

Automatic temporary restraining orders in California divorce

**By Matthew Crider, JD
Family Protection Attorney**

It is typical, if not natural, for parties to a divorce case to start hiding assets and income from each other as soon as divorce is anticipated. Spouses are thinking ahead of the game on how they can outsmart the other spouse so that they end up with the larger portion of the pie.

This is a common reaction by clients not knowing that they are violating the automatic temporary restraining orders (ATROS) that are automatically in place the moment divorce is commenced. I thought it would be important for family law litigants to be aware of ATROS so they can avoid a violation and the consequences of such violation.

ATROS takes effect on the Petitioner upon filing the Petition and summons while it takes effect on the Respondent upon service of the Petition under family Code

Section 233 and 2040 ATROS are not limited to divorce cases but also apply to legal separation actions and Nullity actions. ATROS stay in effect until entry of the final judgment in the case.

The four standard mutual restraining orders are:

Removing their minor children from the state without the prior written consent of the other party or a court order. Family Code Section 2040.

Restraint from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate without the other party's written consent or court order. Family Code Section 2040.

Restraint 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 child for whom support may be orders. Family Code Section 2040.

Restraint from creating a non probate transfer or modifying a no probate transfer in a manner that affects the disposition of property subject to the transfer without the other party's written consent or court order. Family Code Section 2040.

Automatic temporary restraining orders in California divorce

There are exceptions to the above restrictions. One exception is for property transfers in the usual course of business or for the necessities of life. Examples would be property transfers as part of your usual business operations or to pay for usual household living expenses. Another exception is payment of reasonable attorney's fees. Family Code Section 2040.

A violation of restraint against property transfer may be remedied by awarding the aggrieved spouse his/her 50% of the community property that the spouse would have received had the property not been transferred pursuant to the case of *Marriage of McTiernan* and Family Code Section 1101(g). A violation of the child move away restriction is punishable by fine and/ or imprisonment pursuant to Penal Code 278.5. A violation of the other ATROS restrictions is punishable by contempt, fine, and/or imprisonment pursuant to Penal Code 273.6. It is important for family law litigant's to steer clear from violating the ATROS.

About Matthew Crider, J.D.

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals through the California divorce process by providing creative solutions as their trusted advisor and legal counselor. His divorce and family law practice focuses on assisting people in dissolution matters, including divorce, child custody and visitation, child and spousal support, spousal support and alimony, and parental rights.

