

APPENDIX A

This appendix provides legal authority for the forty-four states that have clear authority stating that family courts cannot adjudicate the rights of the creditors of divorcing spouses.

1. *Costanza v. Costanza*, 346 So. 2d 1133, 1135 (Ala. 1977) (finding divorce decree can "neither enlarge nor restrict" obligations owed to creditor);
2. *Murray v. Ledbetter*, 144 P.3d 492, 502 (Alaska 2006) ("The proposition seems universally settled that a divorce decree incorporating an agreement between divorcing spouses does not affect the rights of third-party creditors");
3. *Cnty. Guardian Bank v. Hamlin*, 182 Ariz. 627, 631 (App. 1995) (holding that the allocation of community debt in divorce would only affect whether ex-wife had right to contribution from ex-husband not on ability of creditor to collect from ex-wife);
4. *Boxley v. Boxley*, 77 Ark. App. 136 (Ark. App. 2002) (finding trial judge has only the authority to determine obligations amongst the parties to the divorce and not to third parties);
5. Cal. Fam. Code § 2023 (West) (creditor's rights unaffected by divorce decree under statute);
6. *In re Marriage of Jorgenson*, 143 P.3d 1169 (Colo. App. 2006) (holding that trial court lacks jurisdiction to affect rights of third-party creditors);
7. *Clark v. Clark*, 115 Conn. App. 500 (Conn. App. 2009) (holding that marriage dissolution has no affect on debt underlying mortgage);
8. *Eberly v. Eberly*, 489 A.2d 433 (Del. 1985) (rejecting creditor's right to intervene in dissolution due to statutory lack of jurisdiction);
9. *Firestone v. Firestone*, 263 So. 2d 223 (Fla. 1972) (noting in dicta that final judgment of divorce court would not be binding on creditor);

10. *McDonald v. McDonald*, 205 S.E.2d 850 (Ga. 1974) (finding divorce decree fixed responsibility on note between spouses and is non-binding on third party);
11. *Rossiter v. Rossiter*, 4 Haw. App. 333 (Haw. App. 1983) (finding no jurisdiction to affect interests of non-party to suit);
12. *Kujawinski v. Kujawinski*, 376 N.E.2d 1382 (Ill. 1978) (construing property to be distributed under statute to avoid impairment of any contractual obligations owed to third parties);
13. *Ellis v. Ellis*, 730 N.E.2d 201 (Ind. Ct. App. 2000) (finding that trial court does not have power to affect obligee's interest);
14. *Instructions for a PETITIONER in a Divorce That Does Not Involve Minor Children*, provided by the Iowa Supreme Court and Office of State Court Administration (noting that a decree does not prevent creditor from attempting to collect from either party);
15. *In re Marriage of Yockers*, 134 P.3d 36 (Kan. Ct. App. 2006) (finding district court lacked jurisdiction to affect rights of non-party to case);
16. *FirstUnion Home Equity Bank, N.A. v. Bedford Loan and Deposit Bank*, 111 S.W.3d 892 (Ky. Ct. App. 2003) (" . . . statute operates only to establish property rights as between spouses in the event of divorce and does not operate to establish rights as between creditors regarding marital property");
17. *Pennison v. Pennison*, 195 So. 2d 276 (La. 1967) (holding that divorce court may not relegate community creditor to collection from only one spouse);
18. *Schweizer v. Schweizer*, 484 A.2d 267 (Md. 1984) (discussing Maryland's distribution system whereby courts use marital debt to adjust monetary awards between divorcing spouses rather than dividing debts directly);

19. *Harriman v. Harriman*, 710 A.2d 923 (Me. 1998) (holding that allocation of responsibility for debt payment has no effect on relationship between creditor and spouses);
20. *Estes v. Titus*, 751 N.W.2d 493 (Mich. 2008) ("[J]urisdiction of a divorce court is strictly statutory and limited to determining the rights and obligations between the husband and wife, to the exclusion of third parties.");
21. *In re Marriage of Sammons*, 642 N.W.2d 450 (Minn. Ct. App. 2002) (finding no jurisdiction to affect rights of non-party to divorce);
22. *McLain v. West Side Bone and Joint Ctr.*, 656 So. 2d 119 (Miss. 1995) (finding that a divorce decree is not binding on third party);
23. *Poteat v. Poteat*, 632 S.W.2d 511 (Mo. Ct. App. 1982) (finding that the dissolution of marriage has no direct operation on creditor's property);
24. *Aniballi v. Aniballi*, 842 P.2d 342 (Mont. 1992) (holding that a dissolution proceeding allocates property as between the spouses and does not prohibit separate proceeding on debt allegedly owed);
25. *Universal Assurors Life Ins. Co. v. Hohnstein*, 500 N.W.2d 811 (Neb. 1993) (holding that the divorce decree could not relieve former wife of liability to creditor);
26. *Marine Midland Bank v. Monroe*, 756 P.2d 1193 (Nev. 1988) (holding that the divorce decree could not operate to divest bank of right to collect debt from ex-spouse);
27. *In re Muller*, 62 A.3d 770 (N.H. 2013) ("[F]amily division does not have the jurisdiction to disregard or invalidate a third party's claim of interest in marital property.");
28. *Interchange State Bank v. Riegel*, 190 N.J. Super. 139 (App. Div. 1983) (holding that a matrimonial court could not limit or eliminate prior lien of a nonparty to divorce);

