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FAMILY LAW BULLETIN

A NEWSLETTER FROM LAW OFFICES OF MATTHEW Z. MARTELL, P.A.

ISSUE THREE
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How Alimony is Determined

Alimony (also referred to as spousal support or maintenance) is paid by one ex-spouse to the other after the marriage is dissolved. Temporary alimony may be paid during the

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Finding Hidden Assets in Divorce Cases

A claim that one spouse is hiding assets from the other are common during a divorce. All hidden asset claims need to be investigated, even though many will turn out to be

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baseless. The investigation may be done by a divorce attorney or a financial investigator or a combination of the two.

Are Hidden Assets a Possibility?

A significant proportion of hidden asset claims in divorces result from a skewed perception of the amount of money earned versus the amount of money spent. The more money a couple earns, the more they are likely to spend to increase the family's standard of living. Therefore, one of the first things an investigator attempts to establish is whether the couple has simply spent all their money or whether expenditures are less than income allowing for the possibility of hidden assets.

When this question isn't answered at the outset, time and money can be wasted trying to solve an imaginary problem. Establishing that hidden assets are unlikely or impossible curtails expensive investigations.

On the other hand, establishing the possibility of hidden assets gives an investigation credibility and direction. It is then easier to get access to information needed to complete the investigation. Once evidence of the possibility of hidden assets is produced, courts are more likely to order the suspected party to turn over relevant financial information. The other party may even comply voluntarily without court intervention, knowing little will be gained by resisting.

Regardless of who investigates, the investigator needs to answer three preliminary questions:

1. Did the suspected spouse have any opportunity to hide assets?

2. Are hidden assets a possibility, or did the couple simply spend everything they earned?

3. Assuming hidden assets are a possibility, during what time frame did the hiding most likely occur?

Places To Look For Hidden Assets

Relatives

Family ties can provide the means for concealing assets during a divorce. Parents will protect children, children will protect parents, and siblings will protect each other. The resolve of the protectors will vary from case to case.

The divorcing party doesn't want his or her relationship with a family member damaged. In most cases, he or she wants to protect the relationship more than the asset. Therefore, the threat of involving a relative in the legal process may get the spouse to reveal an asset held by a relative. In addition, while a relative may additionally agree to hide an asset, the relative may very quickly draw a new line when it becomes obvious that he or she is about to become embroiled in the legal process.

Friends

Similar to family members, the emotional bonds between friends may provide a means of hiding assets. However, these relationships tend to be more fragile. Pressure of any type may break the resolve of an abettor. This category also includes new significant others. Pressure, or even threatened pressure, on the relationship may easily break the combined front of the new couple.

Pawn Shops

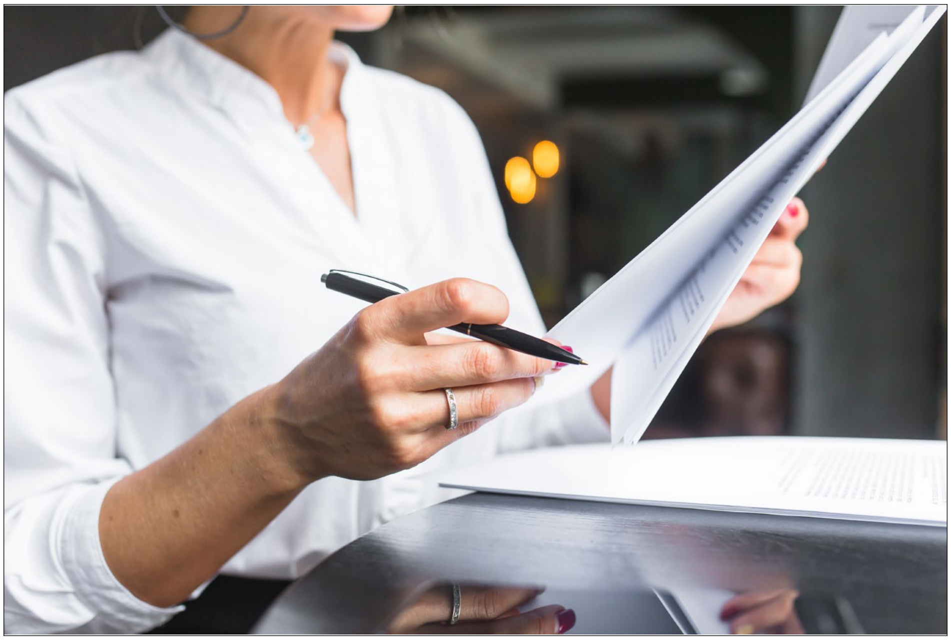
Individuals who have historically dealt with pawn shops may continue to deal with them during the course of a divorce. Trading assets for a pawn ticket and cash may provide a quick means of securing assets from an inquiring spouse. Some pawn shops are even set up to take pawns on vehicles, planes, or real property. Pawns entailing hundreds of thousands of dollars are possible.

