

"Divorce: Think Financially, Not Emotionally® is a wonderful guide for women seeking to secure their financial future."

—Laura A. Wasser, Divorce Attorney to the Stars

DIVORCE

Think Financially, Not Emotionally®

Volume II



**WHAT WOMEN NEED TO KNOW ABOUT SECURING THEIR
FINANCIAL FUTURE BEFORE, DURING, AND AFTER DIVORCE**

Jeffrey A. Landers, CDFATM

#1 BESTSELLING AUTHOR FOR DIVORCE

CHAPTER 4

WHAT YOU CAN AND CANNOT WITHDRAW FROM JOINT ACCOUNTS



Reaching the decision to file for divorce can be a long, painful, and emotionally draining process. However, as soon as you conclude that it's what you need to do (or if you believe your husband may be about to file), you need to think calmly and clearly about securing the funds to hire a [professional divorce team](#). You will also need to cover your living expenses until an interim arrangement or a final settlement agreement is reached.

If you don't have a significant income stream of your own or a substantial secret fund as I discussed in the previous chapter, finding the money to get through the divorce process can be a difficult problem—even for affluent women. As a result, you may be wondering about withdrawing money from the joint account(s) you and your husband use to

pay household bills. Can you use a joint account to set aside funds for your own upcoming needs? *Should* you? If so, how much should you withdraw? What can you do if you have limited funds and can't access your marital assets?

I asked several respected divorce attorneys from around the country to weigh in on these critical questions, and as you might imagine, there are nuances and legal implications for every scenario. Here are my questions and how the experts responded:

Is it a good idea to take money from joint accounts to use for my own expenses?

[Marilyn B. Chinitz](#), Esq., Partner at the New York law firm Blank Rome LLP, said it is. “Clients have a right to one-half of the value of the jointly titled funds and should access those monies to secure funds should they later be closed out of accounts held by the other spouse,” explained Attorney Chinitz, whose clients include Michael Douglas and Tom Cruise. “If there is one joint account and the monied spouse has multiple accounts in their sole name to which the non-monied spouse has no access, it may be appropriate for the non-monied spouse to secure as much money as they can to ensure that they are not left out in the cold.”

Chicago attorney [Debra DiMaggio](#), Esq., Principal of the Law Offices of Debra DiMaggio, sees

two ways to answer the question. Her advice would be not to withdraw money from joint accounts if the withdrawal itself could spur divorce proceedings. “On the other hand, if the divorce was inevitable and the couple would most likely have been engaged in a difficult and acrimonious divorce anyway, then the answer is, ‘Yes.’ But even then, a rule of reason has to prevail with the funds earmarked to pay an attorney retainer and pay routine bills until a temporary court order can be secured,” Attorney DiMaggio said. “I’d rarely recommend withdrawing 50% of the account balance. The account balance might be temporarily inflated in anticipation of paying property taxes or income taxes and a withdrawal of half might divest the ability to pay.”

When is the best time to withdraw funds from joint accounts?

Once a divorce is initiated, withdrawals from joint accounts in many states are legally restricted through an Automatic Temporary Restraining Order (ATRO), a court order prohibiting either spouse from making certain financial changes once a divorce action begins. (To learn more, read Volume I, Chapter 21.) Since this is the case in New York, Attorney Chinitz cautioned that any such withdrawals there can only be done *before* legal action has formally begun.

A similar restriction exists in California, reported [Laura A. Wasser](#), Esq., Partner in the Los Angeles

family law firm of Wasser, Cooperman & Carter and author of the book, *It Doesn't Have to Be That Way: How to Divorce Without Destroying Your Family or Bankrupting Yourself*. Attorney Wasser acknowledged that funds can be withdrawn prior to the filing and service of a petition for divorce, but warned that doing so poses its own risk.

“This could very well start the case off in the wrong way, as husband would feel that she was divorce planning and seek vengeance,” said Attorney Wasser, whose client list includes Maria Shriver, Heidi Klum, Angelina Jolie, Christina Aguilera, Britney Spears, and many others. “I generally recommend an advance distribution of funds at the outset of a case if my client feels that maintaining expenses will be difficult during the pendency of the proceeding. Obviously a lot depends on the parties and their respective personalities.”

How much can I withdraw?

Suppose you and your spouse have a joint account containing \$400,000. Is it fair to assume you're entitled to half of it? What if you know the \$400,000 represents just a small portion of your total marital assets, but this is the only account you can access. Can you then justifiably take out more, or all, of the \$400,000?

