



Divorce Your Credit

By Mark L. Aschermann•

So, you've divorced that lousy no good person to whom you were once married. You are rid of them once and for all. Right? WRONG. You may still be obligated on creditor accounts with that despicable Ex-Spouse. Credit cards, mortgages, car loans, and installment accounts may still haunt you EVEN IF THE DIVORCE DECREE says the Ex-Spouse is supposed to pay. How do you protect yourself if the mortgage is not paid? What if Ex-Spouse opens a new account after your divorce with YOUR credit information? What if Ex-Spouse is supposed to pay the car payment but gives the car back for repossession?

I. DEBTS IN MARRIAGE

Property possessed by either spouse during the marriage or at dissolution is presumed to be community property.¹ This presumption may be rebutted by proof that the lender agreed to look only to the separate property of the borrowing spouse for repayment.² Property purchased on credit during a marriage is community property unless there exists an express agreement on the part of the lender to look solely to the separate estate of the purchasing spouse for satisfaction of the indebtedness.³

A. Some cases on Spousal Liability.

1. In an action to recover from the wife for debts of her husband, the wife was entitled to an instruction regarding the circumstances under which she could be held liable for the debts of her spouse, pursuant to former Tex. Fam. Code Ann. § 4.031(a) and (c); the spouse is only liable when the purchase was for necessities or if the spouse was acting as agent.⁴

2. Judgment against a wife for the debts of her deceased husband's business was reversed as the evidence was insufficient to support the jury's findings of apparent authority and ratification; the business was the husband's special community property.⁵
3. Because a marriage does not make one spouse the agent of the other, under former Tex. Fam. Code §4.031(a), suit to collect a debt signed by the husband did not make the wife a party.⁶

This paper is not written to suggest that there is some magic way to avoid liability for enforceable debts of the marriage. It is written to suggest ways to mitigate the long-term effect of the performance (or non-performance) of the Ex-Spouse on your client's credit reporting and on your client's balance sheet.

II. THE CREDIT REPORTING SYSTEM

The credit reporting system is dominated by the big 3 Credit Reporting Agencies and their local bureaus. The Fair Credit Reporting Act refers to Transunion, Experian and Equifax-CSC as Credit Reporting Agencies or CRA's. The CRAs utilize information provided by furnishers. Furnishers are creditors and others with information about the credit performance of consumers that supply that information to the CRAs.

While the technological advances of the last decade may not have dramatically altered the average law office they have dramatically affected the ability of CRAs to store, transport, sort, share, and analyze credit data. This has led to new and aggressive uses for credit information beyond a basic local credit report.

A. The Credit Score.

The most aggressive use of this information is the credit score. The Fair Isaac Company creates computer programs that calculate credit scores, commonly referred to as FICO (Fair Isaac Company) scores. The range is usually 500 to 850 with a higher score indicating a lesser credit risk. The lesser credit risk should in turn receive better credit terms. Factors that affect credit scores include:

1. Amount of total credit,
2. Amount of credit used as a ratio of available credit,
3. Payment history,
4. Number and type of credit inquiries,
5. Income and employment,
6. Length of credit history, and
7. Amount of credit activity.

The importance of a credit score can be found in this table which was copied from the Fair Isaac website in 2004. It assumes a 360 month (30 year) mortgage for a principal amount of \$150,000.00:

FICO Score	Interest rate	Monthly payment
720-850	5.56%	\$857
700-719	5.69%	\$869
675-699	6.22%	\$921
620-674	7.37%	\$1,038
560-619	8.53%	\$1,157
500-559	9.29%	\$1,238

A more complete explanation can be found at www.myfico.com. Fair Isaac provides a basic scoring model to Equifax (FICO), Experian (Empirica) and TransUnion (Beacon). Theoretically, a credit score should be the same for all three reports.

However, users of credit reports can design and buy unique scoring models from Fair Isaac. For instance, a mortgage company may place greater emphasis on length of credit history, and credit to income ratios. An automobile finance company may place a greater weight on prior repossessions and current income levels. A credit score is a moving target which depends on the time of the report, the data in the report, and the scoring program.

The use of credit reports has accelerated in the last 3 years. Credit reports are now routinely used for:

- Housing applications for rental and purchase;
- Credit applications;
- Employment applications;
- Insurance applications and rating systems;
- Government security clearances; and
- Review by existing creditors.

The only certainty in this system seems to be that the importance of credit information about an individual will grow in importance.