Art Storage Facilities

In addition to being inherently valuable, works of art may be environmentally sensitive. Some art, such as paintings, may require specific temperature and humidity ranges in order to retain its value. Some art owners seek out these facilities to store their collections when they are on vacation or change residences for major portions of the year. Historical use of these facilities in the past may provide a productive line of inquiry during a divorce.

Casinos

Many gambling establishments accept fund transfers from their clientele. A player may simply instruct his or her bank to send funds to the casino that will presumably be used for gambling. The casino holds the money until the player shows up and then issues chips or other gambling credit. When the player has had enough, he can then instruct the casino to wire his remaining funds back to his account.However, there is nothing prohibiting the spouse who transferred the funds from telling the casino that there has been a change of plans and to send the money back. Therefore, the hiding spouse can show where the money went and claim that it was lost.



The Business Owner

Businesses Can Be Used to Hide Assets

A business may be an ideal venue for keeping assets from a spouse. Transactions that can have a large effect on the marital estate may be camouflaged by the large transactions that normally occur in a business. Some business owners can exert total control over the operations of a business defeating internal controls and normal bookkeeping procedures.

Finally, a business may be a significant source of income for a couple. Following the money may indicate where assets could have been hidden.

Information Needed to Begin the Investigation

The information necessary to begin a business investigation is the same as for a wage earner — the bank statements and the check registers. The difference is that the bank statements and the check registers are needed for both the couple's personal account and the business account.

The investigator will review the business account for how money comes into the business, interbank transfers, and unusual bank transactions. The review of the check registers will focus on payments made to or on behalf of the owner, large or unusual transactions, and non-business expenditures.

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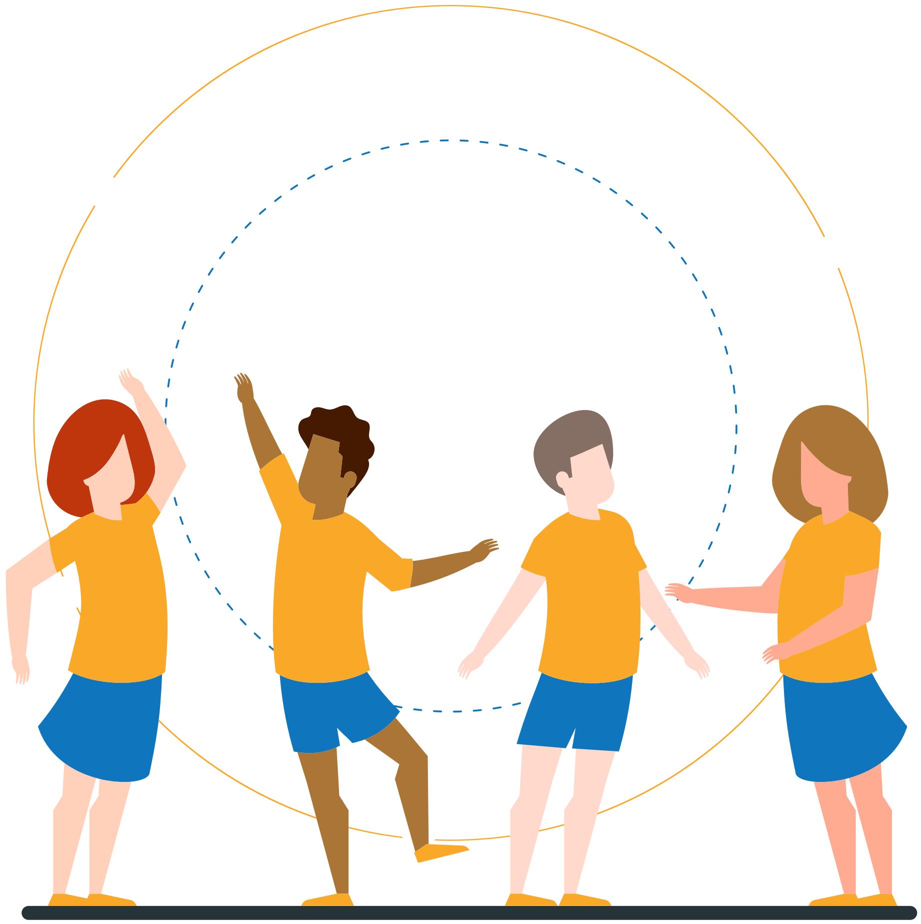


