

Bankruptcy in Marriage – Do Both Spouses Have To File?

By Arizona Bankruptcy Attorney John Skiba

www.skibalaw.com

It is pretty common knowledge that bankruptcy is going to lower your credit score and make it more difficult to make purchases on credit. Because of this, many married people that I meet with ask if it is possible for only one spouse to file bankruptcy so that the non-filing spouse's credit can be saved. The simple answer is yes, it is possible, however there can be negative consequences associated with only one spouse filing bankruptcy that need to be considered prior to making that decision.

Arizona is a Community Property State

Arizona is one of nine community property states in country. For our purposes all you really need to know about community property law is that generally speaking most assets you obtain during marriage and most debts you incur during marriage are joint. These means if I go out and get a credit card without telling my wife; buy a new \$5,000 TV for the home, my wife is on the hook for the \$5,000 even if she didn't know that I had opened the credit line.

Bankruptcy and Community Property Law

Once a bankruptcy case is filed the bankruptcy court will issue an order that stops all collection efforts against you and your property. This includes community property even if your spouse is not filing bankruptcy. The drawback to only one spouse filing is technically your creditors can still try and collect on the debt from the non-filing spouse once your bankruptcy case is over.

For instance, if I owe \$10,000 on a credit card that was used during my marriage, I then file bankruptcy (my wife does not file) and obtain a discharge of that debt, the credit card company can still demand payment from my wife. Here is the catch, the credit card company can still demand payment from my wife, but they cannot take any community assets from her due to the bankruptcy.

This means that they cannot take her wages or any jointly owned community property. The creditor could satisfy the debt through my wife's separate property, if she had any, but most married couples do not have separate property.

So in conclusion, yes, both spouses do not have to file bankruptcy together, but there is some risk that the non-filing spouse may have to deal with collectors down the road and if the non-filing spouse owns any separate property (such as an inheritance) that asset may be at risk.

I offer a free consultation where we can discuss your specific situation and what the best route will be to deal with your debt problem.

Arizona bankruptcy attorney John Skiba can be reached at (480) 420-4028 or via email at john@skibalaw.com.