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**Sequor Law Summer Series:  
High Net Worth Matrimonial Asset  
Recovery: Tips and Best Practices  
from the Experts**

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SEQUOR LAW SUMMER SERIES:



SEQUOR LAW

# HIGH NET WORTH MATRIMONIAL ASSET RECOVERY: TIPS AND BEST PRACTICES FROM THE EXPERTS

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## **Marital Asset Recovery: 'Wealth Managers' Assist Unscrupulous Men in Defrauding Their Wives**

Wealthy men are cheating on their wives—with their accountants and lawyers. They carry on these affairs in exotic locales known for banking secrecy and regulations that make it possible to hide billions of dollars in marital assets.

*January 24, 2018*

*By Edward H. Davis Jr., John Silbermann and Nyana Miller*



Nyana Miller, John Silbermann, and Edward H. Davis Jr.

Wealthy men are cheating on their wives—with their accountants and lawyers. They carry on these affairs in exotic locales known for banking

secrecy and regulations that make it possible to hide billions of dollars in marital assets. Even the most financially sophisticated wives and their divorce lawyers are often unable to keep up with the growing asset protection industry and the ruthless men to whom they cater. Combating this trend, divorce lawyers and defrauded ex-wives have turned to lawyers who specialize in piercing the opaque world of offshore companies and trusts to recover assets from high net worth individuals and those who assist them.

The release of the “Panama Papers” and “Paradise Papers” exposed much of the “wealth management” industry and its clientele as co-conspirators in a high-stakes shell game to conceal trillions of dollars of assets from taxing authorities, corrupted government regimes, creditors and, increasingly, the clients’ own spouses. In “Capital Without Borders: Wealth Managers and the One Percent,” Brooke Harrington notes that “through wealth managers’ skillful use of tools such as trusts, foundations and corporations, the game of ‘now you see it, now you don’t’ can go on almost indefinitely ...”

Many firms now advertise “pre-divorce planning” services designed to transfer assets out of a spouse’s reach. These schemes may place marital assets into offshore companies and trusts in which the divorcing wife receives a one-half ownership interest, but no right to distributions. Then, while the ex-husband is drawing “consulting fees,” his ex-wife is handed a large year-end tax liability with no ability to pay it. The scheme concludes when the ex-husband disingenuously offers to buy the company interest back and pay the taxes—all at a fraction of what his ex-wife was entitled to receive.

In these divorce cases, trusts, companies and other entities maintained by the husband to hold assets should be primary subjects of inquiry. Legitimate estate and tax planning does exist and most practitioners in the field are honest brokers of a vital service. However, for the unscrupulous, “estate

planning” is but a euphemism to describe asset concealment to defraud unsuspecting wives and others. Once the seeds of marital discord have been sown, if the wife has not been involved in these transactions or communications, it is more than likely that the husband enlists the wealth management professionals to divest his wife from marital property. Divorce counsel should therefore explore the husband’s accounting and legal engagements, however brief or seemingly minor.

### **Individuals Enlisted in the Schemes Are Often Key to Successful Settlements**

Men who engage in these schemes often fit a standard profile—narcissistic, with an inflated sense of self-importance and a complete lack of empathy. They are often highly intelligent and believe passionately that they are doing nothing wrong. They do not fight over money, for there is more than enough marital wealth for everyone to live comfortably. They engage in protracted litigation to exercise power over and to punish their ex-wives, to exert control over their children and to secure loyalty from their family members. However, because their schemes require trusted individuals to act as nominees for entities or accounts, these men often enlist friends and family members to carry out their asset concealment activities.

One such husband pursued refused to pay child support and to satisfy a judgment for property division for millions of dollars. He was pursued through two jurisdictions before he settled abroad where his conduct was essentially legally condoned. He showered his children with lavish gifts, and insisted that they come to visit him before he would pay for educational expenses and even regular dental cleanings. He threatened to miss college graduations and other milestones in his children’s lives before he would pay his ex-wife as ordered by the court. He was confident that he and his family

had squirreled away the marital wealth in an impenetrable offshore structure. However, by bringing claims against those that facilitated the scheme, which brought these seemingly more rational actors to the bargaining table, a significant global settlement was obtained.

