

## Pre divorce Document Checklist

*This outline is provided to give clients a general understanding of the processes and issues that may be involved in the clients case. This is an outline that may not be up to date and the outline is far from comprehensive. It is not a substitute for legal advice and is not intended to assist in the prosecution of any case. It is offered solely as information to make the litigation process more decipherable to the client. It is not intended and should not be used as a substitute for legal advice.*

### Tip:

Even seemingly unimportant papers help trace hidden assets and income, so copy everything! Copy or record all hand written notations that may lead to additional documents. If your spouse is a wheeler dealer or owns his own business, hire a forensic accountant to scrutinize family finances.

### Case study:

One wife, whose husband kept extensive business records in his home office, had a rented photocopier machine delivered to the marital home. Over two days she copied several hundred documents. Her photocopy expense, (10 cents per page) was minimal compared to the quality of the information and the fortune she saved in legal fees. She avoided formal discovery, including expensive depositions and motions to compel discovery, and obtained the ammunition to settle the case.

## Master List of Documents

- Address Book Federal and State Tax Returns for Past Five Years Business Records and Financial Statements Personal Property
- Small Business Ownership Records Employment Benefits Loan Documents and Applications
- Miscellaneous Income and Assets

### Special Considerations

#### \* Tips for Bank Subpoenas Finding Hidden Treasure Tracing Adultery

Address Book Names, addresses and telephone numbers will help your lawyer prepare subpoenas for documents, depositions and court appearances. Don't forget mystery numbers, i.e., those without names, or just initials. Identify them with the criss-cross directory. Look for the following professionals, friends, and businesses:

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1. accountants--personal, business, and his family's. bankers--personal and business, including trust officers and his family's banker.
2. bookkeepers--for further documents under subpoena
3. computer consultants--they know how and where data is hidden.
4. computer on-line services--obtain his password to access information, including secret liaisons.
5. computer message center and voice mail codes
6. detective/security services--is he spying on you or using a detective to hide assets?
7. escort/dating service
8. financial planners friends--those close enough to be trusted with money.
9. insurance agents--including life, annuity, casualty, and key man insurance.
10. investment advisor
11. lawyers--Including his family's attorney, but remember, confidential matters cannot be subpoenaed.
12. mailing services--such as Mail Boxes Etc.
13. mini-storage and office record storage
14. physicians
15. stock brokers
16. telephone answering services
17. telephone long distance companies
18. therapists
19. travel agents--personal and business.

**Federal and State Tax Returns for Past Five Years provide a wealth of information. Retain an accountant to analyze the returns and read between the lines.**

**Individual tax returns (Form 1040) (Form 1040X, for amendments). Include:**

1. Schedule A--Itemized Deductions
2. Schedule B--Interest and Dividends
3. C--Profit or Loss from Business Note: Same analysis as corporate tax return. See below.
4. Schedule D--Capital Gains and Losses
5. Schedule E--Supplemental Income and Loss (from rents, royalties, partnerships, estates, trusts, etc.)
6. Schedule K-1--Partnership, Estates, Trusts
7. Form 2106--Employee Business Expense (vehicles, travel, meals, etc.)
- 8 Form 4684--Casualties and Thefts Form 5043--Retirement Assets
9. Form 5500 and 5500EZ--Retirement Assets including detailed amounts
10. Supporting documentation: W-2s, 1099s, etc.

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**Look at Schedule B (Interest and Dividends). You can identify accounts, and the approximate amount on deposit. For instance, if your bank pays 3 percent interest on a money market account and Schedule B says you had \$3,000 in interest from that bank, you can assume that an average of \$100,000 was on deposit. Note that other, possibly valuable investments, such as non-dividend paying stock, are omitted from Schedule B, along with tax-exempt interest, and accounts under different social security numbers. Interest from foreign bank accounts appears at the very bottom of Schedule B.**

**Look for refunds and/or deficiencies. If you believe that the document produced is a forgery, have your lawyer insist that Form 4506 is signed by your spouse. The IRS will photocopy the actual return filed.**

