/forms/bankruptcy-forms>.
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For other payments, it depends on the bankruptcy type:

Chapter 7 - Will **not** discharge **non-support obligations** from a divorce or separation.

Chapter 13 - Will discharge some debts arising from property settlements that are not dischargeable in a Chapter 7.

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- ❖ The wording of your divorce decree and settlement could matter in the bankruptcy. Get legal advice **during your divorce** to help you plan for the effects of bankruptcy on your divorce settlement.
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How will the bankruptcy court know my ex owes me anything?

The bankruptcy petition should list you as a creditor. The bankruptcy trustee should give you notice of the initial meeting of creditors (a **341 meeting**) and your deadline for filing a claim.

Even if you do not get notice, if you know your ex is petitioning for bankruptcy, you should file a claim to protect yourself.

Does the “hold harmless” provision in our divorce work if my ex files for bankruptcy?

Maybe not. You may have to repay certain debts even if the bankruptcy court discharged them.

Example: In their divorce decree, Husband agrees to pay back \$1,000 in credit card debt. Wife agrees she will not be responsible for the debt (held harmless). Wife co-signed on the card. The debt is community property.

Husband cannot pay the \$1,000 in credit card debt. If Husband discharges the debt in a **Chapter 7**, the credit card company cannot go after him. If they go after Wife, she must repay the debt. It was a debt that she would have owed the creditor anyway but for the hold harmless provision. Under the hold harmless provision, Wife can force Husband to reimburse her for the \$1,000 debt she paid the creditor.

If Husband gets a discharge for the debt in **Chapter 13** and the credit card company later goes after Wife, she will probably **not** be able to go after him for reimbursement. Wife can ask the divorce court to raise the amount of support she gets because her financial circumstances have changed and she is now responsible for more debt.

Other tips:

Get creditor info as quickly as possible. After you separate, make a list of your creditors right away. Get info from your ex, through the discovery phase of the divorce or from a credit report. Do not guess who your creditors are. [Doing Discovery: Help with Interrogatories and Requests for Production in Family Law Cases](#) has more info.

Send creditors a certified letter right away that you will not be responsible for future debt. This will save you time and expense.

Do not agree to pay your ex's separate debts or more community debt to offset your ex's separate debts. Most courts will not consider those separate debts when dividing community debts.

Do not ignore a collection action. Many people do not answer/respond to collection lawsuits because they think their divorce decree protects them from the collection. It does not. [How do I Answer a Law Suit for Debt Collection?](#) has more info.

Consider a joint bankruptcy filing before filing for divorce. You do not need to live together or have much contact to do a joint filing. It may be the cleanest and cheapest solution to debt problems. What is good for one spouse is not always good for both. Each of you may need a lawyer, even for a joint filing.

Quickly file any objections to discharge when you get the notice of bankruptcy. If you think your ex is trying to discharge debts s/he took in the divorce, act fast!

Talk to a lawyer. Divorce and bankruptcy can be complicated and have serious consequences.

Where can I get more info?

[Washington LawHelp](#), www.washingtonlawhelp.org, has resources and links. Click on "Consumer & Debt." Then click on "Bankruptcy."

[The United States Bankruptcy Courts website](#), <http://www.uscourts.gov/FederalCourts/Bankruptcy.aspx>, has a "Bankruptcy Basics" handbook. It describes the bankruptcy process and explains the differences between Chapter 7 and Chapter 13.

Washington State Laws: RCW stands for [Revised Code of Washington](#), the law of Washington State. The references to the law are up-to-date as of the date we published this. The law sometimes changes before we can update this publication.

- [RCW 26.16.030](#) defines community property.
- [RCW 26.16.010](#) and [26.16.020](#) define separate property.
- [RCW 26.16.205](#) defines family expenses as community debt.

U.S. Bankruptcy Law - "U.S.C." stands for U.S. Code. It is federal law. The number 11 is the "title" number. The symbol § is the section. You can read it [here](#): <http://www.law.cornell.edu/uscode/text>. Click on "Title 11 – Bankruptcy" to browse, or use the search box.

- The law about automatic stays is at [11 U.S.C. § 362](#)(b)(1), § 362(b)(2)(A), and § 362(b)(2)(B).
- The law saying domestic support obligations are non-dischargeable is [11 U.S.C. § 523\(a\)\(5\)](#).
- The law defining domestic support obligations is [11 U.S.C. § 101\(14A\)](#).

- The law saying non-support obligations are non-dischargeable is [11 U.S.C. § 523\(a\)\(15\)](#). The law applies to Chapter 7 only.
- Laws about trustees are at [11 U.S.C. § 704\(a\)\(10\)](#) and [11 U.S.C. § 1302\(b\)](#).

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