The bottom line is that the world does not end at a country's borders. There are methods of pursuing offshore assets that are focused on flipping the leverage of the seemingly impenetrable offshore structure and forcing participants in the scheme to essentially "buy the judgment." Divorce lawyers should reach out to networks of specialized asset recovery lawyers for assistance in navigating the underworld of global asset protection schemes.

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### **High value assets being concealed within divorce proceedings**

With the added pressures following the impact of COVID19 on divorcing parties' assets, there are various concerns over the economic impact of COVID19 on the value of assets either through depreciation or by spouses wishing to protect assets during the pandemic.

Where there are concerns over one party potentially concealing assets within divorce proceedings, then it is always worth discussing these concerns with your family lawyer who can have an initial discussion with a specialised accountant who deals with forensic investigations and asset recovery.

If there is limited information about a spouse's assets or there is suspicion that assets may have been hidden or misappropriated, specialised family lawyers and investigative accountants can work together to trace and identify any potential assets either within the UK or in offshore jurisdictions to assess the potential recoverability.

When a spouse suspects the other of dissipating or concealing assets, this can put an extra strain on what may already be an acrimonious divorce. If clients are in control of knowing what and where their spouse's assets are, this will allow them to have control over the proceedings in order for them to make informed decisions when negotiating a financial settlement within the divorce proceedings.

Some of the services that can be offered through a partnership with investigative accountants for the identification and protection of assets within divorce proceedings are: -

- Corporate intelligence services – where a spouse thinks there may be hidden assets, or trust structures in place within the UK or offshore jurisdictions, specialist intelligence and research reports can be prepared, through the use of multiple UK and global databases; and open-source intelligence. They can identify assets and structures and provide that missing piece of information which may be significant when considering or entering divorce.
- Valuation services – if a spouse is aware of corporate asset structures, then a specialist forensic valuation team can value businesses across all business areas and jurisdictions.
- With no fault divorce/arbitration/FDR's becoming more prevalent we have found the biggest issue is often agreeing valuations of assets, so independent valuations can be provided by one expert for both parties.
- If the divorce becomes acrimonious, and there is a risk of dissipation or losing control of assets or corporate structures, then we can formulate a strategy to secure the assets, to be sure that assets are available to pay the agreed terms once the financial Consent Order is sealed.
- Or indeed a strategy can be implemented to recover assets should they be found to have been dissipated following a financial Consent Order being sealed.

If you are concerned that your partner is in anyway concealing or dissipating assets beyond your reach to minimise any financial award within the divorce proceedings, it would be worth a conversation with a specialist family lawyer and an investigative accountant to advise whether they can assist in alleviating your concerns or indeed assist with securing or recovering any assets that may have been concealed, so that the fairest financial outcome is achieved.

Both Emma Easton of Turner Nicholson and Hannah Davie of Grant Thornton UK will be happy to assist.

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Following on from the article written by Emma Easton of Turner Nicholson and Hannah Davie of Grant Thornton UK LLP (GT) published on 5 January 2021, this month they go into more detail as to how family solicitors and investigative accountants can work together when clients are going through divorce proceedings and there is the need for the identification and protection of assets to add real value for the client.

Also, they look at how bankruptcy proceedings can affect your client or their spouse before or after the financial Consent Order has been sealed by the family courts.

Further information in relation to each of the areas of interplay are provided below:

### **Pre divorce investigations**

For some, contemplating divorce proceedings can be a daunting prospect especially when you are unaware of the full financial picture of the family finances. Quite often one party has been in control of the finances throughout the marriage and is unaware of assets that may be in the sole or joint names of the parties. Therefore, it may be prudent to carry out pre divorce investigations into the asset position of the parties to have a clearer idea of the finances; and be armed with the financial information before divorce proceedings are commenced and negotiations take place between the parties over the financial split of the assets.

By carrying out early investigations into the other parties' assets prior to commencing divorce proceedings, it may prevent them from hiding or dissipating assets once they become aware that the other party has commenced divorce proceedings.

In most cases, the parties will reach an agreement as to how the assets will be split in terms of property, savings, investments, and pensions. The disclosure process requires both parties to be open and honest when disclosing their financial arrangements but there may be cases where a spouse fails to disclose assets in an attempt to avoid the assets forming part of the capital pot to be split equally. Common assets which may be hidden in the divorce process include:

- Cash
- Insurance policies
- Stocks and shares
- Overseas property and investments.