Protecting Children During and After Divorce

Divorce is a difficult time for children. They fear losing the love of one or both parents and the security of their home and established routine.

Younger children sometimes feel that they are to blame for the divorce, particularly if they are the subject of a custody fight. Older children may demand to know which parent is responsible. By pointing a finger, one parent can seriously damage the child's image of the other parent, causing a lasting rift in the relationship.

Studies show the most damaging aspect of divorce for children is parental conflict. For children to thrive during and after your divorce, parents must do everything possible to reduce the conflict.

Here are some suggestions for helping children feel safe, secure, and loved during divorce:

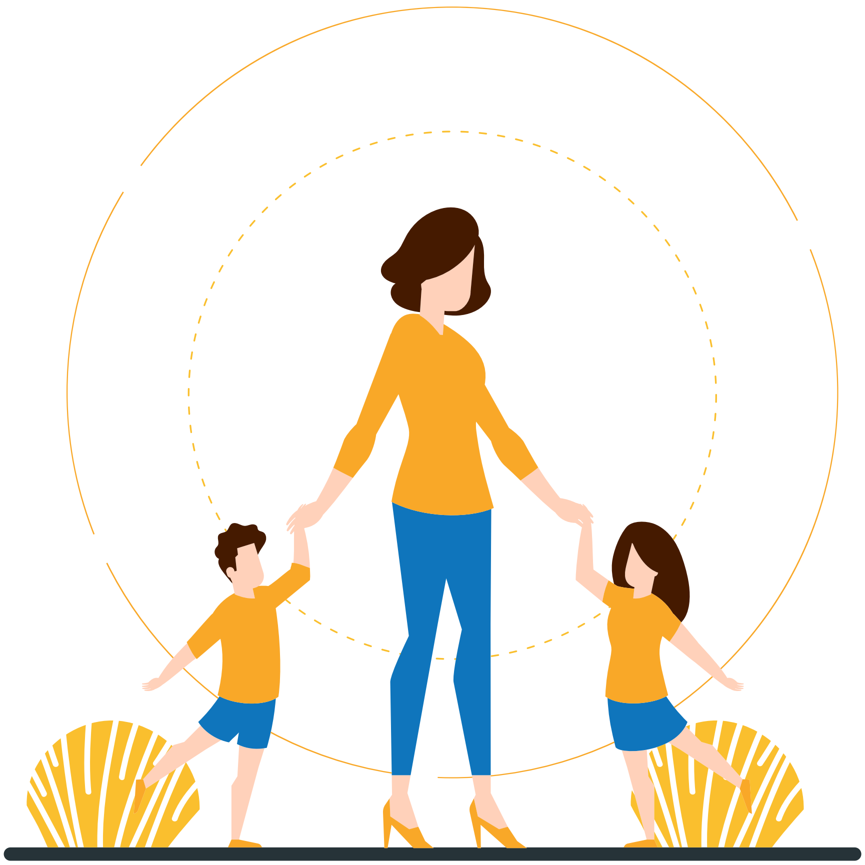
1. Think of your children's well-being before acting. If this is difficult because of your own feelings, needs, and emotions, get professional help.

