

Navigating asset management during divorce proceedings is a complex process fraught with legal, ethical, and financial risks. For individuals and financial professionals alike, understanding the specific restrictions and best practices associated with actively managing marital assets is essential. Divorce laws and court-ordered restrictions vary by jurisdiction, and the stakes are high: missteps can lead to serious consequences, including legal penalties, financial losses, and strained negotiations. By adhering to best practices and understanding the legal landscape, divorcing parties and their financial advisors can better protect marital assets, mitigate risks, and ensure a fairer outcome in the division process.

Actively investing assets during divorce proceedings poses several risks, primarily because most jurisdictions impose legal and ethical restrictions on handling marital assets while the divorce is ongoing. These risks can have significant legal and financial consequences:

## 1. Violation of Automatic Temporary Restraining Orders (ATROs)



In many states, Automatic Temporary Restraining Orders (ATROs) go into effect when a divorce is filed. These orders typically prevent either spouse from making significant changes to marital assets, including active investing. Violating an ATRO by engaging in risky investments without the consent of the other party or the court can result in:

- **Legal Penalties:** You may be found in contempt of court, which can lead to fines or even jail time.
- **Reversal of Transactions:** Courts may reverse any investment gains or losses, returning the assets to their pre-investment status.
- **Impact on Settlement:** Courts may penalize the investing party in the final property division by awarding less favorable terms or more assets to the other spouse.

The following states have Automatic Temporary Restraining Orders effective upon filing for divorce:

Alaska	California	Colorado
Hawaii	Massachusetts	Montana
Nevada	New York	Oregon
Vermont		

The following states have similar provisions that are not automatic but are easily accessible:

Arizona	Florida	Georgia
Illinois	New Jersey	Texas

The key restrictions that generally apply to **Automatic Temporary Restraining Orders** include:

- Prevention of either spouse transferring or hiding assets
- Prohibits altering or canceling life, health, auto or disability insurance
- Restricts either party from taking children out of the state or county without written consent or court permission

Donna Cheswick from Pennsylvania provides her perspective on asset management during divorce proceedings, emphasizing the professional practices often adopted in her state.

**Pennsylvania (Donna M. Cheswick, CDFIA®, CQS):** In Pennsylvania, there are no specific laws governing how Certified Financial Planners (CFPs) or other financial professionals should manage joint accounts when clients are undergoing a divorce. However, Donna M. Cheswick notes that many professionals, upon learning of a pending divorce, adopt a cautious approach. This often includes seeking the consent of both parties before making any changes to joint accounts, such as withdrawing funds, in order to prevent potential disputes or accusations of asset dissipation.

*Court Intervention in Freezing Assets:* Pennsylvania courts can also intervene if one party requests a freeze on accounts to prevent asset dissipation. In such cases, it is the responsibility of the requesting party or their attorney to ensure that a Court Order is sent to all financial institutions where the parties hold funds, thereby securing the assets until the divorce is finalized.

## 2. Potential Loss of Marital Assets

Investments inherently carry risk, and if assets are lost due to poor or risky investment decisions during divorce proceedings, the following could occur:



- **Reduced Marital Estate:** Any losses would reduce the total pool of marital assets available for division. Courts may view this as irresponsible management of shared resources.
- **Possible Compensation to Spouse:** If investments are made recklessly or without consent, the court may require the investing spouse to compensate the other for the losses.
- **Scrutiny of Intent:** Courts may suspect the investing spouse of deliberately trying to devalue assets to minimize their share of the settlement, which could result in penalties.

David Smith from Florida highlights the role of financial advisors in safeguarding marital assets during divorce to prevent potential losses.

**Florida (David Smith, CDFA®, CQS™, ChFC®, CASL®, D.M.D., Ret LtCol, USAF):** In Florida, "Standing Administrative Orders" come into effect at the beginning of a divorce case to maintain the status quo and prevent significant changes to marital assets until the proceedings conclude. Smith underscores that financial advisors, especially CFPs®, have a duty to avoid actions that could risk asset depletion or limit access to funds unless both parties have agreed. He emphasizes the importance of prioritizing client interests over commissions, noting that "chasing commissions is just not a good practice." By adhering to these principles, advisors can help protect the marital estate from unnecessary risk and preserve its value for equitable division.

### 3. Breach of Fiduciary Duty

Spouses owe a **fiduciary duty** to each other, particularly regarding financial matters. This duty obligates both parties to act in the best interests of the marital estate. Actively investing, especially in volatile or high-risk assets, can be seen as a breach of this duty if the investments:

- Are made without informing or consulting the other spouse.
- Involve significant financial risk that could harm the estate.
- Do not align with the standard practices the couple followed before the divorce.

A breach of fiduciary duty could result in court-ordered penalties or a larger portion of the marital assets being awarded to the non-investing spouse.

### 4. Complexity in Valuation of Assets

Investments, especially in volatile markets, can make asset valuation more complex during a divorce. Courts typically prefer a stable snapshot of the marital estate to divide assets fairly. Active investing during the proceedings may create:

- **Uncertain Asset Valuations:** Fluctuating values of investments can make it difficult to determine a fair division.
- **Delayed Proceedings:** Courts may need to assess the risks and valuation of investments over time, which can prolong the divorce process.
- **Need for Expert Testimony:** If investments become complex, parties may need to hire financial experts to provide testimony, increasing litigation costs.