III. YOU DIVORCED YOUR EX. NOW FINISH IT AND DIVORCE YOUR CREDIT.

This author is not a family law practitioner but offers these suggestions to your family law practice to monitor and maintain the credit health of your client.

A. Client Intake.

Have your client bring a copy of their credit report to an initial conference or early client meeting. If they do not have a copy, get one. Review the report and have your client verify the listed credit accounts. Be suspicious of any accounts recently opened. Don't overlook the inquiries section, for it may tell you that a new account has been opened in your client's name and without your client's consent. The activity may be the result of activity by the soon to be ex-spouse.

B. Discovery.

Ask for a copy of the Ex Spouse credit report or obtain an authorization to do so. DO NOT REQUEST A CREDIT REPORT ON EX-SPOUSE without permission or authorization. This may expose you to an Impermissible Access claim pursuant to **15 USC 1681b**. See section VII.D. below for more information on this.

C. Temporary Orders.

The Temporary Orders should restrict the Ex-Spouse from opening new credit, selling, transferring or encumbering existing assets, or increasing existing debt other than is necessary for the maintenance and support of the family.

D. Divorce Decree.

The decree should divide the debts AND enjoin the Ex-Spouse from applying for or obtaining new credit in the Ex-Spouse's name without written authorization.

IV. SUGGESTED ACTION AFTER THE DIVORCE

The remainder of this paper will discuss ways to deal with this and other all too common post divorce credit problems. Whether a creditor is secured (usually auto or home) or unsecured (credit cards, store accounts, utilities) and whether it is delinquent or current makes a difference in how to respond. The following will address secured and unsecured responses.

In brief summary, here are the steps that should be taken to Divorce your client's credit.

A. Close ALL joint accounts with low or zero balances.

This is probably the biggest area for future problems. That forgotten department store credit card, furniture store account, mail order account, or emergency credit card may be inactive but open. CLOSE IT. If necessary, have the client open a new account in the client's name only. This should be done as soon as possible but no later than 90 days after the divorce.

B. Obtain a credit report 90 days after the divorce.

Review the report and confirm all accounts and activity. Take immediate action if unknown accounts have appeared or questionable activity has occurred.

C. Obtain duplicate notices for joint credit.

Contact the creditor and request DUPLICATE notices for open joint accounts with balances. Even if Ex-Spouse is ordered to pay the account by the divorce decree, Client may still have an obligation to the creditor. Knowing about the problem early is probably the easiest way to correct it. If the creditor refuses to send additional notices to Client, Client may have created the affirmative defense of equitable estoppel or waiver in a later collection lawsuit by the creditor.

D. Make accord and satisfaction offers.

Offer a sum of money in exchange for a release on the debt. See section V.(I) below.

E. Communicate with the CRAs.

Let them know about the divorce and any name changes. Aggressively dispute any incorrect items on the credit report. See section VII.(A) below.

F. Create a plan for dealing with the debt.

Client should set priorities for dealing with all post-divorce debt and follow a disciplined approach to dealing with it. Too often Clients in financial trouble become disoriented when they receive collection calls or dunning letters from creditors. Sticking to a post divorce debt plan can help the **client stay on track**.

Of course, the effort for the client depends on their credit history, the number and duration of joint credit accounts, age, income potential and a host of other variables. But at least some effort should be placed on this area of growing importance.

V. UNSECURED CREDIT

Unsecured credit in the name of both spouses is a quandary. This most often is in the form of a credit card or a store charge card although it could be a small loan with a financial institution. Revolving credit is perhaps the most difficult to analyze and rectify.

A. The VISA card example.

The October 18, 2004 Houston Chronicle Business Section column State Your Case asked this question:

Q: My husband and I had several joint credit cards when we got divorced last year but I forgot to cancel them. I just learned he ran up quite a bill on one of them and is not making the payments. Now the credit card company has contacted me and tells me I must pay the bills. Do I have any recourse other than to pay and try to seek reimbursement from him?

This is an all too common situation.

1. The Account Agreement.

Almost all credit accounts begin with an Account Agreement. In legal terms this is a contract. Only the parties to the contract are bound by the terms of the agreement. The best evidence of this contract is the contract itself. It is fairly easy to determine the status of the account if a copy of the agreement is available. However, most consumers rarely keep a copy of the application and creditors usually do not provide them on a casual request. In fact, many creditors will not produce a copy of a revolving account agreement for anything short of a lawsuit. How then, do you determine whether a particular spouse is responsible for a debt?

