Until debt do us part
Full disclosure of obligations is a prerequisite of marriage

Dallas Morning News
PAMELA YIP Personal Finance Writer
Published: July 7, 2003

When it comes to marriage, one of the most important discussions that a couple can have is how they will manage their finances after they become one economic unit.

Experts say more marriages collapse over money issues than over anything else.

Within that discussion, one of the most sensitive subjects is debt.

"If there's pre-existing debt prior to the marriage, there has to be a serious discussion of how it will be handled," says Debbie Cox, vice president and wealth adviser at JPMorgan Private Bank in Dallas.

Many experts recommend a prenuptial agreement for newlyweds with financial issues. But whether a couple goes that far or not, any significant debt issues must be dealt with upfront.

"The watchword here is full disclosure - the full extent of the debt, what the monthly payments are, and when the total is due," says Ike Vanden Eykel, a family law attorney and managing partner at Koons, Fuller, Vanden Eykel & Robertson PC in Dallas.

The first and best solution, of course, is to pay off or pay down as much of the debt as you can before you marry.

"Most couples, once they get married, will start making a big purchase, such as a house, and if you have a lot of outstanding debt, that could impede your opportunity of obtaining a mortgage," says Rudy Cavazos Jr., spokesman at Money Management International in Houston, a credit counseling firm.

If love has overwhelmed any financial concerns and you're bringing debt into a marriage, then experts have suggestions for dealing with the situation.

The first question to ask is: Will you pay off the debt jointly, or will the debt remain the sole responsibility of the spouse who incurred it?

Let's say a man owns a home before he gets married, and after the marriage, the couple lives in his home.

"Who's going to pay for it?" asks Ms. Cox, an estate planning attorney who deals with financial issues concerning families. "If the wife helps pay for the mortgage, she's actually paying the husband's separate liability."

That's assuming the husband hasn't added his wife's name to the mortgage.

What happens if the marriage ends and the wife has paid a bunch of money toward the mortgage?

"How is she going to be reimbursed?" Ms. Cox asks. "It can be a very sensitive subject when you're talking about the house."

The husband could convey an interest in the house to his wife, but it's not the same as taking on the liability for the mortgage, she says.

"The liability on the note is still with the husband," Ms. Cox says.

What the law says

Generally speaking, because Texas is a community-property state, spouses are liable jointly and individually for debt incurred during their marriage, says Michael McCurley, a family law attorney and senior partner at McCurley Orsinger McCurley & Nelson LLP in Dallas.

Obviously, if you get a credit card with both your names on it, you're both liable for the debt.

But what about debt that was incurred before marriage that you bring into your marital union? Is the nondebtor spouse liable? It's not black and white.

"You're not liable for debts incurred before marriage, but the problem is, when does the debt become a joint debt thereafter?" Mr. McCurley says.

He gave an example:

"I have $500 on my American Express card in my name," Mr. McCurley says. "We get married; I add your name to the card. We charge another $1,500 on it. How do you keep it separate?"

There's another gray area when it comes to the liability of nondebtor spouses, whose partners have used credit in their name to buy something.

"If you're enjoying the benefits of that asset, you have some potential liability," Mr. Vanden Eykel says.

Let's say your fiancé bought a refrigerator with his credit.

"His name is on the debt," Mr. Vanden Eykel says. "They can come after you if you're sitting there using the property."

Many experts say the best way to protect yourself is to draw up a prenuptial agreement that spells out how the debts will be handled.

"We always recommend that clients consider a prenuptial agreement just as a matter of course," says Kalita McCarthy, a certified financial planner and certified divorce planner at Quest Capital Management in Dallas.

"It could say the party who brought debts into the marriage is going to be responsible for paying it off, or that both parties can be responsible for paying it off," Ms. McCarthy says.

Premarital pact

A premarital pact can be a marker for creditors as to which spouse they can pursue to collect a debt.

"The safest way to protect your assets from your spouse's debts is to enter into a premarital agreement that allows for the creation of a no-community-property estate and that provides that everything in your name and subject to your sole control is your sole and separate property," says **Janet Brumley**, a family law attorney and partner at Verner & Brumley in Dallas.

That would include such things as your earnings and growth on your savings.

Creditors' rights

“You and I can't make an agreement that precludes creditors from exercising any of their rights," Ms. Brumley says.

"All we can say is that you, the debtor spouse, can give up any rights on any claim to any property of the nondebtor spouse, which effectively protects that property from the creditors of the debtor spouse, since the creditors' only access to the nondebtor's spouse property is through the debtor."

Taking that action sets out a "clear delineation of what the creditors can grab and what they can't grab," she says.

Agreeing on how debt will be handled before marriage is better than trying to resolve that issue in a divorce proceeding, because creditors don't have to abide by a divorce decree, lawyers say.

"Generally speaking, a divorce decree is not going to be binding on the creditors who granted credit jointly," says Steve Camp, senior attorney in the financial services practice at Gardere Wynne Sewell LLP in Dallas. "If it's a joint obligation during the marriage, it's going to be a joint obligation after the marriage, as far as the lender's concerned."

But it's different with prenuptial agreements.

"Prenuptial agreements, setting forth couples' separate property, will be binding on a creditor," says Mr. Camp, who represents financial institutions and was senior corporate counsel for Bank One Corp.

What's at heart

Aside from the legal issues, there are nonfinancial reasons why couples need to talk about debt before they marry.

For instance, how did he or she incur the debt?

It's one thing if a wife got into debt helping to support her mother or paying for her parent's final expenses at death.

It's another thing if a spouse racked up the debt through lack of financial discipline.

"If he's coming into the marriage with a lot of debt, it may be a red flag that there might be a continuation of a lot of debt," says Ms. Cox of JPMorgan.

If you don't talk about the debt and your beloved finds out about it after you're married, there could be severe consequences to your relationship.

"The hurt has not been the fact that the debt has existed," says Ms. McCarthy of Quest Capital Management.

"It's the fact of not knowing about it and being blindsided."

E-mail pyip@dallasnews.com