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## DEBORAH N. DEWALT NEWSLETTER

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### **“CHARGE IT” – BUT WHO PAYS THE BILL AFTER THE DIVORCE?**

In a divorce debts along with assets are divided up. Many people wonder about how to handle debts, and especially future credit card debts, at the beginning of a divorce. Frequently, I hear, “I’m worried my spouse will run up our credit cards because he/she is angry about me wanting a divorce.” The only correct answer is: It depends.

Minn. Stat. §519.05(a) provides that when a husband and wife are living together, they are jointly and severally liable for all necessary medical expenses for each other and for necessary household goods and supplies for the family.

Ordinarily, one spouse is not liable to a creditor for the debts of the other spouse Minn. Stat. §519.05(a). What this means is that if your spouse has a credit card in his/her individual name and uses it for luxury items (such as excessive gambling), the creditor cannot sue you in an effort to collect the debt. If that credit card was used for groceries instead, the rule changes.

“Jointly and severally liable” means that the creditor can sue both of you or either one of you individually and collect all of the debt. Creditors will focus their collection efforts on the spouse(s) who will most readily generate full payment. For example, an employed spouse is a better collection target than an unemployed one.

In a divorce, the Court can apportion either luxury or necessary debt between the parties, Minn. Stat. §519.05(a). What the Court cannot do is change the original contract between the creditor and the person(s) who promised to pay the money back. So if you signed up for a credit card and your spouse charged on it, the Court in a divorce can apportion that debt to your spouse, but cannot take away your responsibility to the creditor. The creditor retains the right to sue you, and with the divorce decision, you would have the right to sue your ex-spouse (or bring a motion in family court seeking payment). The creditor can still garnish your bank accounts and paychecks. This is why you want to

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keep a close watch on the debts assigned to you in a divorce – you want the most control over the ones in your individual name or in joint name.

Before doing anything with credit cards at the beginning of a divorce, you need to know (1) who is the responsible party on this card and (2) were the charges (or will the charges be) for necessities as defined by the statute.

If you expect that you will need credit for necessities, you may want a credit card to remain open for your use. It is best to assume that you will be 100% responsible for charges made after separation or commencement of a divorce. Your attorney can advise you if your situation warrants a different result. Keep good records of what the credit was used to purchase. If you would not need credit, or believe the other side will run up unnecessary charges, you may want to close credit cards to limit additional liability – especially on joint or your individual account for which your spouse a named user. Minn. Stat. §519.05(a) permits either spouse to close a credit card accounts (or unsecured line of credit) on which both spouses are contractually liable by giving written notice to the creditor. Often credit card companies won't close accounts with outstanding balances; however, they will not permit any future charges.

A comprehensive list of credit cards in your name is usually included in a standard credit report on you, some of which can be accessed by the Internet. See for example, <http://www.creditreport.com>, <http://www.creditreporting.com>, [www.equifax.com](http://www.equifax.com) etc.



### WHERE TO FIND FORMS FOR A “COLA”



Fall often has all of us taking a hard look at our budgets. If you receive child support, you should be asking for biennial cost of living adjustments (COLAs) which automatically increase child support using increases in the U.S. Consumer Price Index (CPI). The forms and instructions for getting a COLA in place can be accessed at:

[www.commissions.leg.state.mn.us/lcesw/cola/forms/htm](http://www.commissions.leg.state.mn.us/lcesw/cola/forms/htm) .

If you pay child support and your wages have not been keeping up with CPI, you must bring a motion to oppose COLA notice that has been served on you within a certain period of time, or the COLA becomes effective. Forms for opposing a COLA can be found at:

<http://www.courts.state.mn.us/districts/fourth/General/onlineforms.htm> .

Your county support and collections agency has both sets of forms available in hard copy. COLAs also apply to spousal maintenance.

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## RACING HORSE IS INSPIRATION TO PERSEVERE



Seabiscuit is a story about a horse that was too small with a jockey who was too big – who won against the odds. The film emphasizes the times – the Great Depression – and the inspiration and hope that Seabiscuit raised as his record grew to include more and more wins. The book Seabiscuit by Laura Hillenbrand (Random House Publishing Group 2003) is available at most local bookstores. The paperback version costs \$7.99.

A phrase repeated several times in the film is a good one for those of you trying to adjust to new family situations, “You don’t throw away a life just because it got banged up a little,” says the character Tom Smith, who found Seabiscuit and recognized the horse’s talent despite its tough history. Ditto with his locating the jockey. Smith coupled this supportive style with high expectations and a daily routine to develop the skills and endurance of both horse and jockey. Smith epitomizes the ideal of maintaining his good character while finding satisfaction (call it happiness, success) wherever he was.

# REMINDER

As of July 1<sup>st</sup>, 2003, the filing fee for all court cases went up from \$145 to \$245. The fee needs to be paid at the time either party files papers with the Court. There is now a new fee of \$55 payable for bringing or responding to a motion, except that the fee for motion relating to child support remains \$25. These fees bring home the point that cooperative skills save money – now court fees as well as attorney fees.

### Office Hours

**Monday – Friday: 9:00 a.m. – 4:30 p.m.**  
**Effective September 1, 2003 – May 28, 2004**

Please feel free to let us know if you want to be added to our mailing list at: (952)-895-5543.

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