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PRACTICE FOCUS

What Happens When a Spouse Hides Money During a Divorce?

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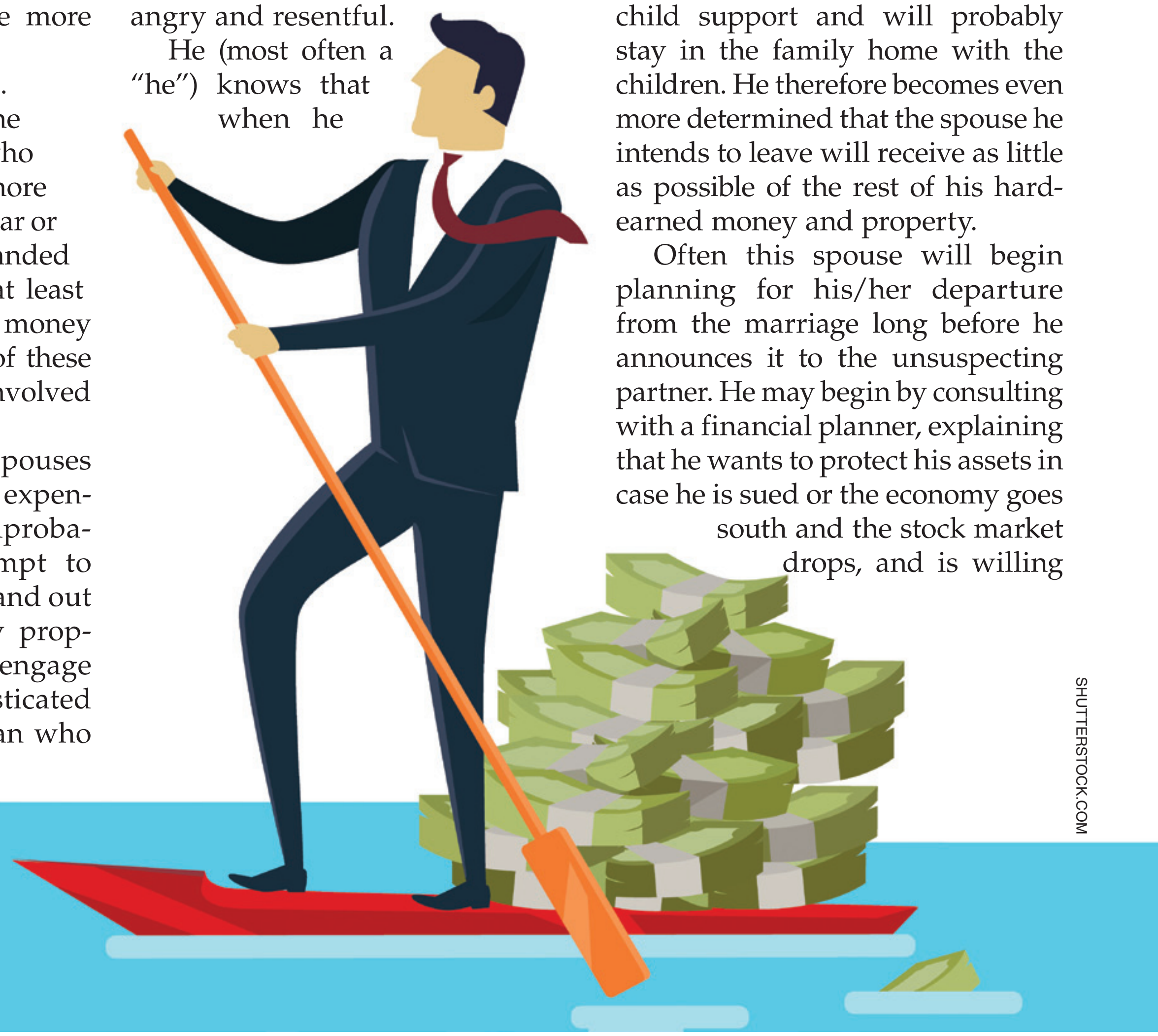
MANY AMERICANS ASSUMED WHEN the Patriot Act went into effect in 2001 that it would become more difficult for the wealthy to hide their assets offshore. Certainly enforcement of the laws against tax evaders who attempt to hide money offshore has intensified. In the past year or so alone, U.S. courts have handed down prison sentences to at least seven individuals who hid money in offshore accounts—one of these an Alaskan plastic surgeon involved in a divorce.

