

# **LEVEL UP LAW**

South Carolina Legal Services

**LEVELING UP YOUR LEGAL KNOWLEDGE**

**Tuesdays at Noon**

# The Doctrine of Necessaries

What is it?

and

What Does it Mean for You?



# Definition

The Doctrine of Necessaries (sometimes called “Necessities”) typically means that a spouse is responsible for the necessary expenses of the other spouse, during their lives and after death. Necessaries usually means medical bills, but can also include shelter like nursing home care.

# Where did the Doctrine Come From?

The Doctrine of Necessaries is an old common law rule that a husband was responsible for the debts and expenses of his wife.

Under early English common law, a husband and wife were regarded as one legal entity. Married women had no right to own property or to control their finances. Since married women were legally incapable of owning property and incurring debts independent of their husbands, the common law recognized husbands had a duty to support their wives and pay for their necessary expenses.

So, this common law doctrine made the husband liable to third parties who provided essential goods and services. This included medical care and treatment for a wife and children.

Of course, *that* law is outdated and no longer valid, but has been updated with a similar, gender-neutral law.

# The Doctrine Applies to 3<sup>rd</sup> Parties

Doctrine of Necessaries is the right of a creditor to collect from the spouse

Not enforceable between the spouses

Even though each spouse may have an obligation to support the other.

In general, you are not responsible for your spouse's contracts or torts

# Debt Collection Against Spouse

The typical situation where the doctrine comes up is a hospital suing a married couple for the medical debt of only one of them.

If the hospital gets a judgment against both spouses, it becomes a lien on any real estate they own- such as their home. In S.C. the lien is good for 10 years and not renewable.

This means the hospital can ask the court to sell your home to pay the judgment amount.

Property is sometimes exempt from being sold to pay the hospital's judgment. See S.C. Code of Laws Section 15-41-30

# Can Your Home Can Be Sold to Pay a Hospital Judgment of \$20,000?

## Example 1

Your home is worth \$100,000, is owned by only one spouse and has no mortgage.

The legal exemption amount in S.C. is \$60, 975 per owner.

\$100,000

- 60,975 amount of exemption

\$ 39,025 home value subject to pay judgment

# Can Your Home Can Be Sold to Pay a Hospital Judgment of \$20,000

## Example 2

Your home is worth \$100,000, is owned by both spouses and has no mortgage.

The legal exemption amount in S.C. is \$60,975 per owner.

\$100,000      value of home

- 121,950      amount of exemption

\$ -21, 950      home value exceeds joint spousal exemption and is not subject to being sold to pay hospital judgment



# Can Your Home Be Sold to Pay a Hospital Judgment of \$20,000?

## Example 3

Your home is worth \$100,000, is owned by only one spouse and has a mortgage balance of \$50,000.

The legal exemption amount in S.C. is \$60,975 per owner.

\$100,000

- 50,000 balance owed on mortgage

- 60,975 amount of exemption

\$ - 10,975 home value subject to pay judgment

# Bankruptcy

These S.C. exemptions are also available if you file bankruptcy (with limited exceptions).

Application of the doctrine may become an issue during bankruptcy:

1. When only one spouse files bankruptcy to discharge their medical bills only to find that the other spouse is also personally responsible.

*Consider filing joint bankruptcy to get both exemptions.*

2. When the home value is more than the exemption amount of \$60,975 for one spouse filing or \$121,950 for both spouses filing.

*Consider settlement or payment plan.*

# Probate

When a spouse dies, the estate is responsible for medical bills of the deceased spouse. If there was insurance coverage, any remaining balance after insurance pays is a debt of the estate.

# Insurance Coverage

A widow/widower and their deceased spouse who was which obligated under the doctrine to pay the bills of the deceased spouse can in some cases be allowed to assume the position of an insured under the policy that existed on the deceased spouse.

# Pre-nuptial agreements

Prenuptial agreements do not avoid the applicability of the doctrine because the medical providers are third parties who are not parties to the prenuptial contract. You cannot contract them out of getting paid.

The only exception to the doctrine of necessities may be if the spouses were separated at the time the medical services were provided *and* the provider of medical services had actual notice of the separation during the time services were provided

# Avoiding the Application of the Doctrine of Necessaries

Make sure both spouses have health insurance.

It is possible to do some planning with irrevocable trusts if you have a lot of property to protect.

This also illustrates the importance of obtaining life insurance to cover unexpected final expenses and long-term care insurance to cover nursing home costs

# S.C. Legal Services Contact Information

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