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## In divorce, smart planning prevents conflict over paying college expenses

**D**ivorcing parents are often at odds over payment of children's college expenses, and conflict around this issue can consume significant time and attorney fees even though the issue is governed by statute.

Addressing the issue correctly and precisely in a marital settlement agreement in light of the parties' financial circumstances and the ages of their children can mitigate problems that could otherwise arise years in the future.

Section 513 of the Illinois Marriage and Dissolution of Marriage Act addresses payment of college, professional and vocational school expenses in a divorce proceeding (this column will refer to those expenses as post-high school education expenses or college expenses). Section 513 vests the court with discretion to order divorcing parents to contribute to their non-minor children's post-high school education expenses. *In re Support of Pearson*, 11 Ill.2d. 545, 551, 96 Ill. Dec. 69, 72 (1986); *In re Marriage of Cianchetti*, 351 Ill.App.3d 832, 834-35, 286 Ill.Dec. 807, 809 (2004).

Under Section 513(b), the court will allocate a contribution to expenses based on the parties' respective abilities to pay, the standard of living the child would have enjoyed with the divorce, the child's financial resources and the child's academic performance.

Non-divorcing parents have no financial responsibility for children over the age of majority (up on high school graduation, or at age 19 if a child is still in high school, or at the age of 18) requiring them to contribute to college expenses.

The legislature gave courts expanded authority dealing with divorcing families because the acrimony of divorce can affect the parties' relationships with children, disadvantaging them when education expenses would otherwise be met in an intact family. *Kujawinski v. Kujawinski*, Ill.2d 563, 579-80, 17 Ill.Dec. 801, 808-09 (1978); *In re Marriage of Chee*, 2011 IL App (1st) 102797, 952 N.E.2d 1252, 1256.

If divorcing parents cannot reach an agreement, the court (or the lawyers) simply include language in the marriage dissolution judgment or settlement agreement which mirrors the language of Section 513, requiring the parties to return to court (or reach an agreement) shortly before a child goes to college to resolve expenses. This is all that an Illinois court has the power to order in a divorce judgment, absent agreement of the parties, thus the provision accomplishes almost nothing.

It may be wise for parents of young children who have years to earn income and acquire assets, and whose children will not be attending college imminently, to include "513 language" in a marital settlement agreement rather than attempt to negotiate college expense payments at the time of divorce.

Moreover, younger parties often have limited ability to predict their financial circumstances years in advance, which makes it risky to agree to a significant future financial commitment. This strategy also reserves the issue and avoids payment of attorney

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fees to negotiate an issue that the court has limited power to creatively resolve in a divorce decree.

However, parents of high school age children should resolve contributions to college expenses in their settlement agreement rather than pay attorney fees again to address the issue in just a few years. The divorcing parties' baseline inquiry is whether there are assets already available to pay for a portion of college.

The use of these funds becomes more complex when a grandparent or other relative funded the asset. In this instance, the question is whether the party whose



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relative funded the account is entitled to use those funds toward his or her ultimate contribution for expenses. While funds titled in the name of a third party are not part of the marital estate (even if for the benefit of a child), a divorcing party's access to those funds to pay expenses is a factor in allocating the parties' respective contributions.

Assets funded during the marriage from marital property are

easier to address, and parties may agree to use these assets in proportion to their respective obligations before either party is required to proportionately contribute his or her own funds.

Even though Section 513 lists educational expenses the court may order paid, future disagreement about what constitutes "expenses" can be minimized by including in a settlement agreement a detailed and finite list. The statute allows the court to order payment of expenses, including but not limited to room, board, dues, tuition, transportation, books, fees, registration and ap-

plication costs, medical expenses including medical insurance, dental expenses and living expenses.

The statute's broad language leaves room for disagreement about expenses to be paid. For parties who memorialize their college contributions in a settlement agreement, it is important to be specific about exactly what expenses will be paid.

For example, an agreement should state the number of round trips per year between school and home. Just as important are directives for payment of expenses when school is in recess. Unless specific provisions are made, custodial parents may be forced to pay the majority of a child's direct and indirect expenses when the child is home from college on break.

A petition requesting contribution for college expenses from a former spouse should be brought before expenses are incurred because a party cannot receive contribution for expenses prior to the date of filing a 513 petition. *In re Marriage of Petersen*, 955 N.E.2d 1131, 1136, 353 Ill.Dec. 320, 325 (2011).

While the court has significant authority under Section 513 to order parties to contribute to post-high school educational expenses, the court does not have authority to order contribution to expenses when a non-minor child completes their education. Except where a non-minor child is proven to have a mental or physical disability, Illinois law does not impose an obligation to support the child if he or she is not attending college.

This can cause financial hardship for a party with a child at home who has reached the age of majority. A court does not have authority to order support in this situation (absent proven disability), but it might consider the additional financial burden on the custodial parent in awarding maintenance.

If terms about payment of college expenses are properly addressed in a settlement agreement, disagreement about this issue can be avoided years down the road.