2. Keep your composure around the children at all times. Set aside time to mourn and be sad each day, when the children are asleep or not at home.

3. Assure your children that they are not to blame for the break-up and that they are not being rejected or abandoned.

4. Try not to upset the children's routine too abruptly. Children need a sense of continuity and it is disturbing to them if they must cope with too many changes all at once.

5. Be direct and simple in telling children what is happening and why, and in a way a child can understand and digest. The worst course is to try to hush things up. If the child asks questions, explanations should be brief, prompt, direct, and honest.



6. Don't let the guilt you may feel about the marriage breakdown interfere with disciplining the children. Children need and want to know what is expected of them. Parents must be ready to say "NO" when necessary.

7. Offer the children the opportunity to see a counselor for professional assistance.

8. Watch your body language, and tone of voice, as well as what you say. Continuing anger or bitterness toward your former partner can injure your children far more than the dissolution itself. The feelings you show are more important than the words you use.

9. Do not criticize the other parent in front of the children. For a child's healthy development, it is important for him to respect both parents and believe both parents respect each other, even if that is not the truth.

10. Do not force or encourage your children to take sides. To do so encourages frustration, guilt and resentment. Allow your children to be children. Do not confide in them, whatever their age. Children should never be brought into the conflict as confidants, spies, or pawns.

11. Do not discuss finances with the children. Never mention payment or non-payment of support.

12. Remember that doing the right thing often is not immediately rewarded. However, doing the right thing will have a positive and lasting impact upon your children, and only serve to enhance your relationship with them as they mature and grow.

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Interviewing the Parties

If given the opportunity, the investigator will want to interview the business owner concerning unusual transactions in the bank statements and questionable items in the check register. The investigator will also interview the business owner's spouse and ask that he or she review the bank statements and check registers of the business.

There are a number of good reasons for this approach. First, the spouse may have been involved in the business and have as much or more information than the business bookkeeper. Second the spouse may be the business bookkeeper or may have been in the past. Third, the spouse may recognize payments to relatives, dress shops, girlfriends, questionable vendors, or unfamiliar credit cards that the investigator will not.

Fourth, educating the spouse on the income of the business and how it spends its money may either show the spouse that his or her concerns of hidden assets are unfounded, or that the spouse likely has a valid claim.

Countering the Business Owner's Resistance

The business owner may resist the investigator's efforts to obtain the bank statements and check registers. The reasons given by the business owner for not producing the documents range from client confidentiality concerns, to undue burden, to claims that the disclosure will reveal operational secrets to the business's competitors.

A claim of undue burden is countered by indicating that most businesses of any size have automated bookkeeping systems. Production of the check register entails pushing a button.

While it is true that a vindictive spouse could damage a business by revealing operational secrets, the check register and bank statements do not usually contain information that could be used in this manner. If the business owner illustrates that secrets could be revealed, the investigator can counter with provisions that insure that only the investigator and not the spouse will be allowed access to the information.

The arguments that the business owner offers for not providing the documentation requested often have little to do with the real reason the owner does not want to disclose the records. The owner may have claimed personal expenses as business expenses or have unreported income. This puts the business owner in a position of revealing questionable tax reporting. If this is the case, assurances of confidentiality may go a long way towards obtaining the records.

The resistance by itself can be a clue that something is amiss in either the disclosed income or the assets of the business owner.

The Formula for Determining the Possibility of Missing Assets

Once the investigator has determined the net income of the business, the following formula can be used for determining the possibility of missing assets.

Net Business Income - Personal Expenditures = Missing Income or Assets

The net business income comes from the tax return. The personal expenditures are determined by review of the couple's personal checking account. The difference is missing income, which may exist in the form of assets. The amount of income is known; the amount that was spent is known. The figure that has to be explained by the business owner is the difference.

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divorce. The purpose of alimony is to help the lower-income spouse maintain a reasonable standard of living and to become self-supporting within a reasonable time, if possible.