2. Authorized User and Joint Account.

Most credit reports will have a category of the credit report for "Responsibility", "Type", or "Status." This category reflects whether the account of a married person is the contractual responsibility of both Husband and Wife (Joint) or of one person ("Individual"). If a spouse uses the account but is NOT contractually bound by the account agreement the report should indicate an "Authorized User" or "AU" status. The Authorized User status is a relic of the 1960's stay at home housewife. In that age, the Husband was the responsible party on all family debt and the Wife was non-existent to the credit industry. As women asserted their independence in the 1970's they lobbied to change that and CRA's added the Authorized User status to credit reports. However, the credit report may not always report this category accurately.

3. Negotiating with the Creditor.

The creditor will probably not agree to remove your client's name from the account if its records show that it is an Individual or Joint account. The creditor will probably also require that the account be paid in full before it is closed. Although it is difficult, both of these points are negotiable.

4. Authorized User Account.

If your client is an Authorized User on an account, he or she should not agree to assume that debt as part of the Divorce. The Authorized User will run into difficulty in changing the status of the account and/or restricting the access to and charge privileges of the Ex-Spouse. Alternatively, your client may have some success in removing the item from their credit report if they are an authorized user. Caution: Once an account becomes delinquent, it is not uncommon for a furnisher to change the reporting status from Authorized User to a Joint Account. This is a reporting trick often used by debt collectors and debt buyers and may be a violation of the FCRA. However, use some common sense in this approach. If your client is an Authorized User but incurred a significant portion of the debt, you may lose your

equitable position, if not your legal position.

5. Individual and Joint Account.

If your client is independently liable for an account they need to carefully consider transferring responsibility of the account to the Ex-spouse in the Divorce Decree. This can create a very uncomfortable situation where the Ex-Spouse runs up the bill and fails to pay. Your client will want to know what they can do. Unfortunately, the divorce does not affect the contractual status of the account. Your client is still liable for the debt. Accordingly, you should have your client keep the debt in the Divorce Decree and IMMEDIATELY revoke the authorized user status of the Ex-Spouse. If acceptance of the debt is an unfair division of property, then find some other way to balance property division. Joint Accounts will need to become individual accounts after the divorce. But how?

6. Common law Accord and Satisfaction.

The defense of accord and satisfaction rests on the formation of a new contract, express or implied, in which the parties agreed to discharge a preexisting obligation in a manner otherwise than was originally agreed.⁷ The accord is the agreement between the parties and the satisfaction is the execution or performance of that agreement. An accord and satisfaction constitutes a bar to any action on the original obligation.⁸ This type of accord and satisfaction is applicable for creditors that do not fit the definition for the statutory Accord and Satisfaction.

7. Statutory Accord and Satisfaction.

For most credit card lenders, auto finance companies, mortgage companies and other large lenders, the applicable law is Tex. Bus. & Com. Code §3.311 (hereafter referred to as "3.311") which states:

§3.311. Accord and Satisfaction by Use of Instrument

(a) Subsections (b)-(d) apply if a person against whom a claim is asserted proves that:

- (1) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim;
- (2) the amount of the claim was unliquidated or subject to a bona fide dispute; and
- (3) the claimant obtained payment of the instrument.

(b) Unless Subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to Subsection (d), a claim is not discharged under Subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that:

- (A) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be

- sent to a designated person, office, or place; and
- (B) the instrument or accompanying communication was not received by that designated person, office, or place.
- (2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subdivision does not apply if the claimant is an organization that sent a statement complying with Subdivision (1)(A).
- (d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.⁹

The most difficult part of this statute is to obtain the disputed payment mailing address for the account. It will almost always be different than the address on the monthly statement payment coupon. This may require some research on the Internet, phone calls to the creditor or a review of the account statements and agreements to find such an address. Even though this may be a frustrating search, keep looking and DO NOT send the correspondence to the payment coupon address.

a. Good Faith and Payment: §§3.311(a)(1) & (3).

The Client should write a letter and send a qualified good faith payment. The letter should explain why the amount of the payment is in good faith and tender the payment in the FULL satisfaction of your client's obligation for the debt. Do not offer a token amount in the hope that it will be cashed. Emphasize the facts about the account and your client's benefit from the charges or lack thereof. Do not complain about the Ex-Spouse's character or the non-payment or late payment of child support or other non-related obligations. If the creditor cashes the check and "obtained payment on the instrument" you have an accord and satisfaction.¹⁰

b. Bonafide Dispute: 3.311(a)(2).