**Corporate tax returns (Form 1120 and 1120S for corporations)**

- 1. Schedule A--Cost of Goods Sold**
- 2. Schedule D--Capital Gains and Losses**
- 3. Schedule E--Compensation of Officers**
- 4. Schedule K--Other Information (includes dividends paid in excess of earnings, possibly in an attempt to devalue the business)**
- 5. Schedule K-1--Allocation of Profit and Loss among Shareholders corporations only).**
- 6. Schedule L--Balance Sheets Schedule M-1--Reconciliation of Income per Books with Income Tax Return**
- 7. Schedule M-2--Analysis of Unappropriated Retained Earnings per Books**
- 8. Form 4562--Depreciation and Amortization**
- 9. Form 4797--Sales of Business Property**
- 10. Form 5500--Annual Return/Report of Employee Benefit Plan.**

**Your accountant should investigate whether your spouse is manipulating accounts to minimize income. Ask about the following:**

**Is the company deferring income? Are accounts receivables being postponed? Are expenses being prepaid to decrease profit? Are inventories being manipulated? Are salaries to friends and families increasing? Are non-arm's length agreements hurting the company?**

**Subchapter "S" tax return (Form 1120S)**

**Partnership tax returns (Form 1065) Look for net operating loss adjustments.**

**Gift and estate tax returns. Has your spouse made or received any gifts? Has he inherited any property?**

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### **Business Records, Financial Statements and Credit Card Invoices**

Tax returns don't tell the whole story. For instance, if your spouse's business depreciates assets for tax purposes, this expense reduces taxable earnings, but does not cost anything out-of-pocket. Real estate, for example, may actually increase in value while being depreciated for tax purposes. You will need a fair market value appraisal. Try to obtain all business records and financial statements. If the company prepares audited financial statements, possibly required by a lender, get copies for the past five years.

If your spouse has an expense account, get copies of expense reimbursement records. Copy both sets of books. Credit Card Invoices Copy all invoices and slips. Look for a credit balance, meaning the company owes your husband money since he overpaid the bill or received merchandise credit. Also, hire a computer expert to "backup" all the information in his home and office computers. Don't forget to investigate any "on-line" accounts.

**Personal Property Personal property includes:**

### **Annuities Antiques Appraisals**

Contain detailed descriptions of marital property. Note that appraised values may depend on the reason for the appraisal. For example, "replacement value" appraisals are often inflated while "tax" appraisals minimize value. Be sure you know the purpose for which the appraisal was prepared.

art work automobiles planes boats china and crystal coins collectibles frequent flyer miles furniture/furnishings furs guns jewelry rugs stamps sterling Bills of Sale (all property over \$200) Certificates of Title for automobiles boats planes trailers heavy equipment Homeowners Insurance "scheduled property" often states a value for insurance purposes. Life Insurance Policies

Applications, including drug test results, beneficiaries cash surrender value, loans against policies, other encumbrances against policies, e.g., using the policy as collateral for a loan.

**Sales Slips and Bills of Sale for automobiles boats planes trailers**

**Savings, Checking, and Credit Union Accounts**

**Note: If your spouse's name is second on a joint account with a third party, interest income will be reported by that third party. Your spouse will not receive a 1099, and the account will not show on your income tax return.**

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- 1. application to open an account**
- 2. monthly statements (look for payment or debit memo for safe-deposit box rental)**
- 3. passbooks**
- 4. canceled checks and drafts (front and back) Note: make sure you photocopy the backs of checks, especially those made out to "cash," to your husband or to any unknown third party. Account numbers of secret accounts may appear along with the name of the depository bank.**
- 5. check cashing card**
- 6. check register**
- 7. check stubs**
- 8. cashier checks (carbon or photocopy)**
- 9. cash transactions**
- 10. certificates of deposit**
- 11. children's Uniform Gift to Minors Act bank**
- 12. Christmas club accounts**
- 13. deposit slips**
- 14. linked mutual fund and stock brokerage account**
- 15. loan and credit applications**
- 16. numbered accounts (often Swiss)**
- 17. passbooks (check to see if there is a loan against it)**
- 18. wire transfers withdrawals Look for any suspicious activities, such as repeated withdrawals of sums such as \$505, suggesting conversion to travelers checks for \$500 plus a 1 percent fee of \$5.00.**