Alimony can be negotiated. Spouses can agree on an amount and duration for alimony or that neither will receive alimony from the other. If spouses cannot agree on alimony, the court will decide whether to award alimony, how much to award, and for how long a period.

These are the factors most courts consider:

Disparity in Incomes. Often marriage partners have significant differences in their ability to make money. The bigger the difference, the more likely alimony is to be awarded.

Length of Marriage. Alimony is less likely in a short marriage. Many courts use a sliding scale approach, employing a formula where the number of years of alimony awarded is related to the number of years of the marriage.

Job Market Reentry. When the marriage has been short and the spouse seeking support is employable or can be employable with some training, support may be awarded for a short time to provide the spouse with enough time and money to become self-supporting.

Loss of Career. If a spouse surrenders his or her career in deference to the career of the other spouse, an argument can be made that alimony should be paid to compensate the deferring spouse for this sacrifice.

Property Division. If a spouse is awarded sufficient income-producing assets in the divorce, he or she may have no need for alimony.

Separate Wealth. If a spouse has separate property that makes him or her independently wealthy, the spouse is unlikely to be awarded alimony.

Spouse's Ability to Be Self-Supporting. If a person cannot be self-supporting through employment or assets, alimony is appropriate. Courts are reluctant to cast one spouse onto public assistance if the other has the ability to pay spousal support.

Physical Condition, Mental Condition, Age. The physical condition, mental condition, and age of a spouse are considerations in determining alimony. A disabled spouse may have a difficult time supporting himself or herself. Age discrimination can be a barrier to older spouses attempting to reenter the workforce.

Standard of Living During the Marriage. Maintaining the same standard of living after divorce is difficult for most couples. Divorce creates two households that are more expensive to maintain than one. Consequently, while standard of living can be a consideration, it may have limited weight.

Child with Special Needs. Alimony can be awarded to provide for a parent who is unable to work because he or she is caring for a child with special needs.

Ability to Pay. The court will consider the financial situation of the payer spouse. An award of alimony that exceeds an individual's ability to pay makes little sense. The couple is likely to end up back in court with one trying to collect the alimony and the other trying to have it reduced or eliminated.

Answers to Common Questions About Property Rights in Divorce

What property can be kept once the divorce is over?

The property that spouses accumulate during their marriage is marital property that will be divided during divorce. This property may include a home, vehicles, investments, personal property, and retirement accounts. In most cases, a 50/50 division is the starting point for both settlement negotiations and the court if the spouses cannot reach a property settlement. The court sometimes orders or the spouses agree to an unequal division to adjust for disparities in earning capacity, avoid alimony, or take care of a spouse with special needs.

Spouses keep their separate property. It is not divided during divorce. This includes property acquired before marriage and property received during the marriage as a gift or inheritance. However, earnings from separate property that accumulated during the marriage, such as interest or dividends, are subject to division.

What if a spouse spent or wasted a lot of property during the marriage?

If a spouse unnecessarily spent marital funds such that a significant portion of marital property is gone, then he or she may be liable for fraud or waste of marital assets. Fraud or waste can be proven with evidence that a spouse transferred sizable funds to family members or friends, incurred debts for unneeded expenses, gave gifts to a paramour, or gambled away the funds.

If fraud or waste is proved, the judge will likely award more of the remaining marital property to make up for the amount wasted.

What can be done to prevent a spouse from taking possessions, draining the bank accounts, or cancelling insurance upon finding out about the divorce?

Usually, the court will enter orders preventing this behavior once a divorce is filed. A spouse who violates these orders can be held in contempt and fined or jailed. To get around the orders, sometimes a spouse hides or destroys property before a divorce is filed. In either case, the court could award the innocent spouse a greater share of the marital property to compensate for missing assets.

Steps that can be taken to protect property before a divorce is filed:

- ✓ *Photograph or video the contents of the home just as is done for insurance purposes.*
- ✓ *Make an inventory of the items owned with their cost and an estimate of their value.*
- ✓ *Save any purchase receipts or appraisals in a safe place.*
- ✓ *Remove the most valuable items or those that are particularly important and store them in a safe place.*