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Should you and your spouse keep your bank accounts separate?

Historically, when couples get married, they tended to merge their lives completely, moving into the same home and merging finances. However, a Bank of America study shows a trend among "millennials" (roughly those born between the early 1980s and mid-1990s) to keep separate bank accounts. According to the study, more than a quarter of millennials keep separate accounts.

This may be because, on average, millennials tend to get married later, when they're further along in their careers and perhaps value their independence over the idea of commitment. They, in turn, may say they're doing this because it shows a greater level of trust for one another than merging their money might do.

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This raises a lot of questions about whether it's a good idea for married couples to maintain separate bank accounts. The quick answer is that there's no easy answer. Nonetheless, here are some things to consider.

First, separate bank accounts don't necessarily make it easier to split up assets in the event of a divorce. That's because it doesn't matter if bank accounts are held separately; any assets acquired during marriage generally become "marital property" and would have to be divided in a divorce settlement. This means if one spouse is squirreling away money in a separate account while the other spouse spends everything in another, it all goes into the same pot.

Separate accounts also make it tougher for the attorney representing

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Visitation pick-up and drop-off: a contentious issue

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Child custody disputes are contentious in themselves. But once those are resolved, other related issues can pop up. Who's driving the kids for visitation is one such issue that sounds petty but can be the source of a surprising level of strife.

That's especially true when you throw in issues such as lateness, the difficulty of getting to the location in question and conflicts between visitation schedules and children's other activities. Sometimes, tension over this issue can land divorced spouses back in court.

That happened recently in New Jersey. When the couple in question got divorced, they lived in the same town and agreed to alternate weekends with their daughter. The father agreed to do all driving in connection with his visitation time.

The mother later moved to New York City and then back to New Jersey. At that time, the father agreed to keep providing all transportation related to his parenting time until the mother completed her move. But the agreement didn't address what would happen then.

Three years later, with the mother back in New Jersey but not living close to the father's house, the father went to court seeking an order that they share driving responsibilities equally. The mother opposed this, arguing that because he didn't pay alimony and his child support obligations were "modest," it was only fair that he do all the driving.

A family court judge agreed with the father, ruling that it was fair and equitable for them to share driving duties for parenting time equally, and ordered them to find a pick-up and drop-off spot halfway in between. An appeals court upheld the decision.

The case shows that not only can small logistical issues be controversial after a divorce, but that although you may bargain for one thing at the time of the divorce, changes in circumstances can affect whether the agreement should stand. The best way to address these issues is to be reasonable and be prepared for changes, and to talk to a family lawyer about how best to plan for them.

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Changes to military retirement may affect family law

Recent changes to the military retirement system could impact family law issues, particularly division of marital property in a divorce. If you or your spouse are retired military or will be in that category in the future, it's probably a smart idea to talk to a family lawyer to see how you could be affected by these changes.

Historically, retired military personnel participated in what's now known as the "legacy" retirement system. This is a defined benefit program, meaning that after 20 years of service, personnel can receive roughly half their monthly base pay as their pension. For retirees with more than 20 years of service, the government multiplies years of service by 2.5 percent of base pay for larger benefits.

Service members on active duty who joined the military before the end of 2017 can be grandfathered into this legacy system or choose the new "blended" retirement system instead. Under the new system, which applies to everyone who joined after 2017, there's a defined benefit component that makes up part of your retirement benefit, although it's a smaller percentage of monthly base pay.

But there's also a "defined contribution" component, which is like a 401(k) plan, an investment plan that grows over time (or shrinks if the markets do poorly). Personnel automatically put 3 percent of their pay into the plan but can contribute up to 5 percent, with the government matching contributions after two years.

This is relevant to family law because it creates questions about how the new plans will be handled by a divorce court. It's unclear whether it'll be treated as marital property to be divided in a divorce or nonmarital property that the other spouse doesn't get to share in.

These changes also affect the amount of retirement pay former military spouses receive if they and their ex got divorced before the member retired, particularly if that member is eligible to opt in to the new "blended" program. Talk to a family lawyer in your state to see how this might all work.

Should you and your spouse have separate bank accounts?

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you in a divorce. Since your soon-to-be-ex hasn't necessarily maintained transparency during the marriage, it can be challenging and time-consuming to unwind everything, which can require some forensic work.

