

BARRISTER'S CORNER



ATTY. KENNETH URSUA REYES

Knowing your rights to reimbursements during divorce

DIVORCE can be a bit complicated specially if there are community assets and debts involved. Generally, accumulations and earning after the date of separation is each spouse's separate property. What happens when you use separate funds to pay for community debts after the date of separation? Does that spouse get credit for all those mortgage payment?

Normally when a spouse uses separate property to pay for community debt prior to the date of separation, there is a presumption that it is a gift to the com-

munity unless you can trace the separate property contribution and seek reimbursement under family code §2640. However, there is no presumption of a gift when separate funds are used to pay community debts after the date of separation. That is why the date of separation is very important and commonly litigated in highly contested divorce cases due to the difference in controlling presumptions. Instead, the trial court has discretion to order reimbursement of any separate property used to pay community debts after the date of separation under family code §2626. The reimbursement is commonly called Epstein credits after the case Marriage of Epstein. However in deciding whether to allow reimbursable credits, the Court has to consider the Epstein guidelines. Reimbursement for a particular debt is inappropriate where: a) The

parties agreed payment would not be reimbursed. b) Payment was truly intended as a gift, even though made after separation. c) Payment was made on account of a debt for the acquisition or preservation of an asset the payor was using, and the amount paid was not substantially in excess of the value of the use. d) The payments on account of preexisting community obligations constitute a discharge of the payor's support duties.

How about the situation where one spouse has exclusive use of the community asset between the date of separation and the date the community no longer has an interest in the asset such as use of a car? The Spouse with the exclusive use of the community asset can be charged the reasonable use of that property under the Marriage of Watts. This is called

Watts charge. So for example if the wife has exclusive use of the car, the husband may ask that the community be reimbursed by the wife for the value of the use of the car between separation and trial date or settlement date. The same thing can be applied when one spouse alone is staying at the family residence while the other spouse is paying for the house. The rules governing reimbursements can be confusing to lay people. It is best to obtain the representation of competent counsel.

Attorney Kenneth Ursua Reyes was President of the Philippine American Bar Association. He is a member of both the Family law section and Immigration law section of the Los Angeles County Bar Association. He has extensive CPA experience prior to law practice. Law Offices of Kenneth Reyes, P.C. is located at 3699 Wilshire Blvd., Suite 700, Los Angeles, CA, 90010. Tel. (213) 388-1611 or e-mail kureyeslaw@aol.com. Website kenreyeslaw.com (Advertising Supplement)

DEBT RELIEF



ATTY. LAWRENCE YANG

Creditors appeal Chrysler sale to Fiat in BK Court

CHRYSLER has been in bankruptcy for a little over a month now and is actually ready to get out of bankruptcy with the sale of most of its assets to FIAT. President Obama had indicated that he wanted Chrysler to have a quick prepackaged bankruptcy with the FIAT purchase and partnership, and it certainly looks that way. The Bankruptcy court has approved the reorganization plan, which calls in part for the sale of most of Chrysler's assets to FIAT. The sale was about to take place when a group of secured creditors objected to the sale to FIAT claiming that the sale prejudiced their rights as secured creditors. Since Bankruptcy courts are Federal Courts, appeal is made to the United States Court of Appeals, and thereafter to the United States Supreme Court. The Supreme Court has issued an order staying the sale to FIAT pending resolution of the creditor objections. Lawyers

of Chrysler argued for a quick resolution of the objections by the Supreme Court saying that Chrysler was losing \$100 million a day without the FIAT deal and implementation of the reorganization plan which had been approved by the Bankruptcy Court. The latest news is that the Supreme Court has rejected the objections of the secured creditors and has given its permission for the sale to FIAT to push through immediately without further delay. Thus, it is now certain that Chrysler will be out of bankruptcy before this month ends as a leaner and eventually profitable enterprise. Chrysler will be owned by FIAT, the US government, it's union and employees, and creditors. From start to finish, Chrysler was in and out of Bankruptcy court in two months. But without FIAT and Uncle Sam in the equation, Chrysler's bankruptcy would have ended with its liquidation in a Chapter 7 case, instead of reorganization in a Chapter 11 case.