According to Los Angeles divorce attorney and [Avvo.com](#) legal analyst [Kelly Chang Rickert](#), Esq., of

the Law Offices of Kelly Chang, “prior to any divorce papers being filed, you can withdraw any amount you'd like.” After papers are filed, withdrawals may be more restricted. “Technically, if it's community [property], then you can withdraw up to 50%,” she explained. “The problem is, the other spouse may have reimbursement claims, etc., and because there is a restraining order, you may run into problems if you have a vindictive ex.” Attorney Chang Rickert's ultimate recommendation is to withdraw any and all funds you deem necessary *prior* to filing a divorce. “That way you don't run into any problems with violating court orders and such,” she said.

One approach to the joint account is to try talking with your spouse about splitting it, suggested [Jennifer Brandt](#), Esq., Philadelphia divorce attorney, [Avvo.com](#) legal analyst, and partner at Cozen O'Connor. “I typically advise clients to speak with their spouse about closing the account and equally dividing the monies. If that is not possible and they cannot communicate with their spouse, they should take no more than 50% of the money. The reason for this is that usually they will be entitled to no less than this amount in the divorce,” she said.

What if the spouse has significant funds of his own, and the joint account represents a small percentage of total marital assets? Would that warrant withdrawing more than half the joint account balance?

“I don't advise a client to take any more than 50% even if the spouse has additional funds solely in

his name because this just usually leads to a money grab on his part which, in the long run, can make the divorce even more complex,” Attorney Brandt continued. “If a client needs additional monies to fund the litigation, I would advise that she petition the court and get them by way of court order.”

Unfortunately, even retaining an attorney to file the necessary motion for a court order can be a prohibitive expense for a woman whose husband has cleaned out the joint accounts ahead of her.

Is there any reason I should *not* withdraw money from joint accounts?

[Bari Z. Weinberger](#), Esq., owner and managing partner of the Weinberger Law Group, a firm exclusively devoted to family law in New Jersey, generally does not recommend her clients remove any money from joint accounts. “Inevitably, even if the client is acting merely to safeguard some funds for security purposes, the other spouse will interpret it as an initiative to liquidate and dissipate assets and act in kind,” she explained. “Then the game playing begins. Before you know it, both parties are tapping into every resource they can find, hiding money and jewelry, removing items from the home and what started out as a simple plan to protect a joint account has spiraled way out of control. Litigation will erupt and the parties will spend mountains of money on their lawyers to have to deal it through the courts,

likely branding both parties as manipulators to the judge.”

Like Attorney Brandt, Attorney Weinberger prefers to communicate from the beginning. “Discuss with the other party the desire to each have access to joint funds and to split certain assets,” she said. “If the other side refuses, there is always the option of asking the judge to allow freedom and access to certain accounts throughout the pending litigation so that one side does not have the upper hand in maintaining control of all of the finances. Judges appreciate this method and approach as opposed to the former. I absolutely believe that both parties should be on an equal playing field throughout the case. However, it is imperative to be forward thinking and proceed with caution before recommending certain courses of action to a client that *could* create an unnecessary level of fear and suspicion in the other party, thereby spawning a nightmare of events for your client whose only goal was some peace of mind and security.”

Although I agree with those views in theory, I’ve seen far too many situations in which the woman, hoping for a non-contentious divorce, attempts to play nicely and by the rules, only to get “screwed” when her husband then cleans out all their accounts. This leaves a woman without a significant source of income in dire straits. It’s especially dangerous when dealing with a [narcissistic](#) and/or abusive husband, who will use this as a tactic and then do everything

possible to drive up her legal costs so that she quickly runs out of money.

In my experience, withdrawing funds from joint accounts, unless and until restricted by an ATRO, is a wise, self-protective measure for a divorcing woman with no income of her own. After all, as Attorney Chang Rickert said, “All is fair in love and war.” Your husband will certainly be thinking along those lines. Of course you’ll need to consult your own attorney with the specifics of your case, but my advice is to *Think Financially, Not Emotionally*[®] and take every step you can to protect yourself.



Reminder: If you do withdraw funds from joint accounts, make sure that they are used judiciously to cover your expenses during the divorce. This is not the time for extravagant purchases or luxury travel (or revenge spending). You need to be able to demonstrate that you are living sensibly. Don’t give your husband any reason to claim otherwise.



Hot tip: When you set aside funds for your own use, deposit them with a different bank than the one that your husband uses or that the two of you used for joint accounts. Choosing a new bank is cleaner for record-keeping, emphasizes the new separateness of your finances from his, and prevents

any of your information being unintentionally revealed to him by a well-meaning bank employee who knows you both, but may not be aware that you’re divorcing.



Legal matters: Don’t assume your accounts and policies will “automatically” be notified that an Automatic Temporary Restraining Order (ATRO) is in effect. For instance, in states where an ATRO prohibits the modification of beneficiaries, you need to inform your bank, stock brokerage, insurance companies, etc. about the divorce action. The courts will not take care of this important step; notifying your bank, etc. is *your* responsibility!