A bonafide dispute must exist as to the account. Some suggested bonafide disputes: 1) the account balances were incurred exclusively by the Ex-Spouse, 2) the account was opened by the Ex-Spouse; 3) the charges on the account were not used for the necessary maintenance of the community estate; 4) client never consented to the account; and 5) the balance was incurred primarily by the Ex-Spouse during the pendency or immediately after the divorce. For the defense of accord and satisfaction to prevail, there must be a dispute about the amount owed and an unmistakable communication to the creditor that the tender of the reduced sum is upon the condition that acceptance will satisfy the underlying obligation.¹¹

c. Conspicuous Statement: 3.311(b).

The tender of the debt must be done in a conspicuous fashion pursuant to 3.311(b). In addition to a restrictive endorsement on the payment method, you should attach a letter to explain the dispute and a directive to return the check if it

is not accepted as payment in full of the disputed debt. If the creditor cashes the check in spite of these obvious warnings there may be an accord and satisfaction.

d. Affirmative Defense: Disputed Payment Location Notice: 3.311(c).

Section 3.311(c)(1)(A) states that a claimant is to send a "conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place."¹² Do not send the statement to a payment processing center.

8. Estoppel: Fair Credit Billing Act.

Another possible remedy is the Fair Credit Billing Act, 15 USC § 1666. (FCBA). The FCBA requires the merchant and/or credit card company to investigate disputes in a prompt manner and to notify the customer if the dispute is decided unfavorably to the customer.¹³ If your client suspects that the soon to be Ex-Spouse is using credit cards improvidently or with the intent of impacting the divorce settlement, the client may complain about the credit card. While this may not cause the credit charge to be reversed, it may strengthen your client's case at a later time that the charges did not properly belong to the client. The client can also use this if it has obtained duplicate statements and new charges are being made to the account from which client receives no benefit.

9. Letter to Creditor.

See Exhibit A for both short and long forms of letters to an unsecured creditor which include accord and satisfaction language.

VI. SECURED DEBT

Secured Debt must be approached differently than Unsecured Debt. Secured Debt is usually a joint obligation of the community estate and is most often for the homestead or a vehicle. There is less risk of default in such a debt because (hopefully) there is equity or necessity. After all, where will Ex-Spouse live or what will Ex-Spouse drive?

A. Titles, Debt and Possession.

These three are often separated in a post Divorce setting. For example, Client may live in the house (possession); Ex-Spouse may be required to pay the installments pursuant to the Divorce Decree (Debt); Client may own the home (Title); and Ex-Spouse may retain an interest to be paid when the home is sold.

B. Notice of default.

In order to cure a default or avoid a foreclosure or repossession, Client needs to know about it. In the example above how will your client learn about a missed payment if one occurs? The Ex-Spouse may, and probably will, have the payment notices sent to his address. Client should request duplicate notices be sent to Client. An alternative is to obtain access to account information through the Internet. The creditor may not cooperate so a provision may need to be written into the divorce decree to provide this information for the pendency of the joint debt.

C. Security interest.

In the example above a dangerous condition may be created for Ex-Spouse. Ex-Spouse may be obligated to pay installments pursuant to certain behavior by Client. If Client does not perform what can he do? Ex-Spouse may have to utilize some creditor like remedies to enforce his position with Client.

D. Letter to Creditor.

See Exhibit B as a form letter to a secured creditor.

VII. FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act 15 USC 1681, et.seq.

(FCRA) regulates the consumer credit reporting industry. One of the fundamentals of the FCRA is that the information in the files of the CRAs is assumed to be correct. This presumption of accuracy can be very exasperating because most consumers do not learn of a problem until they are in the middle of a credit application. In fact, they may have received notices of rate increases or cancellations on credit cards and other debts and never linked it to information on their credit report.

The FCRA is a technical law which is dominated by the big three CRAs and their business practices. While some of the principals of law may be fairly simple, the learning curve is steep because it requires a significant immersion into the business practices of the CRAs and furnishers. An understanding of the computer programs, the sharing of large amounts of electronic data, and the motivations of the consumer data industry are almost as important as the FCRA itself. Additionally, each CRA utilizes a single national law firm that handles almost all of their consumer complaint litigation.

The remaining section is not written as any treatise on the FCRA or any component of it. Nor is it suggested to be a comprehensive list of all remedies. The following section is a list of the most common types of FCRA complaints.