Studies also indicate that couples who keep separate bank accounts are more likely to get divorced than those with joint accounts. This doesn't mean the separate accounts actually cause the divorce, but such an arrangement may indicate an underlying lack of trust and commitment. It can also allow for unpleasant surprises that may undermine a marriage, such as learning your spouse has racked up credit card debt you didn't know about, leading to money problems and joint debt.

Meanwhile, on a more practical level, a joint bank account simplifies paying bills and other shared tasks. And if one spouse passes away, the other spouse has easy access to the funds without having to see if he or she has been left the money in a will and going through the probate process to receive it as an inheritance.

This isn't to say there aren't benefits to separate accounts. For example, a joint bank account can cause marital trouble if spouses don't talk to each other about account activity. It can also be problematic when one spouse has significant debt at the time they get married. If you merge your finances, you'll be paying off the debt with jointly owned funds, which can lead to marital problems if communication is lacking.

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These are obviously complex issues, and it's important to discuss them with your soon-to-be spouse before you get married, or at least as early in the marriage as possible. It's also important to continue to discuss financial issues throughout the marriage, such as how to divvy up expenses and how much each of you should be spending and saving. This sets the foundation for a strong union. It also doesn't hurt to give a family lawyer a call to discuss in detail what might be the best way to go.

Can a divorce agreement require that kids take out student loans?

Divorce agreements with kids involved create a lot of things to decide, including custody, visitation and child support. It's also common for divorce agreements to address how the kids' college education will be paid for. The agreement may state how much each parent will contribute to college costs or, if the kids are very young, defer the calculation until a specific time when the kids are closer to finishing high school.

Sometimes, these agreements have clauses stating that the children must apply for any financial aid, grants or loans they can get. But it's unclear if kids can really be forced to burden themselves with student loans as part of a contract (the divorce agreement) that they themselves didn't agree to.

A recent New Jersey case suggests that the answer is "no."

In that case, a couple divorced in 2003. Their daughter was five at the time. Under the terms of the divorce settlement, the parents agreed to pay for college, but the daughter would have to apply for loans, grants, financial aid and scholarships.

Twelve years later, the daughter was accepted to Georgetown University, which is not only extremely prestigious, but also carries a whopping price tag of nearly $70,000 per year. The mother tried to get the father to kick in his share, but he resisted and she went to court to enforce the agreement.

The father, whose net income had ballooned to $217,000 per year from $80,000 per year since the divorce, argued that the daughter should have tried to get student loans before he had to contribute, just as the agreement said.

A family court judge rejected his attempt to enforce the "loans" provision of the agreement, calling it "unfair and unjust." He also ruled that the daughter couldn't be held to a contract that she wasn't party to, especially since her parents had a legal obligation to support her. Besides, said the court, the parents had sufficient financial resources to send their daughter to Georgetown.

The father challenged the ruling, but an appeals court upheld it. The law may differ from state to state, so talk to an attorney to find out how it might work where you live.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

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Money in 529 college savings plan is marital property, court says

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"529 Savings Plans" are a popular way for parents to save for their kids' college education. Under these plans, parents can open an investment account to save money for tuition, fees, room and board and, in most states, the investment gains are tax-free as long as the money is ultimately used for college. But how is that money treated if the parents get divorced?

A recently decided North Carolina case tells us how that question is handled in at least one state.

In that case, a couple created 529 plans for all six of their kids using money that the father was earning as the family's sole breadwinner. However, the mother was named as plan participant and owner of the accounts.

The couple divorced in 2014 and, in 2017, the court divided their assets unequally, giving the mother 57 percent of the estate, including the home and the 529 plans, assuming she'd use the plans to pay for the kids' college educations.

But the father challenged the decision. He argued on appeal that the 529 plans should be "carved out" of the marital estate and should not be part of the calculus when dividing their property. Specifically, he argued that the plans should be considered a gift to the kids.

The state appellate court disagreed with the father, ruling that because the children didn't legally possess the plans, the plans couldn't be considered a gift to them. Though it was expected that the mother would use the money for the kids' college, she could, in theory, opt to use it on something else after paying a tax penalty. Thus, the court said, it made sense to allocate the plans to the mother, as plan custodian.

This decision, however, only applies in North Carolina. Courts in other states may handle the issue differently, so it's a good idea to talk to a lawyer where you live to find out what you might expect should this issue arise.