29. *Sunwest Bank of Albuquerque v. Roderiguez*, 770 P.2d 533 (N.M. 1989) (holding that marital settlement agreement was not binding on rights of pre-divorce creditor);
30. *Boyajian v. Boyajian*, 755 N.Y.S.2d 571 (Sup. Ct. 2003) (“In ... a matrimonial action, a Court only possesses the authority to apportion liability for debt between the spouses....”);
31. *Branch Banking & Tr. Co. v. Wright*, 74 N.C. App. 550 (N.C. App. 1985) (“We find no authority for using the Equitable Distribution Act to defeat the rights of creditors.”);
32. *Recovery Res., LLC v. Cupido*, 818 N.W.2d 787 (N.D. 2012) (“The court's division of debts in a divorce action does not affect the rights of third-party creditors.”);
33. *Michael v. Michael*, 136 N.E.2d 691, 694 (Ohio Ct. App. 1955) (holding that a divorce “cannot be made to bind a creditor who is not a party to the suit and a divorce trial is not the forum to litigate disputed claims of such creditors”);
34. *Responding to a Petition for Separation*, Hosted on the Oregon Judicial Department Website, <http://www.courts.oregon.gov/forms/Documents/Separation%20Respondents%20without%20Children%20%28Packet%29.pdf> (“Your judgment of separation affects you and the petitioner, but does NOT bind your creditors. Either party may still be responsible for the debts in spite of this judgment.”)
35. *Rhode Island Cent. Credit Union v. Paziienza*, 572 A.2d 296 (R.I. 1990) (finding limited jurisdiction vested in family court to affect rights of third parties);
36. Stipulation and Settlement Agreement (Without Minor Children), Form UJS-324, Rev. 10/2017, South Dakota (“[E]ach [party] shall immediately apply for formal transfer or assumption of the debts each assumes under this Agreement with the creditors involved so the non-responsible party is released from liability by the creditors. However, neither party can guarantee that the creditors involved will approve a release from liability.”);

37. *Long v. McAllister-Long*, 221 S.W.3d 1 (Tenn. Ct. App. 2006) (holding that courts are unable to disturb the rights of the parties' creditors from divorcing parties);
38. *Blake v. Amoco Fed. Credit Union*, 900 S.W.2d 108 (Tex.App.-Houston [14th Dist.] 1995, no writ) ("[D]ivorce courts cannot disturb the rights of a creditor to collect from either of the divorcing parties on a joint obligation");
39. Utah Code Ann. §§ 15-4-6.5 ("On the entering of a decree of divorce . . . the claim of a creditor remains unchanged unless otherwise provided by the contract or until a new contract is entered into between the creditor and the debtors individually.");
40. *Flanagan v. duMont*, 159 A.3d 99 (Vt. 2016) (holding that trial court adjudicating a divorce had no jurisdiction to adjudicate liabilities to Internal Revenue Service);
41. *Hanson v. Hanson*, 55 Wash.2d 884 (Wash. 1960) (holding that a divorce decree only affects rights as between the parties);
42. W. Va. Code §48-5-604(d) (Section covering the marital home "is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.");
43. Wis. Stat. Ann. § 766.55(2m) (West) (statute authorizing divorce expressly states that it does not alter relationship between creditors and spouses);
44. *Nielson v. Thompson*, 982 P.2d 709 (Wyo. 1999) (holding that the only proper parties to divorce are parties seeking divorce).

APPENDIX B

The following five states allow the joining of third parties to divorce cases but appear to have applied this rule only to third parties with property rights in the spouses' assets, not to creditors.

- *Farmer v. Boyd*, 404 P.2d 353 (Id. 1965) (holding that third parties may be joined to determine third-party property rights in divorce proceeding);
- *Amrhein v. Amrhein*, 29 Mass. App. Ct. 336 (Mass. App. Ct. 1990) (striking part of divorce order requiring husband to execute mortgage on trust property because the order affected the rights of third parties and permitting the wife to join those parties);
- *Greco v. Foster*, 268 P.2d 215 (Ok. 1954) (finding that the trial court had a duty to bring in third party where interest of third party are to be adjudicated);
- *Van Buskirk v. Van Buskirk*, 590 A.2d 4, 7 (Pa. 1991) (requiring the joinder of third parties who were potential owners of the divorcing spouses' marital residence);
- *Seawright v. Seawright*, 305 S.C. 167 (Ct. App. 1991) (finding that it was error for a court to affect rights of a property owner not joined to the suit).

Virginia's law is unclear on this point.

- *Lindsey v. Lindsey*, 2249-92-4, 1994 WL 102172 (Va. Ct. App. Mar. 29, 1994) (finding that the court had no occasion to decide rights of non-party to divorce but not stating whether that non-party could have been joined to the case).