



Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Serving all of California

Ron's Corner

This month we focus our newsletter on providing Family Law attorneys a quick-reference overview of tracing. Our article was written by Sue Olson, a staff accountant from our firm.



Sue Olson, Accountant

Sue has been in the forensic accounting field for 25 years and for the past 16, has provided valuable support to our clients and me. Although she offers her assistance in a variety of areas, she focuses much of her efforts on tracings.

Sue studied accounting at El Camino College and has taken additional courses through UCLA Extension. She is also taking courses in financial statement analysis. Once complete, she plans to study to attain certification as a fraud examiner. Her interest and adeptness in tracings has lead her to offer her skills to estate planning attorneys, in addition to attorneys who practice family law, to conduct probate/estate accounting tracings.

For a specific case on how tracing can be used to assist a client, I also recommend you visit *Forensic Accounting Today* issues 32 and 33 to review *How Diligent Tracing Saved a Client Hundreds of Thousands of Dollars*. The article was written by Tatyana Sklevin, CPA, CVA, CFE, one of our senior accountants. You may download the newsletters at <http://www.anfusoocpa.com/forensic-accounting-newsletters/>.

If you have specific questions concerning tracing, we welcome you to contact Sue or me at the office.

Ron

Tracing: Why, When and How

By Sue Olson, Accountant

Tracing usually becomes an issue when community and separate property funds have been commingled in the same account(s) and then an asset is purchased with funds from that account. The mere commingling of separate property moneys in a community bank account does not destroy the separate property character of the funds, so long as they can be adequately traced. *In re Marriage of Mix, (1975) 14 Cal.3d 604.*

Property acquired by purchase during a marriage is presumed to be community property (*Family Code §760*) and the burden is on the spouse asserting its separate character to overcome the presumption. *Mason v. Mason (1960) 186 Cal.App.2d 209, 212; Estate of Niccolls, (1912) 164 Cal. 368; Thomasset v. Thomasset, (1953) 122 Cal.App.2d 116.*

The presumption applies when a spouse purchases property during the marriage with funds from an undisclosed or disputed source, such as an account or fund in which a party has commingled his or her separate funds with community funds. *Estate of Neilson, (1962) 57 Cal.2d 733.* A spouse may trace the source of the property to his or her separate funds and overcome the presumption with evidence that community expenses exceeded community income at the time of acquisition. If the party proves that at that time all community income was exhausted by family expenses, the spouse establishes that the property was purchased with separate funds. *See v. See (1966) 64 Cal.2d 788, Estate of Neilson, supra, at p. 742; Thomasset v. Thomasset, supra, at p. 127.*

A spouse may protect the character of his or her separate property by not commingling it. However, if the spouse chooses to commingle it, then he or she assumes the burden of keeping adequate records. The documentation must be sufficient to establish either the direct tracing or the balance of community income and expenditures at the time an asset is acquired with commingled property. *Estate of Murphy (1976) 15 Cal.3d 907, 919; White v. White (1938) 26 Cal.App.2d 524, 529.* The spouse's testimony alone is not sufficient. *In re Marriage of Frick (1986) 181 Cal.App.3d 997.*

Direct Tracing Method

Direct tracing is employed if the withdrawal from the commingled account used to acquire the disputed asset can be traced to a specific separate property deposit or deposits into the account. The requirements for direct tracing are:

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* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

How We Ensure We Leave No Assets Uncovered



and Deliver Your Reports On Time



We determine the actions needed based on the facts of the case and Ron's 26 years of experience. Then Ron:

- Carefully estimates how much time each required task will take
- Assigns tasks to correct personnel based on their experience and expertise
- Provides each assigned staff with details of their scope of work
- Meets frequently with his team to ensure timely, thorough completion of our investigation.

**When You Need a Forensic
Accountant**

Ron J. Anfuso, CPA/ABV
An Accountancy Corporation

Tracing: Continued from page 1

- (1) The tracing spouse must have specific records. *In re Marriage of Marsden (1982) 130 Cal.App.3d 426*;
- (2) The specific records establish that on the date that the separate expenditure was made, there were separate funds available in the account to make the purchase. *In re Marriage of Higinbotham (1988) 203 Cal.App.3d 322*; and
- (3) The tracing spouse had the intent to utilize the separate funds to make the purchase. *Estate of Murphy (1976) 15 Cal.3d 907, 918*; *In re Marriage of Frick (1986) 181 Cal.App.3d 997, 1010-1011, 226 Cal.Rptr. 766*.

Recapitulations Insufficient

Generally, the tracing burden cannot be met by annual recapitulations (*In re Marriage of Higinbotham, supra, 203 Cal.App.3d at p. 330*; *In re Marriage of Marsden, supra, 130 Cal.App.3d 426*), or by recapitulations over the length of the marriage. *See v. See, supra, 64 Cal.2d 778*. The only time that recapitulation may be used is when, through no fault of the spouse asserting the separate property interest, it is impossible to ascertain the balance of income and expenditures at the time each payment was made. *Id. at p. 783*; *In re Marriage of Higinbotham, supra, 203 Cal.App.3d at p. 330*. Examples of this would be when the opposing spouse destroyed the records, or the documents were destroyed by fire or flood.

Actual Use of Separate Property Funds

The tracing must trace the separate property directly into the particular bank account from which the disputed payment was made and show that on that date there were sufficient separate funds available in said account to make the payment. Evidence that merely establishes the general availability of separate funds on particular dates without also showing any disposition of the funds is not sufficient proof of tracing to overcome the presumption in favor of community property. *Estate of Murphy, supra, 15 Cal.3d at p. 918*; *In re Marriage of Mix, supra, 14 Cal.3d at pp. 613-614*.

Intent to Use Separate Funds

In addition to showing the availability of separate property funds in the account from which the payment was made, the tracing party must also establish the intent to use those separate funds in purchasing the disputed asset. *In re Marriage of Higinbotham, supra, 203 Cal.App.3d at p. 329*; *In re Marriage of Johnson (1983) 143 Cal.App.3d 57*. This additional burden can often be met by the party's testimony as to his or her intention. No case has yet addressed the effect on the intent requirement of *Family Code §1100's* imposition of a fiduciary duty on spouses during marriage.

Substantial Evidence Rule

Whether a tracing is adequate is a question of fact for the trial court, which decision will be upheld on appeal if supported by substantial evidence. *In re Marriage of Higinbotham, supra, 203 Cal.App.3d at p. 329*.