

Duty to disclose community property in divorce

BARRISTER'S CORNER



ATTY. KENNETH URSUA REYES

THERE is a natural tendency among divorcing parties to hide their assets from their spouse. This is a common problem that I have observed from practicing law for many years. A common question I hear from clients is "my spouse doesn't know I have an account in this bank, do I have to let him/her know of this account?"

Parties to a divorce proceeding have a duty to

disclose financial information to each other. This duty arose based on California's policy (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties as provided under California law. To promote the above public policy, the family code requires a full and accurate disclosure of all assets and liabilities in which the parties have or may have an interest be made in a divorce or a legal

separation, regardless of the alleged characterization of the

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property as either community or separate. Parties are also required to disclose all income and expenses of the parties.

The parties also have a continuing duty to update and augment that disclosure to the extent that there has been a material change to their financial position. The purpose of the duty to augment and update

the disclosures is so that at the time the parties enter into a settlement agreement, stipulated divorce judgment, or trial, each party will do so with full and complete knowledge of all relevant underlying facts of the case.

The disclosures are made by the parties by serving each other with a preliminary declaration of disclosure and a final declaration of disclosure. The preliminary

declaration of disclosure should be served within 60 days of serving the divorce, separation, or nullity petition. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment in addition to other remedies available under the law. The preliminary declaration of disclosure is not filed with

the court but only exchanged by each party. The preliminary declaration of disclosure shall set forth 1) the identity of all assets and liabilities which the declarant may have an interest regardless of the characterization of community, quasi-community, or separate property; 2) The declarant's percentage in the asset or liability; 3) the declarant's characterization of the asset or liability. In addition, the declarant shall also provide the other party with a completed income and expense declaration. The declarations may be amended without permission from the court.

The parties shall serve each other with a final declaration of disclosure at the time the parties enter into a settlement agreement, stipulated divorce judgment, or if the case goes to trial, at least 45 days prior to the first assigned trial date. The final declaration of disclosure shall include (1) All material facts and information regarding the characterization of all assets and liabilities (2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is

contended the community has an interest. (3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability. (4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration. The parties may agree to mutually waive the final declaration of disclosure requirement but not the preliminary declaration of disclosure. A party who fails to comply with the above requirements may face a motion to compel from the complying party and may be ordered to pay sanctions by the Court. ***

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)

MINDING YOUR FINANCES



ATTY. RAYMOND BULAON

NO one ever wants to get into debt but at some point in your life, you may face a debt crisis. The reason is irrelevant. The problem may be self-caused or can be a result of circumstances beyond your control. Whatever the case may be, you need help and you need it fast. Oftentimes, options can be confusing so a lot of people end up doing nothing. This makes things even worse. Don't let this happen to you.

First of all, let me say this: Having debts does not make you a bad person. Things happen. Most people do their best with the resources that they have but sometimes, it's

Are you feeling trapped by too much debt?

just not enough. Generally, I find that most people find it very uncomfortable to talk about the subject of money and debt so they tend to deal with their problems on their own.

How can you tell if you are facing a serious debt crisis? My definition of a "serious debt crisis" is where you can't afford to make even the minimum payments on all your debts every month. When this happens, I see a lot of people resort to borrowing even more. But as I always tell my clients, there is no way you can borrow your way out of debt. For example, if you are using credit cards every month to pay other credit cards, this is inviting financial disaster, plain and simple. It is just a matter

of time before your credit cards are maxed out and you will have a bigger mess in your hands. It has never worked and never will, trust me.

If your debts are huge but you are at least able to meet your monthly payment obligations, you may not be in a serious debt crisis but you may be in what's called a "debt trap" if most or all your monthly payments are just barely covering interest charges. It's called a trap because that's exactly what it is. It means that you will be stuck in debt for the rest of your life with no way out. It's not a place that you want to be but sadly, it's a reality for a lot of people who are living way beyond their means.

It doesn't take a rocket

scientist to figure out that the first thing that you need to do

in debt that without filing for bankruptcy, they simply

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when you are in more debt than you can handle is that you should stop borrowing. Maybe you need to prioritize your debts and determine which ones should be paid first but do not borrow any more. Cut up your credit cards if you cannot control yourself. If you need to take money out of your credit cards, it's not your money and you are not free to spend it any way you want especially if you have no way of paying it back. The truth can't be any simpler.

