

Four Key Automatic Restraining Orders in Dissolution Proceedings

By ***Matthew R. Souther*** ^[1]

Once the decision has been made to terminate a marital relationship, there are four (4) extremely important Automatic Temporary Restraining Orders (“ATROs”) by which both husband and wife must abide. These four ATROs become immediately effect upon the filing of the Petition for Dissolution of Marriage.

First, both husband are wife and precluded from removing their minor child or children, if any, from the state without the prior written consent of the other party or an order of the court. The obvious intent of this ATRO is to prevent one parent from taking a child or children out of the state and beyond the Court’s jurisdiction.

The second ATRO prohibits both husband and wife from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children. While many people may not realize it, these items are actually assets that belong to the marriage community and, absent an exception, not husband or wife as individuals. It is designed to help prevent husband or wife from absconding with property that belongs to the community.

The third ATRO precludes husband and wide from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. It is not uncommon to hear stories about parties in a dissolution proceeding to attempt to hide assets from the other party and possibly move them out of the Court’s jurisdiction to deprive them of their legal interest in the property. This ATRO becomes immediately effective to help prevent this unlawful practice.

The last, and certainly not least, ATRO prohibits creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court. Before revocation of a nonprobate transfer can take effect or a right of survivorship to property can be eliminated, notice of the change must be filed and served on the other party. This ATRO is similar to the third. It is basically designed to prevent a party from transferring all forms of property from the community and into the hands of a third party to prevent husband or wife from acquiring his/her legal share upon dissolution. The ATRO does not affect probate transfers.

The basic rule is once the Petition for Dissolution for Marriage has been the parties must preserve the integrity of the community. This includes both children and property. The status

quo must be maintained until the Court enters an order affecting the property or the parties have a written agreement.

Matthew Souther ^[1] is an associate at Neil Dymott. His areas of practice include professional liability, personal injury and general civil litigation. For further information, Mr. Souther may be reached at (619) 238-1712 or msouther@neildymott.com ^[2]

[Matthew R. Souther](#) ^[3]

[Back to Articles](#) ^[4]

Source URL: <https://www.neildymott.com/four-key-automatic-restraining-orders-dissolution-proceedings>

Links:

[1] <http://www.neildymott.com/matthew-r-souther>

[2] <mailto:msouther@neildymott.com>

[3] <https://www.neildymott.com/matthew-r-souther>

[4] <https://www.neildymott.com/articles>