



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



DEBT DIVISION IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

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INTRODUCTION

Thank you for downloading our special report: about Debt Division, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

DEBT DIVISION IN TEXAS

INFORMATION FROM A KNOWLEDGEABLE HOUSTON LAWYER

When a couple submits to the divorce process in Texas, their shared marital assets will be assessed for division. What a lot of people don't realize is that their debts could be divided, as well. Any debt that is incurred over the course of the marriage will be reviewed for possible division in the divorce process and, in some cases, will be distributed between the two spouses.

If you are facing the divorce process and know that you will be dealing with significant debts, it is crucial that you have knowledgeable and experienced counsel by your side. At the Law Office of Bryan Fagan, PLLC, their team of Houston attorneys know how crucial it is to fairly and favorably arrive at a debt division agreement and what it takes to protect their clients throughout every stage of this process.

It is possible to face your divorce with confidence. Contact the firm today to start exploring your legal options:

- What Happens to Marital Debt During a Texas Divorce?
- How are Credit Cards Handled in a Texas Divorce?
- What am I or My Spouse Entitled to During a Texas Divorce?

HOW DEBT IS DIVIDED IN TEXAS

Unlike other states, Texas does not automatically divide all debts incurred over the course of a marriage between the two spouses in a divorce. Instead, the courts will assess the circumstances of an individual debt and, if it finds that only the borrowing spouse is responsible for the debt (or the creditor lent the money based on solely the one spouse's assets) the debt will remain assigned to that one spouse. In other words, marriage does not automatically create joint liability when debt is incurred.

There are, however, some cases in which debts will be considered shared:

- When one spouse acts as an agent of the other spouse
- When the money is used to purchase basic necessities

Generally speaking, food, shelter, medical care, and clothing are considered necessities, but there are some gray areas here that may need to be asserted before the judge. If you have further questions or concerns about how your community debt might be assessed during your divorce, then it is time to speak with an attorney who is ready to protect your financial well-being.

WHAT HAPPENS TO MARITAL DEBT DURING A TEXAS DIVORCE?

A Divorce in Texas deals with three primary areas of two persons lives:

- Dissolving the marriage relationship
- determining conservatorship/possession/access for children (if any) and
- dividing the property/debts of the spouses.

All of these issues can have lasting effects for a person but perhaps none more so than the dividing up of marital debts



CREDITORS ARE NOT BOUND BY THE DIVORCE DECREE

For starters, while spouses can agree to how their debts are divided creditors are typically not bound by the terms of a Divorce Decree. For example, if the credit of both spouses is utilized to secure a home loan then the creditor will have the right to pursue either spouse whose name appears on the application for the loan for failure to make payments on the underlying note. This can be true even if the parties to a divorce agree to one spouse taking control of that debt.

It is pretty easy to foresee a situation where because the spouse who becomes responsible for the debt fails to make timely payments both former spouses are in line to have their credit negatively effected due to these missed payments. Creditors can go to such extremes as garnishing wages, assigning liens against other property of both spouses or other methods to enforce the payment of their debt.

REMEDIES

As far as remedies available to the former spouse who is no longer "responsible" for the debt, a contempt or enforcement action may be sought in court. However, this does little to give any remedy to the above scenario where a fast acting creditor takes action against you in the financial world.

An experienced family law attorney, such as those with the Law Office of Bryan Fagan, PLLC, can assist in allocating marital debts in a manner that best suits their client. For example, assigning debts to the party whose name they are in can help avoid potential issues for the non-debt incurring spouse in the future. In regard to a home loan, it is possible to have one spouse refinance the loan while absolving the other from future responsibility for payments.

The attorneys at the Law Office of Bryan Fagan, PLLC are equipped and eager to advocate for persons who are concerned about marital debt in their pending divorce. Consultations for family law matters are always free, and are always with an attorney licensed to practice in Texas.

HOW ARE CREDIT CARDS HANDLED IN A TEXAS DIVORCE?