## 5. Changes in Tax Liabilities

Actively buying and selling investments during divorce can create **tax consequences** that may affect both spouses, especially if:



- **Capital Gains:** Profits from the sale of investments might trigger capital gains taxes, reducing the overall value of the estate.
- **Increased Tax Burden:** The spouse managing the investments may incur a larger tax liability, which could complicate the division of assets.
- **Tax Benefits Lost:** If investments result in losses, the spouse responsible may not be able to benefit from tax deductions as they would when jointly filing.

## 6. Perception of Bad Faith

Courts scrutinize the behavior of both spouses during divorce proceedings to ensure fairness in the division of marital assets. If one spouse actively invests assets, it can be perceived as:

- **Attempting to Hide or Shift Assets:** Courts may suspect the investing spouse is trying to hide money or move assets out of reach to gain an unfair advantage.
- **Disregard for Shared Interests:** Risky financial decisions can be interpreted as disregarding the other spouse's interest in the assets.

This perception of bad faith could influence how the court divides property and awards spousal support.

Sam Hubbard from Georgia provides a perspective on how perceived bad faith in asset management can arise during divorce proceedings. **Georgia (Sam Hubbard, MBA, CFA, CDFIA):** In Georgia, standing laws aim to prevent significant alterations to marital assets, such as changing asset types, incurring new debts, or transferring property. However, Hubbard points out that these laws do not impose a complete freeze on assets, allowing ongoing investment management if it was standard practice before the divorce. He argues that continuing such activities can preserve financial strategies and avoid unnecessary disruption.

**Legal Limitations and Enforcement Challenges:** According to Georgia statutes (e.g., O.C.G.A. §§ 19-5-7 and 19-6-1), parties are generally restricted from making substantial changes to assets, except in ordinary business transactions or bona fide exchanges. However, Hubbard notes that enforcement is often weak, with some individuals converting liquid assets into illiquid forms, such as real estate, despite standing orders. Such actions may raise concerns about bad faith, as they can complicate equitable division and raise suspicion of attempts to conceal or reallocate assets. This lack of practical enforcement can lead to court disputes over whether these conversions were made in good faith or as a strategy to hinder fair asset division.

## 7. Inequitable Division of Future Growth

If investments made during the divorce proceedings yield substantial profits, the other spouse could argue that those gains are marital property, even if the investing spouse took all the risks. Conversely, if the investments result in losses, the investing spouse may bear the full financial responsibility, leading to:

- **Disputes Over Who Benefits or Suffers:** Both parties may argue over who is entitled to the gains or who should absorb the losses.
- **Potentially Unfair Outcomes:** Courts strive for equitable division, but active investments may complicate this process, leading to outcomes that favor one party more than intended.

Alyssa Miller from Ohio shares insights on how ongoing asset management during divorce can lead to disputes over future growth and division. **Ohio (Alyssa Miller, CFP®, CDFA®, CDC®, CLTC®)**: In Ohio, there are no automatic restrictions on marital assets upon the initiation of divorce, allowing routine account management to continue unless specific restraining orders are in place. Miller explains that clients seeking to restrict asset withdrawals must obtain temporary restraining orders through legal counsel, which must then be communicated to financial institutions. However, these orders are sometimes violated, with financial institutions often unaware of the restrictions, leading to transactions that may be contested later in court.

**Permissibility of Routine Account Management:** Miller notes that, while these orders may restrict withdrawals, they do not prohibit general trading or routine rebalancing within accounts. This can lead to scenarios where investments continue to grow or fluctuate during divorce proceedings. If these accounts experience significant gains, the spouse not actively managing the investments might argue that the resulting growth should be divided as marital property. Conversely, losses could raise questions about responsibility and whether the managing spouse should bear the full financial impact. These situations often complicate equitable division, as both parties may contest entitlement to the future growth or argue over who should bear the risk of potential losses.

## 8. Best Practices During Divorce Proceedings

To minimize risk and avoid legal complications, consider the following:



- **Consult with a Lawyer:** Always consult with a divorce attorney before making any financial decisions or changes to assets during a divorce.
- **Freeze Investment Activities:** If possible, avoid making new investments or changing investment strategies until the divorce is finalized.

- **Disclose Financial Activities:** Be transparent with your spouse and the court about any financial decisions or investments made during the proceedings.
- **Obtain Court Approval:** If investment activity is necessary, seek court approval to avoid violations of ATROs or fiduciary duties.

## Conclusion

Actively investing marital assets during a divorce is highly risky and could result in legal penalties, financial losses, and complications in the asset division process. Courts generally prefer that marital assets remain stable during divorce proceedings to ensure fairness.

The insights provided by financial professionals across Pennsylvania, Florida, Georgia, and Ohio underscore the importance of understanding not only the general legal framework but also the nuances of state-specific regulations and professional standards. From the enforcement of temporary restraining orders to the ethical considerations around asset management, these experts highlight a shared commitment to stability, transparency, and accountability during the divorce process.

Financial advisors, particularly CFPs® and CDFAs®, play a crucial role in navigating these complex issues, offering guidance that can help avoid legal complications and protect shared assets. As divorce cases unfold, best practices such as seeking mutual consent for account changes, adhering to regional orders, and prioritizing ethical considerations can prevent disputes and ensure a more equitable division. If active investment is necessary, consulting with a legal professional and obtaining court approval is essential to protect both parties' interests.

By maintaining open communication, consulting with legal and financial professionals, and taking a cautious approach to asset management, divorcing individuals can make informed decisions that support a fair and balanced resolution.