### **Securities Accounts**

**Securities certificates stocks and bonds stock brokerage account statements lists of securities mutual fund statements agreements relating to the account, such as, option trading, etc. applications to trade certain securities**

**Note that if your spouse is a sophisticated investor, he/she may have options or commodity trading ability. Stock brokerages require customers to fill out lengthy questionnaires before opening accounts for certain risky activities, such as options. These questionnaires are a good source of information regarding investment experience and objectives.**

### **IRA's, Keogh's and SEP-IRA's Pension, Retirement and Survivor Benefits**

## **Small Business Ownership Records**

**Any information you obtain is helpful in appraising the value of the business, including:**

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- 1. buy-sell agreements**
- 2. key-man, life, and property insurance**
- 3. casualty insurance**
- 4. leases**
- 5. non-compete agreements**
- 6. financial statements**
- 7. balance sheet**
- 8. shareholder equity investments**
- 9. asset list and depreciation schedules**
- 10. corporate redemption agreement to purchase stock rights of first refusal**
  - 11. major contracts**
  - 12. pension and profit sharing budgets**
  - 13. projections**
  - 14. marketing literature**
  - 15. loan applications**

## **Employment Benefits**

**Look for any sign that your spouse has deferred income, commissions, bonuses, royalties or has had salary converted into a non-cash benefit, including the following:**

- 1. clothing allowance**
- 2. company car**
- 3. credit union statements**
- 4. contracts of employment**
- 5. employee benefits brochures**
- 6. pension benefit statement, plan booklet, and amendments actuarial report on pension plan**
- 7. expense accounts**
- 8. expense reimbursements**
- 9. housing/relocation programs**
  - 10. in-kind compensation**
  - 11. meals**
  - 12. medical insurance**
  - 13. life insurance**
  - 14. loan programs**

- 15. pay stubs (show certain benefits not part of taxable income)
- 16. pension
- 17. profit sharing
- 18. stock purchase plan
- 19. travel and entertainment allowance

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Investigate perks your spouse receives such as use of company car, gasoline, meals, entertainment, travel and non-arm's length loans, e.g., loans made to the company from your spouse or from the company to your spouse. Employer's direct payments to pension plans are "income" for purposes of determining support. Although not taxable, such payments show up on W-2's for full time employees and on 1099's for independent contractors.

### **Litigation**

If your spouse is suing, what's the value of his or her lawsuit? If your spouse is being sued, do you have any exposure? Are there any prior divorce proceedings--will a first wife's right supersede yours? Court papers relating to pending matter(s) Statement of damages (to ascertain the value of the case) Look for Court records of final adjudication and Liens placed on assets.

- \* Loan Documents and Applications
- \* Financial statements

tend to show inflated asset values, income and net worth.

- \* Collection agency letters \$home equity loans/lines of credit \$mortgages/ home and business notes passbook loans payment schedule

Note: Look for recent payment of "loans" to family members, business associates, and friends. Also, look for accelerated payments; your spouse wants to show he has no money for you.

- \* promissory notes/ payable and receivable

### **Miscellaneous Income and Assets**

royalties severance pay workers' compensation \$annuities rental income prizes and awards \$trust and estate income capital gains gift certificates unemployment compensation pension veteran's benefits social security lottery or gaming winnings life insurance income or proceeds Notes Payable to your spouse Partnership Agreements Passport

**Where, when, with whom, and for what purpose has your spouse traveled?**

**\* Private Investigative Reports or Invoices**

**Is your husband having you followed or doing an asset check on you?**

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- \* Telephone Records, including Cellular Telephone Records Real Estate Abatement applications Deeds Insurance claims Leases Mortgages Offers to purchase Options to purchase Purchase and sale agreements Rent rolls Tax bills Utility bills Intra-family ownership or transfers Safe Deposit Box Location, Number, Activity Private security services and bank rent boxes Security Services Wills and Trust Documents**

**Including any relatives who may name you and/or your spouse as beneficiary.**

**\* Professional Licenses**

- These documents show your spouse's employability, or demonstrate his underemployment during the marriage.**

**\* School records**

**Including diplomas and evidence of any education or training.**

**\* Calendars and Diaries**

- Check his/her calendar against charge receipts and explanations regarding his/her whereabouts.**