A major concern for many of our potential clients during their divorce is dividing up the debt. Unfortunately for many married couples this is because they are under water and have more debt than they do assets. Often much of this marital debt is in the form of credit cards.

When meeting with these potential clients their solution is that they and their ex should slip all the credit card debt 50/50. In this blog article, we will discuss how credit card debt is handled in a Texas divorce.

IS IT AS SIMPLE AS SPLITTING CREDIT CARD DEBT 50/50 IN A TEXAS DIVORCE?

I believe many potential clients thinking is that because there is community property, there must be community debts as well. Marriage does not, by itself, create joint liability for the debts.

Characterization of property as separate or community plays a lot into the question of dividing up property during a divorce. However, characterization of debt does not always determine the question of liability.

The designation of a debt as community property has no effect on which spouse may be liable for the repayment of the debt.

Joint liability for debt may exist if one spouse incurs a debt:

- as the agent for the other spouse, or
- if the debt is for basic living necessities

FIRST STEP TO DETERMINING LIABILITY OF DEBT



One of the first steps to determine which spouse’s properties may be liable is to classify the marital property.

Each spouse may have:

- ☑ separate and community property
- ☑ sole management and Joint management of property

Under Section 3.202 of the Family Code:

- ☑ A spouse’s separate property is not subject to liabilities on the other spouse unless both spouses are liable by other rules of law.
- ☑ Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse’s sole management, control, and disposition is not subject to: (1) any liabilities that the other spouse incurred before marriage; or (2) any nontortious liabilities that the other spouse incurs during marriage.

SEPARATE PROPERTY

Separate property is not generally subject to the other spouse’s debt liability.

SOLE MANAGEMENT OF PROPERTY

If a spouse has sole management and control over their community property they would have owned except for being married, such as personal earnings.

This sole management community property may only be used to satisfy the debts of the spouse that manages the property or the joint debts.

JOINTLY MANAGED PROPERTY

Jointly managed property, such as jointly titled asset, may be used to satisfy either spouses’ community or separate liabilities.

Debt Before Marriage	Debt During Marriage	Separate Property of One Spouse
A debt incurred before the marriage is presumed to be separate property debt.	A debt incurred by a spouse during the marriage is presumed to be a community property debt.	If a debt is incurred during the marriage, but the creditor agreed to look solely to the separate property of the spouse for satisfaction of the debt, then the debt may be a separate property debt.

WHAT AM I OR MY SPOUSE ENTITLED TO DURING A TEXAS DIVORCE?

Any person who is entering into the divorce process has questions regarding their rights and how they can best be enforced. The attorneys with the Law Office of Bryan Fagan, PLLC are experienced in assisting clients with these sort of questions as they pertain to their children, their money and support from their spouse during the divorce.

A divorce doesn't just mean dissolving the relationship with your spouse. While it certainly does mean this, there are many, many other considerations and wrinkles to a divorce that the attorneys with the Law Office of Bryan Fagan, PLLC have come to expect and prepare for on behalf of our clients.



YOU ARE ENTITLED TO ANYTHING YOU CAN NEGOTIATE

Asking what their spouse can get, or is entitled to in a divorce is a tough question for an attorney to answer. This author's answer would be- you're entitled to whatever your attorney and you are able to negotiate for. Divorces typically center on a few major subjects:

- ☑ Children
- ☑ debts and
- ☑ property

CHILDREN ARE IMPORTANT

When it comes to a client's children, our attorneys will always advise a client that above all else their children need to be treated as being the most important aspect of any divorce. This is usually not an issue as divorcing spouses understand this to be the case, but unfortunately what happens to the children ends up looking similar in a final decree of divorce when compared to a house, car or retirement account.

The state of Texas' public policy is that absent extreme circumstances, both parents have a right and the state will encourage parties to allow one another to have active, important roles in their children's lives. No parent is entitled to anything more than the other, but obviously their individual circumstances play a huge role in determining issues such as- where the children live, who gets to see them when and which parent has the final say so in making education and medical decisions.

