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When parents go their separate ways, child support is a normal part of that process. When the child graduates high school and is ready to go on to a post-secondary education, who pays the cost varies by state and often on a case by case basis. As of January 1, 2005, half the states and the District of Columbia had statutory provisions or court rulings under which a parent may be required to help pay the college expenses of a child, or otherwise support a child past graduation from high school, under certain conditions or to a specified age (Source – National Conference of State Legislatures).

The identified States are: Alabama Colorado Connecticut Florida Georgia Hawaii Illinois Indiana Iowa Massachusetts Minnesota Mississippi Missouri New Hampshire New Jersey New York North Dakota Oregon Rhode Island South Carolina Texas Utah Washington West Virginia Wyoming These states can require a parent to pay from current income or other assets all or a portion of the college expenses of a child. Depending upon the specific requirements of a given state, the child may be required to contribute to the cost and the parents may be given credit for non-cash support for the student living at home. The amount the parent contributes may be based upon actual costs or a percentage of income formula. The paying parent may be entitled to review the financial aid available to the student, the appropriateness of the educational program in relation to the student's academic ability, and the reasonableness of the cost of the program. The payment may be contingent upon a certain level of performance by the student and the parent may be entitled to academic information on the adult student. Even if the state does not have a statute or court decision on the issue of college expenses, agreements between the parties, creation of a tax deferred or exempt college fund, creation of a trust account, or other actions by a parent may result in a court enforcing the agreement or rights of a child to funds from one or both parents for college expenses. A divorce settlement in which the parties agree to pay college expenses is usually a binding contract between the parents, even if the parents would otherwise not have had a legal obligation to provide for the college education of the child. While such agreements may appear to be reasonable from a parenting perspective, parties should carefully consider the consequences of agreeing to fund college, especially if the child is young and college expenses are years away. The financial positions of the parties or the circumstances of the child when college age may be radically different from the expectations at the time of entering in to the divorce settlement agreement. The parties may have set aside funds for the children during the marriage, for college or in general, but not in the name of the child or in a designated tax shelter or other college expense program, such as a regular savings account or regular tax exempt bonds which have a bonus payment if used for college. Such funds would normally be marital property subject to allocation by the court in the divorce and the court may, as part of the property division, order such funds to be held in trust for the children and specify the terms under which the funds may be spent to provide the children the college funding that was intended had the parties not divorced. In addition, there are several programs which provide tax benefits when saving for college expenses, such as an Education Savings Account or a Qualified Tuition Plan. These programs require identification of a named child to be the beneficiary of the program. Although the program may allow flexibility as to the funding of the account and naming of the child who is the beneficiary, the divorce judgment or settlement may dictate the maintenance of such accounts, the parent to be responsible for the account, and the child to benefit from the account. The court order or court-approved settlement would limit the flexibility that might otherwise exist for the parent. A simple mechanism that parents

may use to save for a child's college expenses is to open a savings or investment account in the name of the child, sometimes referred to as a Uniform Transfer to Minors Account (UTMA), with the parent as the trustee of the account. The use of the funds is not restricted to education expenses and the laws of each state may vary as to how the parent may use such accounts and when the child may access the account. However, UTMA accounts belong to the child and are not subject to the terms of a divorce judgment or agreement. The funds are a gift to the child when contributed and the trustee has a legal duty to account for the funds to the child, such that the parent loses legal control over the funds at the outset. While the general age of majority varies among the states, the statute governing the creation of a UTMA may specify the age at which the account becomes the property of the child. For example, in Illinois, the general age of majority is 18 while the Illinois UTMA does not give the child rights to the account until age 21. While the existence of such funds may impact how much the child can pay for their own education, setting up such accounts usually are not credited to the parent funding the account and may not eliminate the possibility of a parent having to contribute to the costs of post-secondary education. Before voluntarily setting up accounts intended to help pay the college expenses of a child, or entering into a divorce settlement on college expenses involving young children, review of the legal implications of such action with a qualified domestic relations attorney is a wise investment in your, and your child's, future. *Richard Coffee is a Senior Attorney in the Fairview Heights office of Cordell & Cordell.*
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