There are several kinds of bankruptcy available. Chapter 11 is usually used by businesses to reorganize themselves when

they have too much debt but can still become profitable again if they are able to get rid of a lot of their unsecured debt. Some individuals are able to use Chapter 11 to restructure their finances if they cannot qualify for Chapter 13 because their debt limits are too high. Many smaller developers of subdivisions hit by the recession are resorting to Chapter 11 to save their businesses but are unable to submit viable reorganization plans because they are not able to find bridge financing to see them through until new home sales get back to normal. They usually buy raw land with a small down payment, subdivide and develop the property into several tract or customhouses, but rely heavily on bank financing and quick sales of the new houses. With banks currently refusing to lend even though they have a lot of money to lend, and with no buyers in sight, these Chapter 11 cases eventually become Chapter 7 liquidation cases where the trust deed holders foreclose on the properties and auction them off to the highest bidder at fire sale prices. If you have cash, it's certainly a great time to buy

houses and land in foreclosure auctions. In Chapter 13, individuals are able to restructure their debts much in the same way that businesses are able to restructure debts in Chapter 11.

If you've had several foreclosures with outstanding second trust deeds, or if your residence is upside down and the mortgage payment is too big because of multiple trust deeds such as seconds or helocs, maybe you should consider a fresh start with a chapter 7 case instead if loan modification is not working your way. Or, if you just have too much credit card debt, Chapter 7 wipe out might be the way to go. A chapter 13 will allow you to annul and convert your second trust or home equity loan into unsecured debt.

If you need debt relief, contact my office. I will analyze your case personally.

Lawrence Bautista Yang specializes in bankruptcy, business, real estate and civil litigation and has successfully represented more than five thousand clients in California. Please call Angie, Barbara or Jess at (626) 284-1142 for an appointment at 1000 S. Fremont Ave., Bldg. A-1 Suite 1125 Unit 58, Alhambra, CA 91803. (Advertising Supplement)

Can Californians use the \$8,000...

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 eligible first-time home buyer will qualify for the credit, provided that the home will be used as a principal residence and the buyer has not owned a home in the previous three years. This includes single-family detached homes, attached homes like townhouses, and condominiums.

Are there income limits to determine who is eligible to take the tax credit?
 Yes. Home buyers who file their taxes as single or head-of-household taxpayers can claim the credit if their modified adjusted gross income (MAGI) is less than \$75,000. For married taxpayers filing a joint tax return, the MAGI limit is \$150,000. The limit is based on the buyer's modified adjusted gross income for the year that the house is purchased, except for certain purchases in 2009.

What is "modified adjusted gross income"?
 Modified adjusted gross income or MAGI is defined by the IRS. To find it, a taxpayer must first determine "adjusted gross income" or AGI. AGI is total income for a year minus certain deductions (known as "adjustments" or "above-the-line deductions"), but before itemized deductions from Schedule A or personal exemptions are subtracted. On Forms 1040 and 1040A, AGI is the last number on page 1 and first number on page 2 of the form. For Form 1040-EZ, AGI appears on line 4 (as of 2007). Note that AGI includes all forms of income including wages, salaries, interest income, dividends and capital gains. To determine modified adjusted gross income (MAGI), add to AGI certain amounts such as foreign income, foreign-housing deductions, student-loan deductions, IRA-contribution deductions and deductions for higher-education costs.

If my modified adjusted gross income (MAGI) is above the limit, do I qualify for any tax credit?
 Possibly. It depends on your income. Partial credits of less than \$8,000.00 are available for some taxpayers whose MAGI exceeds the phase-out limits. The credit becomes totally unavailable for individual taxpayers with a modified adjusted gross income of more than \$95,000 and for married taxpayers fil-

ing joint returns with an AGI of more than \$170,000.

Does the credit amount differ based on tax filing status?
 No. The credit is in general equal to \$8,000.00 for a qualified home purchase, whether the home buyer files taxes as a single or married taxpayer. However, if a household files their taxes as "married filing separately" (in effect, filing two returns), then the credit of \$8,000.00 is claimed as a \$3,750 credit on each of the two returns.

Are there any circumstances for which buyers whose incomes are at or below the \$75,000 limit for singles or the \$150,000 limit for married taxpayers might not be able to claim the full \$8,000 tax credit?
 In general, the tax credit is equal to 10% of the qualified home purchase price, but the credit amount is capped or limited at \$8,000. For most first-time home buyers, this means the credit will equal \$7,500. For home buyers purchasing a home priced less than \$75,000, the credit will equal 10% of the purchase price.

I heard that the tax credit is refundable. What does that mean?
 The fact that the credit is refundable means that the home buyer credit can be claimed even if the taxpayer has little or no federal income tax liability to offset. Typically this involves the government sending the taxpayer a check for a portion or even all of the amount of the refundable tax credit. For example, if a qualified home buyer expected, notwithstanding the tax credit, federal income tax liability of \$5,000 and had tax withholding of \$4,000 for the year, then without the tax credit the taxpayer would owe the IRS \$1,000 on April 15th. Suppose now that taxpayer qualified for the \$8,000 home buyer tax credit. As a result, the taxpayer would receive a check for \$6,500 (\$8,000 minus the \$1,000 owed).