Whichever parent does not have the children living primarily with them has an obligation to pay child support- unless the parties agree otherwise. This is fairly self explanatory- the theory is that even if one parent can't directly contribute to day to day costs associated with child rearing, they can do so indirectly by providing support to the custodial parent. The Texas Family Code provides for a percentage of the obligor's income to be paid depending upon how many children are at issue in a divorce.

WHAT IS THE PROPERTY AND DEBTS?

In a Texas divorce, another major issue is the division of the spouses' debts and marital property. The first step in this process is to identify the property and debts. In order to aid in this process your divorce lawyer will ask you to complete a document called an inventory and appraisalment which lists all of the assets and debts.

Once the property and debts are identified in the inventory and appraisalment, the next step figure out the character of property. Texas is a "community" property state.

COMMUNITY PROPERTY AND SEPARATE PROPERTY

Community property in Texas is all property acquired during marriage except for property

- ☑ acquired by gift
- ☑ inheritance or
- ☑ owned prior to the marriage

It is important to identify whether marital property is community property or separate property because a Texas divorce court can divide the community property between the spouses but cannot divide the separate property.



JUST AND RIGHT DIVISION

In regard to financial aspects of a divorce, income earned during a marriage is considered to be "community property". This means that each spouse has a claim to a fair and equitable percentage of the money earned by both spouses- whether that money comes from a job, an investment or other source. There are exceptions to this general rule, but it is common to have spouses divide money in bank accounts, 401ks and other sources. Everything in a divorce is negotiable, however, and being in a position to negotiate for more can be the difference between getting a bare minimum and getting what you're fully entitled to.

Either parties can negotiate a division of the property and debts or a court will make a "Just and Right Division" for the spouses. In Texas, all community assets and debts are subject to a just and right division.

A court bases a just and right division on the facts of each case. Many people have heard that Texas is a 50/50 state, however a just and right division is not necessarily a 50/50 split. In fact, disproportionate divisions may be what a court determines is just and right.

Some things a Texas divorce court may consider includes:

- ☑ fault in the breakup of the marriage
- ☑ the parties' abilities to support themselves
- ☑ the financial costs incurred by a party while the divorce is pending, and
- ☑ length of the marriage.

MARITAL DEBTS

Marital debts are another common question clients have when it comes to what they are entitled to, or in this case entitled to avoid, in a divorce. A typical arrangement will have both parties taking with them any debts that are in their name only and splitting debts that share both names. However, it's crucial to keep in mind that people are not entitled to getting this sort of equitable result.

Divorce negotiations center on a lot of horse trading over any and all issues pertinent to the separating couple. In order to receive the maximum benefit possible and ensure you are not left holding the metaphorical bag on your communal debts an experienced family law attorney is a crucial advocate for your interests. A family law attorney, such as those with the Law Office of Bryan Fagan, PLLC, are able to help position you to take on no more debt than is equitable while protecting your credit and minimizing your liabilities moving forward.

MARITAL PROPERTY

The issue of marital property and what a client stands to receive in a divorce is a common question encountered by our lawyers. Again, no spouse is entitled to keeping the house or being able to remain living there. However, unlike the children there are some objective truths apparent when considering who can actually afford to pay the mortgage on a single income or who is actually going to keep the kids and needs the space to do raise them properly.

If, for example, mom is awarded primary custody of the kids (she gets to choose the residence of them) but she cannot afford to pay the mortgage on her current income it would not make sense for her to remain in the home. In this type of situation, the newly single dad will typically not need the extra space the house affords and the parties will agree to sell the home and divide the equity. In this scenario, a seasoned family law attorney for mom can do her a great service by negotiating a greater than fifty percent share of that equity to perhaps use as a down payment for a smaller but fully functional home for her and the kids to start a new life in.

The aforementioned scenarios are just the tip of the iceberg for parties and their lawyers to encounter in a divorce. The attorneys at the Law Office of Bryan Fagan, PLLC understand what sort of difficulties are inherent in the divorce process and work hard for each client to ensure that they receive whatever the individual believes they are entitled to. Please contact us today for a family law consultation- free of charge.





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WE'RE HERE FOR YOU

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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