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The Challenge of Hidden Assets in a New Mexico Divorce

One of the most complicated and contentious issues in a divorce is the division of marital property and debt. The first great challenge is often identifying and valuating the marital property. Given that New Mexico is a community property state requiring equal division of all marital property and debt, both parties have a significant interest in making sure that all marital assets are properly identified and valued.

Unfortunately, sometimes one or both spouses will try to manipulate assets or asset values. They may try to classify community property as separate property. Other times, one or both parties will try to distort the value of the property, up or down, depending upon motive. Worst case, one or both parties will try to hide assets.

So what can be done if a spouse suspects that the other spouse is hiding assets? The first step is to use the tools available under the New Mexico Rules of Civil Procedure and begin the discovery process. Discovery is the system devised by the courts for the exchange of information in court cases and it can include written requests for information (called interrogatories, requests for production and requests for admission). In a divorce case, the main focus of discovery is getting both parties to accurately identify all of their debts and assets. The discovery process also allows the parties to hold depositions, which is an interview, held under oath at which the spouse being interviewed can be required to answer questions about the existence of assets. Parties can also be required to bring documents to depositions.

If the parties have engaged in the traditional discovery process and one spouse still believes that the other is hiding assets, it may be time for that party to think about hiring an investigator. Such investigators are typically certified public accountants who are trained in reviewing financial records to look for evidence of missing assets. Basically they are looking for a paper trail connecting various deposit and receipts and tracing where all of the marital income went. Sometimes the investigator is appointed by the court as an expert charged with reviewing the financial records provided during discovery.

Hiring an investigator or asking the court to appoint an expert can be very expensive. Neither party is advised to go down this road unless it is absolutely necessary. Often a good forensic accountant will charge more per hour than the attorney. Often a basic review of the documents provided during discovery will show where all of the parties' marital income has been spent and that there isn't anything to hide. An experienced family law attorney may be able to trace

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that money and dispel fears of hidden assets without having to hire an expert. Therefore, if a spouse believes that another spouse is hiding assets it is very important to review that claim with an attorney before proceeding.

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