Yet, some well-to-do spouses still engage in complex and expensive—even startlingly improbable—schemes in an attempt to keep assets for themselves and out of the pool of community property. Who is most likely to engage in such a plot? A sophisticated and wealthy man or woman who feels trapped in a crumbling relationship and is angry and resentful.

He (most often a "he") knows that when he divorces, his spouse may be entitled to maintenance payments and child support and will probably stay in the family home with the children. He therefore becomes even more determined that the spouse he intends to leave will receive as little as possible of the rest of his hard-earned money and property.

Often this spouse will begin planning for his/her departure from the marriage long before he announces it to the unsuspecting partner. He may begin by consulting with a financial planner, explaining that he wants to protect his assets in case he is sued or the economy goes south and the stock market drops, and is willing



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to consider even highly unusual options. He may also begin to run up a lot of debt to create the appearance that his entire estate is mired in debt and worth much less than appears.

The first thing an attorney who is representing the spouse pursuing the assets must do is to hire a skilled and experienced forensic CPA. The CPA should not only examine the personal financial books of the spouse with the assets, but also any corporate books from owned business entities. The CPA will look closely at such matters as, was income that was written off as "entertainment expenses" when it really should have been classified as a disbursement to the individual in question. Has the spouse received all the disbursements he is entitled to, or has he deliberately diverted or postponed income he should have received?

In Texas divorces, oil leases may be common. The spouse with the assets may claim that a leasing deal fell through or turned out to be a "dry hole," when, in reality, he owns a neighboring lease through a trust where a well did hit pay dirt. Sometimes assets are hidden in joint partnerships in which assets are temporarily "stored" with family members or friends. Sometimes money is even socked away in a hidden store of gold coins or $100 gambling chips!

Following the money trail may involve tracing business entities and trusts through a complicated number of layers in order to identify the ultimate owner of the property. Sometimes business entities are routed through another state where the laws are designed differently. Following the trail may require hiring local counsel and obtaining court orders in that state, forcing exposure of assets that should be included in community property.

In extreme cases, assets may be hidden offshore in jurisdictions that intentionally facilitate the burying of property ownership through layers of trusts and make discovery very difficult. No means of hiding assets is completely unbreachable, but only a highly experienced attorney, with the help of able accountants and investigators, will be able to successfully untangle all of these complex maneuvers. Inexperience can result in much higher costs to the client and, ultimately, failure to uncover the assets.

If the attorney in the case is representing the spouse *with* the assets, the client must answer honestly, to the best of his/her ability, any straightforward, formal questions in the discovery process.

The client needs to be able to demonstrate, for instance, where the money came from that he used to make large purchases. "Oh, don't worry about that," is not an acceptable response, because it will not be acceptable in court, and it will be impossible for even the best attorney to defend his client's position.

On the other hand, it is entirely justifiable for a spouse who had property of his or her own before the marriage, to claim that this property should not be included in the community basket. But he has to be able to *prove* that the property was acquired or inherited before marriage. Genuinely separate property sometimes falls into the community category because the owner cannot produce the records that are necessary to prove that it is separate, and Texas law deems all the property "community" until it is shown to be otherwise.

According to Texas law, if "missing" money or assets are not properly accounted for, a judge can actually "reconstitute" an estate and add the unaccounted-for monies to the total of what is to be considered community property. In such a case a judge may rule that the "missing" monies are awarded to the spouse who cannot account for such funds (which may no longer exist due to his/her wasteful spending), and offset it by giving the non-offending spouse assets in existence.

Everyone tends to assume that "community property" means a 50/50 division of everything, but a judge who suspects that a spouse is illicitly hiding assets could choose to divide the estate 60/40 or even 70/30, and these kinds of judgments are rarely overturned on appeal.

Sometimes a wily and sophisticated individual who believes he or she has cleverly hidden assets from a soon-to-be ex-spouse will find that he has entangled himself in his own plots.

At the very least, if he is not facing serious charges for hiding income from the IRS, he will discover that he has made a poor impression on the judge who will play a major role in determining his financial future.

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