

# What happens to debt when you separate?

**W**hen a couple separates, the general rule is if the relationship has been for three years or more, all relationship property will be divided 50/50.

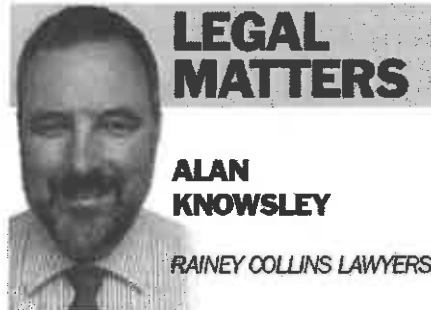
In determining the value of the relationship property pool that is to be divided, the total value of the relationship's assets will be ascertained and then the total amount of any relationship debts will be deducted from that amount.

This can sometimes result in situations where partners at the end of a relationship are simply splitting debt.

A debt can be a relationship debt without both partners being aware of it.

The Act defines a relationship debt to mean a debt that has been incurred:

- By the spouses or partners jointly, or
- In the course of a common enterprise carried on by one or both of the partners, or
- For the purpose of acquiring, improving, or maintaining relationship property, or
- For the benefit of both spouses or partners in the course of managing the affairs of the household, or



## LEGAL MATTERS

**ALAN KNOWSLEY**

RAINEY COLLINS LAWYERS

■ For the purpose of bringing up any child of the relationship.

Take for example a situation where one partner's job required them to buy a share of their business and to do so they had to obtain a loan.

Regardless of whether the fact of the loan was disclosed to their partner, if the business was one from which the couple derived income to support their relationship, that debt would be a relationship debt.

Similarly, if one partner obtained a credit card without the knowledge or consent of their partner, and that credit card was used to purchase everyday household items, to pay for family holidays, or to assist with the upbringing of the couple's children, then that credit card debt would be relationship debt.

It is not unusual in situations where we are assisting couples to divide their relationship property to uncover debts (such as tax debts), credit cards, or other lines of credit incurred by one partner without the knowledge of the other, in some instances in excess of \$400,000.

The consequence of discovering a liability, to which you had not consented, especially during separation, can be quite traumatic.

Although you can never hope to account for every action of your partner, you can take steps to prevent being caught out in such a manner upon separation.

If you and your partner agree to enter into a Contracting Out Agreement, one of the terms could be to do with the retention or division of debt.

For example, a clause could be included whereby each partner was responsible for any debts in their sole name regardless of the purpose for which the debt was incurred.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry you would like discussed in this column, email [aknowsley@raineycollins.co.nz](mailto:aknowsley@raineycollins.co.nz).