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Does Your Client Know Where Their Marital Assets Are? Do They Really?

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In the midst of a divorce, a husband or wife may take advantage of the situation by hiding income, money, assets, property, or sabotaging a business. In order to alter the fair division of assets, a spouse may report lower than actual revenue, higher than actual expenses, hide or undervalue assets, or overstate debts. This is unethical, immoral, and possibly illegal conduct, but for this individual's spouse, it can also compound feelings of betrayal.

Suddenly the financial picture, and the life that he or she knew, appears to unravel with newfound lies. It is important to put aside these emotions and instead, take a step back and devise a thoughtful approach to unearth the facts, locate hidden funds, and develop an accurate financial picture moving forward.

The picture will be constantly changing as the exploration unfolds, but with some hard work, a story will begin to emerge that can be used to support an argument as to how the assets should be divided.

Developing a strong financial team including an experienced divorce lawyer, personal accountant, and divorce financial planner will help to level the playing field and give the spouse a much-needed support system. In some cases, a forensic accountant may be needed to follow the money trail and value business assets. On the personal front, if necessary, in order for clients to have the emotional stamina to get through the financial discovery process, I would encourage them to get additional psychological support.

It's important for a divorce attorney to empower a client to identify discrepancies, investigate further into leads, and ask tough questions. I am not suggesting ever engaging in illegal conduct (i.e., breaking into computers, secure files in the home or office, monitoring cell phone or surveillance) as this can result in significant legal consequences. Rather a client needs to be his or her own best sleuth — learning about the family's finances, taking the initiative, and requesting copies of important documents: mortgage statements, bank statements, utility bills, retirement accounts, brokerage accounts, insurance policies, etc.

Taking the right steps will help keep a client's finances intact during the divorce and prevent a client from becoming a victim of a partner's dishonesty. Below are tips that I have been able to use to find the hidden money in a relationship and in turn achieve the best future possible for a client.

1. Look for Patterns – Lifestyle Analysis

Start with the basics: What are the spouses's spending habits? How does he spend money and have the patterns changed? Looking at credit card and bank statements and observing the use of cash can help to reveal any inconsistencies. If a spouse is claiming that he is now bringing in less income, but seems to be spending more or at the same level, this could be a red flag that he is not being honest about his finances. If he is suddenly spending higher amounts that are not consistent with his past spending patterns, there may be a third party involved, funding of hidden assets and accounts, or investments in previously undisclosed business ventures.

2. Examine Tax Returns

Tax returns provide a wonderful starting place for telling a financial story. Compare and contrast information from tax returns over the course of five years and look for anything that is missing. Is the tax return information consistent with a client's perceived lifestyle? Did the spouse fail to report cash and if so, what happened to it? How much cash may be missing? While you may not be able to recoup the actual cash, you may obtain an offset in the property division.

3. Review Business Records, Income and Assets

Rarely does the primary wage earner's business appear to do better during a divorce; instead, it is common for a spouse to claim that there has been a downturn in business. This is sometimes referred to as Recently Acquired Income Deficiency (RAID) Syndrome. Divorce attorneys also frequently see Recently Acquired Asset Syndrome (RAAS). This occurs when assets are moved or disposed of, often temporarily transferred to family or friends, in order to create the illusion of a bleak financial situation. Also, watch for conversion of marital assets and property into business assets and property, such as cars, paintings, and other collectibles.

4. Check for Unreimbursed Business Account Expenses and Deferred Income

By allowing meaningful business expenses to sit unreimbursed, a spouse is setting himself up for a payday after the

divorce terms are final. Similarly, a spouse may also ask that a bonus, salary, or commission be deferred for the time being — creating additional resources for the future. Stay aware of how business expenses are reimbursed in the company and question significant changes in cash flow or large unknown expenses that sit unreimbursed. Review check registers, bank statements, and tax records to see when bonuses have historically been paid — this may provide some hint that income is being deferred.

5. Review Credit Applications

Past credit applications can offer a revealing picture of a spouse's assets and income. Acquire these records and compare the information on each application to what is already known about the financial picture. Make note of any patterns and inconsistencies, misstatements and misrepresentations that become apparent. This information may be useful in settlement negotiations, discourage trials, and also protect an innocent spouse.

6. Watch for Overpayments

As you review financial records, keep an eye out for intentional overpayments, they could equate to hidden funds. A spouse may overpay on his taxes only to collect the refund after the terms of the divorce have been settled. Similarly, by overpaying on credit cards, the spouse has essentially created a surplus of spendable cash on each card for the future. Take the time to check bills against payments to ensure that everything is consistent.

7. Check Online Activities

The internet has opened up a new world of options for detective work. With a few simple searches of the computer and browsing history, a spouse can check up on the soon-to-be-ex-spouse's financial activities. Web history on the home computer may reveal activity on a bank website where the family does not have an account or the possibility of big ticket purchases that don't make sense given the alleged financial picture. A search of free public databases may reveal unknown real estate transactions or business deals, while a LinkedIn account or company website may reveal previously unknown information about a spouse's business.

8. Look for Evidence of a P.O. Box or Receiving Mail at the Office

There is always the possibility that a spouse could be receiving mail at a P.O. Box or his office as a way of keeping financial activities under wraps. If bills and account statements that once came to the home are conspicuously missing, it may be worthwhile to find out exactly where they are being sent. Confirm addresses with financial institutions for all joint bills and accounts. If a spouse has signed up for paperless billing, it is still crucial to stay informed and obtain copies of all current and past statements.

9. Question International Activity

If the spouse frequently travels internationally, getting a sense of his international activity may be paramount to following the money trail. Overseas bank accounts can be more difficult to trace and may not appear on other records. A good source of information for overseas bank accounts is the IRS Foreign Bank Account "FBAR Form" which must be filed by June 1st. Evidence or the lack thereof of known foreign banking activity, however, can be the necessary tip that raises suspicions of financial deception. Also, look for cash withdrawals or deposits that coincide with foreign trips. Travel without the use of cash or credit cards may suggest that there is money overseas.

10. Question the Scope of Confidentiality Clauses and Agreements

Sometimes a confidentiality agreement or clause in an employment contract may be used as a shield for preventing the disclosure of assets and employment compensation information. Don't take the existence of a Confidentiality clause agreement as a shield for getting the information you need. As an alternative, consider negotiating a surgical compromise to gain the "alleged" confidential information you require.

11. Remind your Client to Keep an Open Mind

Throughout the exploration of the search for marital assets, there may be times when you reached a dead end or encounter information that simply does not make sense. That is why I strongly urge the use of a team of experts. Sometimes a clue may be hidden in plain sight, but just is not on one person's radar.

When the numbers don't add up, highlight the discrepancy and work with your team to strategically trace the trail. It might not always be possible to prove that assets have been hidden, but a divorce attorney can ask a court or mediator to draw a negative inference that wrongdoing has occurred. Ultimately, this in itself may, and frequently does, translate into more favorable judgment and dollars and cents for a client.

Dori B. Hightower is a member of the Connecticut, Fairfield County and the American Bar Associations. Hightower is also a Connecticut Bar Association member of the Unauthorized Practice of Law Committee (UPL); Family Law Section; and Small Firm Practice Management Section. With over 20 years of experience, Hightower has been a solo practitioner in California and Connecticut. She serves a variety of clients. Her most recent concentration has been in complex and contentious matrimonial cases. Hightower's compassion and sensitivity in helping her clients through a difficult and often complex process has proven to be one of her strongest assets. Attorney Hightower may be contacted at dbhightower@dbhightowerlaw.com or at 203.569.7444.

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