As an attorney, I see a lot of people who are so buried

have no other way out. Of course, bankruptcy is a serious decision and should not be taken lightly. Some people are too hard on themselves and instead of focusing on finding a solution, they continue to dwell on past mistakes. But I always tell these clients that their past does not equal their future and if they can learn from their mistakes, the future still holds a lot of opportunities to rebuild their finances and their credit. Bankruptcy is nothing more than a fresh start for most people who need a second chance.

If you are facing a serious debt crisis, do not panic. Like most problems in life, what you are going through is most likely temporary and will soon pass. No financial problem is beyond help but it is important for you to find the right solution for your situation. Get informed on all your options and keep an open mind.

If you need an attorney on your side to help, we would welcome the opportunity to meet with you. To schedule a free office consultation, call us Toll-Free at 1-866-477-7772. We have offices in Glendale, Cerritos and West Covina.

(None of the information herein is intended to give legal advice for any specific situation. ***

Atty. Ray Bulaon has successfully helped more than 4,000 clients in finding solutions to their debt problems. To schedule a free attorney consultation, please call Ray Bulaon Law Offices at TOLL FREE 1-866-477-7772.

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MONETTE ADEVA MAGLAYA

MANY immigrants do not realize until it is too late that they have become addicted to the use of credit cards to the point that after just a few years, they seek credit card counselling and in a worst case scenario, bankruptcy relief protection. They have unwittingly entered credit card hell with collection agencies hounding them and recording all sorts of negative entries into their credit history.

How do you know if you are way in over your head with too much debt? There are early warning signs. If you find yourself like an acrobat trying to juggle too many bills, paying one company this month and another next month, borrowing from one to pay the other one and when lenders send you overdue notices, you are wading into the waters of financial trouble.

Making only the minimum payments never really paying down the principal owed is one sure sign. When you have nightmares and begin dreading going to the mailbox and opening your monthly credit card statements, it is time for a reality check.

Face this problem squarely. Ignoring it will not make it go away. Try discussing this with your lenders to work out a debt repayment schedule. They would rather not seize your property or send the hounds of a collection agency to you. This is their last resort if you try to bury your head in the sand and ignore this problem.

Dealing with credit card hell

Lack of money is the root of all evil.
—George Bernard Shaw

Even if you have defaulted on your credit, you still have certain rights as mandated by the federal Fair Debt Collection Practices Act. There are a number of provisions about this act that affords you certain types of protection that you should know. Of some relevance is for you to know that debt collectors cannot use abusive, deceptive or unfair techniques

Collection agencies cannot threaten you with violence, curse you or verbally assault you with arrest or imprisonment unless they are able to obtain the legal right to do so.

to collect the money that you owe. Unlike in some other countries, there are parameters that a collection agency cannot and should not cross. It will cost them if they do. There are resources in the internet and books in the library to help you through this sticky situation.

Collection agencies cannot threaten you with violence, curse you or verbally assault you with arrest or imprisonment unless they are able to obtain the legal right to do so. They cannot force you to accept collect telephone calls or shame you by advertising your debt. You should know that bill collectors are prohibited from calling you before 8:00 AM or after 9:00 PM, and they may not call you at work if they know that your employer disapproves.

If the collectors violate any of the rules of the act, you can sue for damages. But do not look at this as a way to make

money. Know that if the court finds you have acted in bad faith with the collection agency, you may have to pay the collector's legal bills. Suing for damages can backfire on you and cause you more trouble.

The rights protect you from abuse but your debts have not been forgiven. Creditors can and will seize whatever assets you have, attach or garnish your wages or foreclose on your home or property if you do not pay what is due them.

Recent legislation that govern bankruptcy protection laws seem to go in favor of credit card companies rather than the consumer. Gone are the times when consumers who have abused their credit lines can seek protection from their creditors by simply hiding their assets and filing for bankruptcy. If you seek to understand the substantial changes that are shaping the country's bankruptcy protection laws, go to government internet websites that cover consumer debt and bankruptcy laws.

Nota Bene: My views are my own and do not necessarily reflect the views of AJPL. I encourage you to read my book, "The Complete Success Guide for the Immigrant Life: How to Survive, How to Thrive, How to be Fully Alive." If you have very little time to read, browse through "The Immigrant's Little Quote Book for Success." Your local public library might have these books available or you can request your librarian to purchase copies. These are also available at Amazon.com or immigrantssuccess.com Past articles are on the internet at www.asianjournal.com To ask questions, send feedback and requests, e-mail: monetteamaglaya@sbcglobal.net or monette.maglaya@asianjournalinc.com

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