



Does an Equitable Distribution Order in Divorce relieve a party from liability on a joint indebtedness? No

What is an Equitable Distribution Order?

In Divorce litigation, one of the primary functions of the lawyers and the Court is to “equitably” divide the joint assets and debts of the parties. Usually, even after the entry of the Order, other documents need to be filed to effectuate the division or transfer of the assets and debts in question. A perfect example of this is with regards to the real estate owned by the parties, specifically the marital residence. Usually both the title to the real estate as well as the mortgage, second mortgage or lien is in both the parties’ names. Therefore, a deed must be prepared, signed and filed which removes one of the parties’ right, title and interest in the property. However, that is not the case with the mortgage and most other debts. Those liens have to be refinanced and the other party removed from the indebtedness with the knowledge and approval of the creditor. The point is that the Equitable Distribution Order delineates these rights and obligations and sets the perimeters for each of the parties to accomplish the terms of the Order of Court.

Why doesn’t the Order of Court itself relieve a party from the indebtedness on its own, after all it is an Order of Court?

Without refinancing the obligation remains the responsibility of both parties. Usually these Orders contain “hold harmless” clauses when it relates to joint debts. The party who was “held harmless” on the note would show the Order of Court to the creditor arguing the terms of that Order. Since it is an Order Court, the assumption is that the creditor has to abide by it as well. Unfortunately, that is not the case and creditor can continue to try to collect on the note from the other party even though that party may have already been divested of their interest in the asset by deed transfer or other transfer documents.

The creditor in the above scenario can still pursue collection even through legal action to the party who has lost their interest in the asset. Therefore, it is essential to remember when any transfer is made the corresponding lien must be resolved or refinanced into the opposing parties name alone.

What are a party’s rights and remedies before the Equitable Distribution Order is entered?

Information and knowledge about the debt is essential to protect a party from a joint indebtedness so that the terms of the Order can be as specific as possible as it relates to the debt. Specific account numbers, balances on the loan, contact information and in fact a named representative from the creditor can alleviate some of the confusion which may occur later. Again to use the real estate example, the Order can state that the party



signs the deed at the closing of the refinancing and most mortgage companies will approve the refinance under those conditions.

What are party's rights and remedies after an Equitable Distribution Order has been entered ?

In cases where the party receiving the assets does nothing to refinance the indebtedness, the opposing party can seek enforcement actions through the Court. But this is time consuming and costly. Such enforcement Orders compel the party to act to protect the other from collection actions but the creditor still can seek its own remedies including filing judgments against both parties. Furthermore, the aggrieved party can seek to transfer the collection action back to the Family Division so that the Judge in the Divorce action can decide how that judgment would be paid and by whom. However, these are risky moves and usually have little effect on collections.

Mortgage companies, credit card companies and other lien holders can begin processes to enforce their judgment against one or both of the parties despite the Equitable Distribution Order. That can mean anything from Sheriff Sales to Execution actions whereby the Debtor is literally removing furniture from one or both of the parties' homes. Furthermore, they can take such actions as freezing bank accounts or other liquid assets to secure payment on the debt.

The final option which should be used in extreme cases is for the aggrieved party to file for bankruptcy to have the joint indebtedness discharged. In this way the debt would essentially "go away" and be the sole responsibility of the other party who presumably still holds the asset. This option should not be considered lightly and only when the indebtedness is so large that it would be unrealistic for the party to attempt to pay it.

Conclusion

In conclusion, divorce is about financial stability, not just about ending a marriage. Knowledge and information are key to successful outcomes and competent legal counsel can help you arrive to your financial goals and protect your interests. Protecting your financial interests into the future start during the divorce proceedings and not at the conclusion of them. Once the Order of Court is written and finalized, its too late.

Respectfully submitted,

Elizabeth A. Beroes, Esquire
Attorney at Law