What is the difference between a tax credit and a tax deduction?
 A tax credit is a dollar-for-dollar reduction in what the taxpayer owes. That means that a taxpayer who owes \$7,500 in income taxes and who receives a \$8,000 tax credit would owe nothing to the IRS. A tax deduction is subtracted from the amount of income that is taxed.

Using the same example, assume the taxpayer is in the 15 percent tax bracket and owes \$7,500 in income taxes. If the taxpayer receives a \$8,000 deduction, the taxpayer's tax liability would be reduced by \$1,125 (15 percent of \$8,000), or lowered from \$8,000 to \$6,375.

I am not a US citizen. Can I claim the tax credit?
 Maybe. Anyone who is not a nonresident alien (as defined by the IRS), who has not owned a principal residence in the previous three years and who meets the income limits test may claim the tax credit for a qualified home purchase. The IRS provides a definition of "nonresident alien" in IRS Publication 519.

If I'm qualified for the tax credit and buy a home in 2009, can I apply the tax credit against my 2008 tax return?
 Yes. The law allows taxpayers to choose ("elect") to treat qualified home purchases in 2009 as if the purchase occurred on December 31, 2008. This means that the 2008 income limit (MAGI) applies and the election accelerates when the credit can be claimed (tax filing for 2008 returns instead of for 2009 returns). A benefit of this election is that a home buyer in 2009 will know their 2008 MAGI with certainty, thereby helping the buyer know whether the income limit will reduce their credit amount.

For a home purchase in 2009, can I choose whether to treat the purchase as occurring in 2008 or 2009, depending on in which year my credit amount is the largest?
 Yes. If the applicable income phase-out would reduce your home buyer tax credit amount in 2009 and a larger credit would be available using the 2008 MAGI amounts, then you can choose the year that yields the largest credit amount.

REMEMBER: State of California has a limited \$10,000.00 Tax Credit that you could apply on top of this Government Tax credit, but it is limited to funds. And the property has to be brand new, meaning never been lived in before.

For my honest opinion, call me direct be prepared to listen to my truthful and very direct advice. Call Ken Go at 1st Innovative Finance (888) 822- 5363 or write to: kennethgo@verizon.net. Please be understanding to yourself, mistake can be made to better yourself in the future. (Advertising Supplement)

RE-UNION

Filipino-American Associations in America

Searching for a kababata from your hometown, a college buddy or a Pinoy colleague? Your search is finally over. The Asian Journal brings you Re: Union, Filipino American Associations in America -- your link to a network of kababayan associations here in the United States. As your Filipino-American community newspaper, the Asian Journal recognizes your need to nourish and maintain ties with the people and the culture you were born with. This is our way of connecting our kababayans to the past, of creating new opportunities for the present and of inspiring you to pay it forward by becoming active members of your association and the FilAm community at large in the future.

Philippine Nurses Association of Southern California (PNASC)

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Vision
 PHILIPPINE Nurses Association of Southern California (PNASC, Inc) is the Filipino American professional nursing organization of choice in Southern California.

Mission Statement
 As the official professional organization of Filipino American nurses in Southern California, PNASC will uphold the positive image and welfare of its constituent members, promote professional excellence and contribute to significant outcomes to healthcare and society.

Goals
 Promote activities which will unify the Filipino American nurses in Southern California. Collaborate with professional organizations and agencies in developing and implementing programs relevant to nursing practice, education and research. Participate actively in community activities which directly and indirectly impact nursing and healthcare.

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HELPING FILIPINO EMPLOYEES OBTAIN FAIR WAGES UNDER THE LAW

As an employee, you may be entitled to additional pay if:

- You work more than 8 hours a day, even though you are a "salaried" employee.
- You work before or after your shift without extra pay.
- Your job title is "Manager," "Administrator," or "Supervisor" but you do not make managerial or executive decisions and are not paid overtime.
- You are classified as a professional (for example, accountant or chemist) but do not have a California license and are not paid overtime.
- You are not provided a 30-minute uninterrupted meal break or a 10-minute rest break.
- You are classified as an independent contractor without overtime pay or benefits even though the employer controls your work.
- You are a nurse or healthcare employee and paid different hourly rates for the same job, depending on the hours of your shift.

With more than 22 years of litigation experience, we have a track record of fighting and winning for employees and their families. For a confidential, no-cost inquiry, please call:

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