A. Disputed Accuracy.

The FCRA operates on the presumption that the information in the CRA files is accurate. That presumption may be rebutted by a consumer dispute.¹⁴ Upon a complaint, the CRA must investigate the complaint and cannot charge a fee to do so. Within 30 days the CRA shall either forward the complaint and any additional information to the furnisher. After a response from the furnisher the CRA must:

- confirm the information as reported,
- revise its report as necessary, or
- delete the information entirely.

If the CRA retains the information as submitted by the furnisher, it must note that the consumer disputes the account. A copy of a dispute letter to a CRA is attached to this paper as Exhibit C.

B. Mixed Credit Files.

Mixed File Cases involve the blending of the credit files of two persons. This frequently happens for similar sounding names and can be a real problem for the affected person. Imagine the chance of a mixed credit file if your name is John Jones or Juan Garza? Or if you are a Jr., Sr., or the Third? The CRA's often resist complaints in this area because of the difficulty of the correction. Simply put, the computer programs are not programmed to make these distinctions. Accordingly, your client may be extremely frustrated and will probably need the help of an FCRA practitioner.

C. Identity Theft and Fraud.

These are similar to a Mixed Credit File situation except that someone has obtained your client's social security number, driver's license number or other significant information. Even if the pattern of charges is obvious, the CRA's often require tedious documentation of the claim. Accordingly, your client may be extremely frustrated and will probably need the help of an FCRA practitioner.

D. Impermissible access.

The FCRA limits the permissible purposes for the use of a credit report.¹⁵ Reports in litigation are not allowed absent a debtor-creditor or other allowable relationship. A divorce between spouses is not one of those permissible purposes.¹⁶ However, an award of alimony may create a creditor relationship which allows the creditor spouse to obtain the credit report.¹⁷

VIII. SUMMARY

For most family law practitioners a divorce property settlement consists of child support, homestead, retirement

accounts, and debt division. Unfortunately, the credit impact of these decisions is rarely considered. Post divorce credit planning is even more rare. Consider your client's future credit in planning your next divorce proceeding.

* Attorney at Law, Houston, Texas, www.divorceyourcredit.com

1. TEX. FAM. CODE ANN. §§3.003,3.201 (Vernon 1997); *Easley v. Easley*, 893 S.W.2d 87 (Tex. App.—Dallas 1994, no writ); *Hopf v. Hopf*, 841 S.W.2d 898 (Tex. App. – Houston [14th Dist] 1992, no writ).

§3.201 of the Texas Family Code (Spousal Liability) states:

(a) A person is personally liable for the acts of the person's spouse only if:

(1) the spouse acts as an agent for the person;

or

(2) the spouse incurs a debt for necessities as provided by Subchapter F, Chapter 2.

(b) Except as provided by this subchapter, community property is not subject to a liability that arises from an act of a spouse.

(c) A spouse does not act as an agent for the other spouse solely because of the marriage relationship. TEX. FAM. CODE ANN. §3.201 (Vernon 1997).

2. *Cockerham v. Cockerham*, 527 S.W.2d 162 (Tex. 1975), *Jones v. Jones*, 890 S.W.2d 471 (Tex. App. -- Corpus Christi 1994, writ denied). The agreement may be implied. See *Dunlap v. Williamson*, 683 S.W.2d 544 (Tex. App. – Austin 1984) *aff'd* in part and *rev'd* in part on other grounds, 692 S.W.2d 373 (Tex. 1985); *Humphrey v. Taylor*, 673 S.W.2d 954 (Tex. App. – Tyler 1984, no writ).

3. *Glover v. Henry*, 749 S.W.2d 502 (Tex. App. – Eastland 1988, no writ).

4. *Carr v. Houston Bus. Forms, Inc.*, 794 S.W.2d 849, 1990 Tex. App. LEXIS 1694 (Tex. App. Houston 14th Dist. 1990).

5. *Patel v. Kuciemba*, 82 S.W.3d 589, 2002 Tex. App. LEXIS 3816 (Tex. App. Corpus Christi 2002).

6. *Marynick v. Bockelmann*, 773 S.W.2d 665, 1989 Tex. App. LEXIS 2059 (Tex. App. Dallas 1989), reversed by 788 S.W.2d 569, 1990 Tex. LEXIS 61, 33 Tex. Sup. Ct. J. 430 (Tex. 1990).

7. *Jenkins v. Henry C. Beck Company*, 449 S.W.2d 454, 455 (Tex. 1969); *Kerrville HRH v. City of Kerrville*, 803 S.W.2d 377, 388 (Tex. App. – San Antonio 1990, den).

