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Is it a good time to file for bankruptcy when I am separated or divorcing my spouse?
by [Maxwelllawfirm](#)

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I always ask clients what their marital status is and whether they have joint debts with their spouse says Charlotte Bankruptcy Attorney Victorianne C. Maxwell of Maxwell Law Firm, PLLC.

FILING BANKRUPTCY WHEN YOU ARE SEPARATED

If you are separated you are still legally married and have to disclose this on your bankruptcy petition. What does this mean? You must list that you are married and that your spouse lives in a different household.

DO I HAVE TO FILE WITH MY SPOUSE?

No you do not have to file with your spouse. You can file bankruptcy individually even if you are still living together. The difference in filing married individually vs. married and separated is that you will not need to include your spouse income on the later filin status. However, if you wish to elect to file together both of your incomes must be included on the bankruptcy petition even if you are separated.

WHAT HAPPENS TO JOINT DEBTS WHEN I FILE AND MY ESTRANGED SPOUSE DOES NOT

Depends on the Chapter of Bankruptcy you file. If you file a chapter 7 bankruptcy, then you will receive a discharge on unsecure debts and those you have chosen not to affirm. What this means is that your spouse will remain liable and you will be discharged of liability. Filing a chapter 13 bankruptcy is a little more tricky. Since a payment plan is set up in a Chapter 13 case, the creditor must accept the payment provided by one spouse for that debt if their debt is secured and modified by the plan. But if the debt is unsecured the creditor can seek full or partial payment from the other spouse.

WHAT YOU SHOULD DO IF YOU ARE CONSIDERING BANKRUPTCY

Divorce itself can be quite a long and arduous process. Many times a lot of divorce squabbles stem from property and debt. Consulting with a qualified bankruptcy attorney can save you time and effort on fighting over who should pay for what. In the end creditor does not discriminate and can go after on or both of you for those debts. In some instances it may be beneficial to file jointly in others it may not be, but you will not know unless you consult with a Bankruptcy Attorney.

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