



Using Community Funds During A Divorce Proceeding

WHEN PARTIES FILE FOR A DIVORCE, a set of rules automatically kick in that bind both parties in preserving the community estate pending final distribution of the various assets and debts. These rules are frequently referred to as the Automatic Temporary Restraining Orders, called “ATROS” and are printed on the Summons that accompany every divorce petition. These rules are specifically governed by California Family Code Section 2040, and in short, require that parties do not make big financial decisions, remove or change insurance policies, or withdraw large sums of money from community funds without letting the other party know.

One of the primary principles behind these rules is that it is difficult to determine what there is to divide if parties begin moving money around without notice to each other. You can imagine that if each party was expecting to receive his or her one-half share of a bank account with \$500,000 in it, but the account suddenly went down to \$100,000 without explanation, at least one party is going to be sorely disappointed at the end of the case.

There are exceptions to the ATROS, which include withdrawals of community funds when those funds need to be used for the “necessities of life” or for attorney’s fees. So long as the withdrawing party provides advance notice to the other side of how much and when they expect to withdraw the funds and provide a clear accounting of how the funds are used, the ATROS allow for such withdrawals. This can become especially helpful when one spouse may not have a steady source of income, is not receiving any financial support, and needs access to funds to pay for living expenses or attorney’s fees.

It is important that if a divorce has been initiated, parties obtain good legal counsel who can provide appropriate guidance in how and when they can make these transactions and assist in demonstrating a clear accounting of the funds later on in the divorce.



Photography by Meg Nobriga

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