8. *Harris v. Rowe*, 593 S.W.2d 303, 306 (Tex. 1979) (tender of satisfaction is on condition that acceptance will discharge underlying obligation); *Houchins v. Scheltz*, 590 S.W.2d 745, 751 (Tex. Civ. App. – Houston [14th District] 1979, no writ) (agreement to convey realty interest in satisfaction of claim for legal fees plus execution of warranty deed conveying promised interest constituted accord and satisfaction that barred claim for fees).

9. TEX. BUS. & COM. CODE ANN. §3.311 (Vernon 1996).

10. TEX. BUS. & COM. CODE ANN. §3.311(a)(3) (Vernon 1997).

11. *Axa S.A. v. Union Pac. R.R. Co.*, 269 F. Supp. 2d 863, 2003 U.S. Dist. LEXIS 10638 (S.D. Tex. 2003).

12. Section 3.311(c)(1)(A).

13. 15 U.S.C. §1666.

14. 15 USC §1681i.

15. 15 USC §1681b.

16. *Chiappeta v. Telefson* 1985 WL 1951 (N.D. Ill. 1985). *Rodgers v. McCullough*, 296 F. Supp. 2d 895 (W.D. Tenn. 2003).

17. *Chiappeta v. Telefson* 1985 WL 1951 (N.D. Ill. 1985).

Exhibit A: Unsecured Credit Letter.

**Aggrieved Consumer
123 Main Street
Houston, Texas 77002
(713) 555-5555**

November 3, 2004

Big Bank Visa Card
P.O. Box 666
Bloomington, IL 66666

RE: Visa Account # _____ i/n/o Ex-Spouse
RE: Divorce of Ex-Spouse and Me. My Social Security # 000-00-0000 and Texas Driver's License number 12345678

Dear Sirs:

On May 1, 1980 I was married to ex-spouse. We were divorced on September 1, 2004. A copy of the Divorce Decree is enclosed for your review.

This account was opened by my ex-spouse on or about {insert date}. I did not consent to the opening of the account and did not sign the application. The charges on the account were exclusively made by ex-spouse. The balance of the account on {insert date}, the date of filing of the divorce action was \$____. I have not made any charges on the account during the pending of the divorce action. As of the last statement before the divorce, the account balance was \$____.

The Divorce Decree assigned this debt to ex-spouse. I no longer want, nor do I have access to the account. Please remove me from any authorized user status of the account. Likewise, do not report this debt to any credit reporting agency (CRA) as either part or all of my responsibility as I have no further legal obligation on this account.

Enclosed is \$____ as **PAYMENT IN FULL** for any possible legal obligation on this account. Your acceptance of this check is evidence of your agreement to these terms. However, if you do not accept this check as **PAYMENT IN FULL** of this obligation, please return it to me at the above address along with any documentation that you have that disputes the statements that I have made regarding this account and supports your position that I am obligated to pay all or part of this account.

Also, while Ex-spouse remains the obligor on this account, if you claim that I have any liability for paying any of the balance of the account, please send a duplicate statement to me at {insert address}.

If you sell or transfer this account to any other person or entity, you are directed to include the information in this letter to the new owner or holder and/or any collection agency that you may employ. A copy of this letter will be forwarded to the appropriate CRA with a dispute within 90 days pursuant to 15 U.S.C. § 1681i.

Also enclosed is a copy of the relevant entry from my credit report so that you can accurately delete my name from any credit reporting on this account.

Sincerely,

Aggrieved Consumer

Enclosures: Divorce Decree
Account Statement
Credit Report excerpt

Exhibit B: Secured Credit Letter.

**Aggrieved Consumer
123 Main Street
Houston, Texas 77002
(713) 555-5555**

November 3, 2004

Everybody Rides Auto Finance Company
P.O. Box 666
Little Rock, ARK 55666

*Or
My Mortgage Company
P.O. Box 666
Sin City, NV 88666*

RE: Automobile Retail Installment Contract dated July 1, 2004 between Ex-Spouse and me as Buyer and Big Dealer as Seller. Contract now held by Everybody Rides Auto Finance Company, account # 111-2222-222-4444.

Or

RE: Real Estate Note and Deed of Trust secured by 123 Main Street, Houston, Texas 77002 in/n/o Ex-Spouse and me. My Mortgage Finance Company account No. 12345678

RE: Divorce of Ex-Spouse and Me. Cause No. 2004-50000, Aggrieved Consumer, Petitioner vs Ex-Spouse, Respondent, in the 1st District Court of Harris County, Texas. Divorce Decree granted on October 31, 2004.

