

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP

**Answers to pressing questions on Family Law.
Protect yourself from liability.**

Question: Could you please advise me what I should do to protect myself from being liable in the future for the debts incurred by my spouse on his credit cards (they are held in his name only). We jointly own a home and I am wondering if the companies would take the house over if the payments could not be made. I am planning a separation.

Answer: If your name is not on your spouse's credit cards you are not normally legally liable for any debts incurred. There are still some credit card companies or collection agencies that use old common law principles that if a wife on her credit card charges "necessity of life" such as for food, clothing or shelter on a credit card solely in her name, then her husband has a responsibility, under "common law" to pay those debts- not as a matter of contract law, but as a law arising from their marriage. Recently, certain creative agents from creditors have tried to extend this old common law principle to include anything and everything, including family vacations, haircuts or CD's. However, the courts are becoming less patient with this old common law principle. Although you may not have a direct obligation to the debt, you could still end up paying for half if the credit card company sues your husband successfully and hubby still fails to pay. The creditor could then file the judgment against your jointly own home. When you attempt to refinance or sell the home, that judgment and bingo, you have now paid half of your husband's debt from your share of the sale proceeds. If you separate you could sue your husband for your loss, but that costs money. To prevent any of this you could have the house transferred solely into your name. But you can only safely do so five years before he is sued. Otherwise, you and your husband could be sued for a "fraudulent conveyance." Then the transfer of the home into your name could be reversed by the court on the request by the creditor.

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