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## **Divorce and College: Who Has Custody of the College Savings Plan?**

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Conventional wisdom tells us that parents should begin saving money for college soon after the birth of a child. There are many options when it comes to saving for the expense of college, including prepaid college programs, 529 plans, other qualified tuition plans, or other investment or savings vehicles such as custodial accounts and trusts.

But what happens, when after years of mutually contributing money to a college plan or account, the parents divorce? How do you keep one parent from raiding the account? How do you get both parents to agree on a distribution from an account? What sort of agreement should be hammered out between the parties to ensure the higher education of the child or children remains a priority?

Because these types of accounts are increasing in popularity along with the increasing cost of tuition, they are showing up more frequently as an asset or liability in a divorce to be set aside to one parent or the other.

Depending on the type of account the parents have started, they must abide by the limitations placed on the account as to how money will be disbursed and who is the owner or custodian of the account. This is typically finalized with both parents' signatures, or by agreement of the parties. Often times, one parent is designated as the owner or custodian of the account, but parents agree in a divorce agreement to make withdrawals only by agreement of both parties.

This does not ensure that one party, the owner or custodian of the account, will not make unauthorized withdrawals. This ensures that the other parent can pursue a remedy in family court to have the parent making unauthorized withdrawals reimburse the account. If the unauthorized withdrawals are not for educational purposes, there may be a penalty and tax implications associated with such a withdrawal.

Fortunately, parents who have opened college savings plans have already prioritized college education. It is less likely in these circumstances that one parent will raid an account for his or her personal benefit. Parents who are divorcing need to determine who will remain the custodian of each college savings plan or account. If, for example, a prepaid college account is not fully funded, it is a good idea in the settlement agreement to determine who will continue funding the account until it is fully funded.

While no one likes to think about a marriage ending in divorce, the implications of divorce on your children's college funds must be considered at some point in the divorce process. A skilled family law attorney can simplify the process, and assist in ensuring the college savings plans are safe.



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