Dear Sirs:

On May 1, 1980 I was married to Ex-spouse. We were divorced on September 1, 2004. A copy of the relevant portion of the Divorce Decree is enclosed for your review.

Ex-Spouse and I purchased the property that is the security for this account on **[insert date]**. The Divorce Decree awarded possession and title of the property to Ex-Spouse. I retain a lien interest in the equity of the property. **[explain status of property as divided by Divorce Decree]**.

[Auto]. Possession of this vehicle was awarded to Ex-Spouse in the divorce decree. Ex-Spouse was also ordered to make all payments on the account. Accordingly, I have no use or benefit of the vehicle and no obligation to make any payments on the contract. Please remove me from obligation on the installment contract. Likewise, do not report this debt to any credit reporting agency (CRA) as either part or all of my responsibility as I have no further legal obligation on this account.

[Property] *The balance of the account on [insert date], the date of filing of the divorce action was \$_____. The property is worth [insert amount] according to the records of the Harris County Appraisal District. Accordingly, there is sufficient security for your note and Deed of Trust through Ex-Spouse's payment obligation and the value of the property. Please remove me from obligation on the mortgage. Likewise, do not report this debt to any credit reporting agency (CRA) as either part or all of my responsibility as I have no further legal obligation on this account.*

Enclosed is \$_____ as **PAYMENT IN FULL** for any possible legal obligation by me on this account. Your acceptance of this check is evidence of your agreement to these terms but does not in any way affect Ex-Spouse's obligations on this account.

However, if you do not accept this check as **PAYMENT IN FULL** of this obligation, please return it to me at the above address along with any documentation that you have that disputes the statements that I have made regarding this account and supports your position that I am obligated to pay all or part of this account.

Also, while Ex-spouse remains the obligor on this account, if you claim that I have any liability for paying any of the balance of the account, please send a duplicate statement to me at **[insert address]**. Also, please send any notices required by the Note/Retail Installment Contract to me at the same address.

If you sell or transfer this account to any other person or entity, you are directed to include the information in this letter to the new owner or holder and/or any collection agency that you may employ.

A copy of this letter will be forwarded to the appropriate CRA with a dispute within 90 days pursuant to 15 U.S.C. § 1681i.

Also enclosed is a copy of the relevant entry from my credit report so that you can accurately delete my name from any credit reporting on this account.

Sincerely,

Aggrieved Consumer

Enclosures: Divorce Decree
 Appraisal District Statement
 Account Statement
 Credit Report excerpt

Exhibit C: Credit Dispute Letter.

Aggrieved Consumer
123 Main Street
Houston, Texas 77002
(713) 555-5555
November 3, 2004

Via CMRRR
TransUnion
PO Box 2000
Chester, PA 19022

Via CMRRR# 3134
Experian
Information Solutions
601 Experian Parkway
Allen, TX 75013

Via CMRRR# 1918
Equifax
c/o CSC Credit Services
652 N. Sam Houston Parkway East, Ste. 400
Houston, TX 77060

RE: Aggrieved Consumer Credit Dispute; SS# 123-45-6789 / TDL# 12345678
Residence 123 Main Street, Houston, Texas 77002.

RE: Everybody Rides Auto Finance Company, account no. _____, i/n/o Aggrieved Consumer.

RE: Divorce of Ex-Spouse and Me. Cause No. 2004-50000, Aggrieved Consumer, Petitioner vs Ex-Spouse, Respondent, in the
1st District Court of Harris County, Texas. Divorce Decree granted on October 31, 2004.

Dear Sirs:

On May 1, 1980 I was married to Ex-spouse. We were divorced on September 1, 2004. A copy of the relevant portion of the Divorce Decree is enclosed for your review.

Ex-Spouse and I purchased the property that is the security for this account on [insert date]. The Divorce Decree awarded possession and title of the property to Ex-Spouse. I retain a lien interest in the equity of the property. [explain status of property as divided by Divorce Decree].

[Auto]. Possession of this vehicle was awarded to Ex-Spouse in the divorce decree. Ex-Spouse was also ordered to make all payments on the account. Accordingly, I have no use or benefit of the vehicle and no obligation to make any payments on the contract.

Enclosed is a copy of the relevant entry from my credit report so that you can accurately delete my name from any credit reporting on this account and a copy of the letter that I sent to creditor with all attachments.

