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A Division of Community Debt in Divorce Proceedings Provides Little Relief from Creditors

The general rule in the state of the New Mexico is that all debt incurred during a marriage becomes community debt, which means that both spouses are equally responsible for the debt. This is true even when one spouse creates a debt without the other spouse's knowledge, although there are some narrow exceptions to that rule.

Thus, as part of a divorce proceeding, both parties are required to identify all debts incurred during the marriage. Since these debts are most often community debt, the parties then need to decide how the debt will be divided between them. Essentially, each spouse is responsible for 50% of the debt unless the debt is divided pro rata based upon income, or some other way as agreed upon by the parties. The spouses (or their attorneys) must enter into a marital settlement agreement that identifies which spouse is going to take responsibility for which debt after the divorce is completed.

The parties' agreement with respect to the division of debt is then adopted by the Court in an order dissolving the marriage and adopting the **Marital Settlement Agreement** as an order of the court. The Second Judicial District Court in Albuquerque typically calls this order a Final Decree, but the name given by Courts around the state may vary. Whatever the title, the Court's final order is binding on the spouses and imposes a duty on each spouse to pay the debts that each agreed to pay.

However, problems often arise after a divorce is completed when one spouse quits paying a community debt that he or she agreed to pay as part of the divorce settlement. Even though the Final Decree is binding on divorcing parties, it is NOT binding on creditors seeking to collect a debt. This means that even after a divorce, a creditor may file an action against both spouses in an attempt to collect what was once a community debt. The collection is based upon joint and several liability for the community debt.

As a result, it is not infrequent that creditors go after one spouse for the debt assigned to the other in the Marital Settlement Agreement. Creditors are often extremely aggressive and unforgiving in their collection efforts. The law is unfortunately on their side. Any debt incurred during the marriage is arguably a community debt with respect to the parties. There are some exceptions such as gambling debts.

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If you are considering divorce and have community debt, you should consider consulting an attorney to ensure that your marital settlement agreement clearly assigns that debt. And if you are being contacted by creditors for a debt assigned to your former spouse, you should contact an attorney immediately to discuss the enforcement of the order against your former spouse. Though you have few defenses against the creditor, you do have rights against your former spouse including orders of contempt, attorney fees and costs.

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