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Hidden Assets in Divorce: Are You Getting Your Share of the Whole Pie?

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The Centers for Disease Control and Prevention estimated that in 2020, approximately 50% of all marriages in the United States ended in divorce.[1] Although some divorces are amicable and the couple dissolves their marriage without much disruption, many divorces devolve into name-calling and animosity.

In a divorce that is not settled harmoniously, spouses often try to withhold relevant financial information relating to their income and assets in the marital estate. Each jurisdiction has different laws that govern the division of assets in marital dissolution. In general, the laws dictate that each spouse must produce all relevant financial information. In many instances during a divorce, a spouse may attempt to hide certain assets of the marital estate. When a spouse hides assets, either during the marriage or during the divorce, the other spouse's counsel may engage a forensic accountant to assist in finding those hidden assets.

Hiding Assets: There are a myriad of different ways a spouse can go about hiding assets. Here are some examples from cases we have worked on in the past:

1. **Hiding cash in a separate account:** A client and their spouse withdrew large amounts of cash on a regular basis from joint marital accounts to pay for expenses. As the client's spouse began to contemplate divorce, he started taking a portion of this cash and depositing it in a separate, private bank account. In another case, a client's spouse created custodial accounts for the children. He

controlled the accounts and transferred funds into them from the joint marital accounts.

2. **Unreported or underreporting income:** This is a common phenomenon we see among business owners whose businesses deal in cash. A client's spouse owned multiple pizza stores and a portion operated using cash (i.e., cash revenues and cash expenses). While our client was aware of the cash portion of the business, she was unaware of the extent of the volume of cash. An analysis of the business's operations revealed that the cash portion of the business increased in the years closest to the start of divorce proceedings.

3. **Deferring a salary increase, commissions, or bonus from the spouse's employer until the divorce is finalized:** A client's spouse asked his employer to defer the commissions he earned on the sale of products and services to a later date. In a separate case, a client's spouse was "fired" from his position only to be re-hired six months after the divorce action was finalized.

[1] CDC/NCHS National Vital Statistics System

4. **Harboring or sheltering funds in an account in a foreign country, or investing in international entities with minimal documents to support the investments:** A client's spouse invested cash in several foreign entities. During discovery there were only minimal documents made available about these investments, and the spouse claimed they were the only documents made available by the entity. None of these documents were comparable to U.S. tax documents, such as a Schedule K-1, and most of the entities reported losses and depletion of the capital account. As litigation progressed and we investigated these entities further, a very different financial picture emerged.

5. **Temporarily giving cash to friends or family that was supposedly borrowed:** As part of discovery, a client's spouse provided loan documents between herself and her parents that had been executed during the course of her marriage to the client. The documents stated that the client's spouse borrowed a significant amount of funds from her parents. These funds were subsequently used to invest in assets that were purchased in the name of both spouses. During the marriage, as these funds were being "borrowed," both spouses understood that this was part of the parents' estate planning. However, during the

divorce proceeding, the client stated that the loan documents didn't exist at the time the funds were "borrowed." The loan documents stated that the funds borrowed needed to be paid back within a specific period of time and with interest. In this case, funds that were never supposed to be paid back suddenly needed to be paid back, with interest, thereby decreasing the marital estate.

6. **Utilizing cryptocurrency:** Cryptocurrency has increasingly become a part of marital assets over the past few years and it has added a new twist to the practice of hiding assets. A client's spouse bought cryptocurrency using minimal funds from the joint account. As we tracked these funds, we documented that the market value of the units of cryptocurrency bought increased significantly by the beginning of the divorce action. However, the account statements showed that fractional units of cryptocurrency were being transferred into other cryptocurrency accounts. The client's spouse stated that these transactions were for services provided. Further investigation revealed the client's spouse had established an entity that was siphoning these funds from the spouse's account. In other cases, spouses have conveniently forgotten passwords to access e-wallets containing cryptocurrencies.

Other Examples of Hiding Assets

7. Buying items analogous to the standard of living the couple has experienced. Such items are usually high-priced and may include jewelry, artwork, watches, etc. In our experience, some of these purchases were typically made in cash.

8. Holding cash/other assets in an unknown safety deposit or post office box.

9. For a business owner, deferring new business, contracts or partnerships that would result in increased income until after the divorce is finalized. Some business owners also drive down the value of their business by creating fictitious employees or reporting the purchase of assets that were not actually bought or were not bought for the business.

10. Transferring an interest in a business to a trusted employee to reduce the value of the spouse's interest in the business.

Red Flags: There are certain red flags which could indicate that assets could be hidden. Consider the following scenarios:

1. A spouse starts divorce proceedings, but the couple subsequently reconciles. Several months or a year later, the other spouse starts a new divorce action.

2. A divorcing spouse makes payments of retainers/fees to an attorney months or even a year or more before commencing the divorce action.

3. A spouse takes unexpected international trips in months prior to the start of divorce proceedings. The spouse could be moving assets internationally during such trips.

4. Changes in spending trends or frequency of withdrawals, or changes in how much information a spouse shares with their partner. A client's spouse slowly stopped sharing the specifics of his business activities in the 12-18 months before divorce action began.

Uncovering Hidden Assets: When a forensic accountant is engaged to search for and locate hidden assets, they take various steps to locate those assets. The following are some of the methods used to uncover hidden assets.

1. Search for assets not reported during the discovery phase of the divorce. This search may reveal assets intentionally hidden from the other spouse. Such searches can be conducted for bank and brokerage accounts, entities, etc.

2. Search for and review unclaimed assets. Individuals are often not aware of assets that are held by a state as escheat assets.

3. Search for real property and deed transfers.

4. Look for pending lawsuits that may show a spouse has an imminent financial settlement.

5. Review any corporate filings, businesses registered by name and address, and Dunn & Bradstreet records for unknown businesses.

6. Review bankruptcy records.

7. Search for UCC filings. A spouse may have an interest in certain personal property.

8. Review social media accounts that may reveal information about assets owned by one of the spouses.

9. Analyze lifestyle by comparing spending habits to reported incomes. This analysis can also reveal changes in spending habits that could lead to uncovering hidden assets.

10. Analyze personal tax returns and business financial statements for assets that were reported in prior years but not during or immediately prior the divorce proceedings.

11. Analyze any loan applications and related documents the spouses have submitted in recent years, either for personal loans such as mortgages or entity-related loans such as lines of credit.

12. Analyze the use of any funds sourced from refinancing assets, loans, or credit lines.

13. Compare transactions reflected on bank statements to amounts reported by the spouses and identify significant asset purchases that may not appear on the financial affidavit.

When considering divorce, pay special attention to determining whether certain assets within the marital estate have disappeared. Many times, the spouse that controls the couple's finances is in a unique position to hide some of those assets. Due diligence is important while the divorce is pending. Use all resources to uncover the entire marital estate. One such resource is an experienced and credentialed forensic accountant who can ensure every stone is turned to determine the "whole pie" of the marital estate.