This entry (entries) on Mr. Consumers' credit report is disputed. Please conduct an investigation into this tradeline. If you have any questions, please call.

Sincerely,

Mark L. Aschermann

MLA/pah
Exhibit D: Post Divorce Credit Letter

October 8, 2004

Client
123 Main Street
Houston, Texas 77002

RE: Cause No. 2003-77777; Your Divorce Case; In the 370th District Court of Harris County, Texas

Post Divorce Credit Planning

Dear Client,

Your divorce is now complete. Property has been divided according to the Agreed Divorce Decree. This affects the division of debts and assets between you and Ex-Spouse. However, the Divorce Decree may not and probably does not affect your obligation to third party creditors.

Debts undertaken during marriage are presumed to be community debts, but this presumption may be rebutted by proof that the lender agreed to look only to the separate property of the borrowing spouse for repayment. *Cockerham v. Cockerham*, 527 S.W.2d 162 (Tex. 1975), *Jones v. Jones*, 890 S.W.2d 471 (Tex. App. -- Corpus Christi 1994, writ denied). I am not aware of any of the debts from your divorce proceeding that are not community debts. This means that you need to address the joint community debts because the future credit payment performance of Ex-Spouse may affect your credit history and credit scores.

While the technological advances of the last decade may not have dramatically altered the way you use your computer, they have dramatically affected the ability of Credit Reporting Agencies to store, transport, sort, share, and analyze credit data. This has led to new and aggressive uses for credit information beyond a basic local credit report.

The most aggressive use of this information is the credit score. Fair Isaac Company creates computer programs that calculate credit scores, commonly referred to as FICO (Fair Issac Company) scores. The range is usually 500 to 850 with a higher score indicating a lesser credit risk. The lesser credit risk should in turn receive better credit terms. Factors that affect credit scores include amount of credit, amount of credit used as a ratio of available credit, payment history, number and type of credit inquiries, income and employment, length of credit history, and amount of credit activity. A more complete explanation can be found at www.myfico.com. This means that you should safeguard your credit.

The use of credit reports has accelerated in the last 3 years. Credit reports are now routinely used for:

1. Housing applications for rental and purchase;
2. Credit applications;
3. Employment applications;
4. Insurance applications and rating systems;
5. Government security clearances; and
6. Review by existing creditors.

Additional businesses are using this technology every day. Utility companies are probably the next big user of credit reports which may affect the rates that you pay and the amount of deposit that you must post to obtain new service. The only certainty in this system seems to be that the importance of credit information about an individual will grow in importance.

Here are some steps you should take to protect your credit:

- a. Close ALL joint accounts with low or zero balances. This is probably the biggest area for future problems. That forgotten department store credit card, furniture store account, mail order account, or emergency credit card may be inactive but open. CLOSE IT before Ex-Spouse uses it. If necessary, open a new account in your name only. This should be done as soon as possible but no later than 90 days after the divorce.
- b. Obtain a credit report 90 days after the divorce. Review the report and confirm all accounts and activity. Take immediate action if unknown accounts have appeared or questionable activity is reflected.
- c. Obtain Duplicate notices for joint credit. Contact the creditor and request DUPLICATE notices for open joint accounts with balances. Even if Ex-Spouse is ordered to pay the account by the divorce decree, you may still have an obligation to the creditor. Knowing about the problem early is probably the easiest way to correct it. If the creditor refuses to send additional notices to you, you may create the affirmative defense of equitable estoppel or waiver in a later collection lawsuit by the creditor.

- d. Make accord and satisfaction offers. Offer a sum of money in exchange for a release on the debt.
- e. Communicate with the Credit Reporting Agencies. Let them know about the divorce and any name changes. Aggressively dispute any incorrect items on your credit report.
- f. Create a plan for dealing with the debt. You should set priorities for dealing with all post-divorce debt and follow a disciplined approach to dealing with it. Too often Clients in financial trouble become disoriented when they receive collection calls or dunning letters from creditors. Sticking to a post divorce debt plan can help you stay on track.

If you need help with this Post Divorce Debt planning I suggest that you contact a specialist in this area. An attorney who is Board Certified in Consumer and Commercial Law or Consumer Bankruptcy Law may be able to help you. You may want to call:

Mark L. Aschermann
3730 Kirby Drive ste 520
Houston, Texas 77098
(713) 942-0808
www.divorceyourcredit.com

Please call if you have any further questions.

Sincerely,

Your Family Law Attorney