

### **SO-CALLED "EPSTEIN" CREDITS**

In dissolution actions you will often hear the term "Epstein credits," "right to reimbursement," or "credits." These refer to payments one or both parties make after the date of separation for the benefit of either the community or the other spouse. There is no automatic right to reimbursement or credits, however, they can have a very significant effect on the division of assets and obligations.

Very generally speaking, if the payment in question is not for the exclusive benefit of the payor, and not made in lieu of the payor's obligation to support the other party, or children of the parties, then the payor can request reimbursement for payments made after separation on the community debts, or the debts or living expenses of the other party.

#### **IT IS ESSENTIAL THAT YOU KEEP CAREFUL, ACCURATE AND COMPLETE RECORDS**

The attached form is designed to aid you in the important task of accurately determining the balance due on all the community debts as of the date of separation, the current balance and any credits for pay down that either party is entitled to. You can assist our office in the preparation of your matter by accurately and fully completing this form. You can reduce the amount of time that your attorneys will need to spend on this matter, and thus save money on attorney's fees, by following the instructions fully.

1. You will need to know all of the debts you and your spouse were obligated to pay as of the date of separation. Remember to include debts to family members, if applicable. List each debt and the account number in Column 1 "**ACCOUNT NAME + NUMBER.**" These debts may include mortgage payments, individual utilities, credit cards, doctors, relatives, automobile loans, taxes, etc.
2. Contact each creditor and obtain a duplicate original of the statement for the amount you owe as near as possible to the date of separation. If the date of separation does not coincide with the statement date, obtain the last statement before and the next statement after the date of separation. Make a copy of each statement for us and keep one for yourself. If the original is available, provide that to our office. If there is a dispute as to the date of separation, you will need to repeat this process for each date of separation. For each debt, fill in the balance owed on the account as of the date of separation in Column 2 "**\$ DUE AT SEPARATION.**"
3. When we approach Trial, or settlement in your case, copy the most current statement of the amount owed to each creditor. If necessary, obtain this from the creditor. Fill in the amount in Column 3 "**\$ DUE NOW,**" and write in the date you are using as the most current date.
4. If you have made payments on any of these accounts after separation from your earnings after separation or from separate property bank accounts, copy the back and front of each check you made in payment. Total payments you have made and fill in under "**YOUR PAYMENTS/CHECK #/DATE/AMOUNT PAID.**"

5. If you know that your spouse made payments after separation, you may write those payments in the column marked "**SPOUSE'S PAYMENTS/CHECK MATE/AMOUNT PAID.**" We very strongly urge you to do this on a monthly basis as it becomes more difficult if you do not.

6. Any additional charges on a debt after the date of separation (or immediately before separation, if it is a major purchase or a purchase "not for a community purpose") are usually the separate obligation of the person who incurred the charge and not a community debt. List additional charges which you or your spouse made in Column 6 "**CHARGES AFTER SEPARATION/WHO/DATE/AMOUNT,**" and attach copies of statements showing all charges made and by whom they were made.

7. If you have made multiple payments on any individual account, a separate list of each payment by date, amount and check number should be attached as well. We will also need the original canceled check. If your figures are challenged at a court hearing, it will be necessary for you to give a simple explanation of how you arrived at the figure being questioned. That is the reason it is necessary to have the statements and your canceled checks. By supplying our office with the originals, you will avoid evidentiary problems at Trial.

If you have any questions as you prepare the form, do not hesitate to telephone our office.

Please make a copy of the attached form once you have completed it and all the documentation for your records before returning the original to our office.

## COMMUNITY DEBTS AND PAYMENTS

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