If assets are to be hidden, then it is likely that the assets are hidden in offshore accounts or property. Assets can be transferred into a third-party name to hold until such time that the divorce proceedings have been concluded.

Therefore, if there is any doubt that one party may not disclose all the financial assets of the parties or try to hide such assets, then it is imperative that the client reach out to an investigatory accountant prior to the commencement of the divorce proceedings to consider the use of Corporate Intelligence services, as further detailed below, to ensure that both parties come to the negotiating table on an equal footing.

### **Following Form E disclosure**

As noted above, it is imperative clients know as early as possible what assets will be available to ensure their financial settlement is fair and equal.

Whether there are concerns entering into the divorce or the client starts to have doubts over the accuracy of the information provided by the spouse after completion of the Form E as they believe that not all assets have been disclosed, or has a suspicion the spouse may have concealed assets or not disclosed their interests held in Trust or corporate structures or may even be disposing of certain assets, the client should consider instructing a specialist accountant to undertake a Form E and asset review.

The Form E and asset review would include an assessment of the valuation information provided to enable further question or clarification to be sought, along with the use of Corporate Intelligence services to undertake comprehensive searches of certain statutory and commercial databases with targeted open source research, public social media posts,

and where felt necessary human intelligence, to verify and further investigate the asset position, identify any hidden assets, provide a breakdown of complex corporate structures, including jurisdictions of various entities and establish the ultimate beneficial owners.

An example of a case where GT were instructed by a wife to trace the assets of her spouse based on the suspicion that her husband was taking steps to conceal, disperse and shield certain assets from matrimonial proceedings following their marital breakdown. In this case, the Corporate Intelligence team conducted an examination of web domains and DNS infrastructure to reveal links between the husband and offshore interests managed by nominees for his benefit.

In addition, comprehensive searches of the statutory and commercial databases were undertaken together with targeted open-source research, which established the extent of the husband's overseas interests, including development projects "fronted" by the husband's associates.

Public social media posts also established details of the husband's post separation lifestyle, recent movements, and trophy assets, including vintage vehicles and jewelry.

The report provided to the wife was vital evidence to contest the husband's Form E disclosure and gave her the information need to ensure in the negotiations she was able to secure an equitable division of the marital assets.

This case demonstrates how early identification of assets helps to make better informed decisions around strategy and funding (should this be a potential issue) and paves the way for robust negotiations and prompt recoveries within the financial proceedings.

A Form E and asset review may also assist, if there is any risk that the spouse is holding interests in offshore Trusts or complex corporate structure; and is thought to be disposing of, or transferring their interests in these assets, to make it more difficult for the client to recover any financial award made in their favor in due course, as further detailed below.

### **Issues with recoverability following the financial consent order being sealed by the court**

The hope is of course that financial matters within divorce proceedings are settled amicably or dealt with by way of mediation. However, there may be cases where matters are acrimonious, and the negotiations become protracted. In these situations, if the parties can evidence that false asset information or values have been presented, by providing an independent specialist accountants report, it is likely to mean they will inevitably be able to negotiate a greater settlement than would otherwise have been offered.

Alternatively, if a settlement has been agreed through a Consent Order sealed by the Court but one of the parties cannot recover what is due to them, then you may need to consider certain enforcement strategies.

Any such enforcement strategy must be asset and jurisdiction specific. Hence, once the assets and their location have been identified, you can consider with a specialist accountant, how best to safeguard those assets from dissipation during the course of the enforcement/litigation. Processes such as Court Appointed Receivers (CAR) or Freezing Orders can be used effectively in these situations.

One such example is where GT were appointed by the English Court as a CAR over assets, property and effects of an individual following an application made by the wife as part of matrimonial proceedings. GT's role as receiver was to protect, investigate and recover the assets owned by the husband (who subsequently died). The deceased husband had corporate and personal assets in Brazil, Dominican Republic, Egypt, Spain, Switzerland, UK, US, and a discretionary trust in Gibraltar.

GT used the powers afforded to them as receivers from the English Court to appoint independent directors to the one of the UK companies to investigate the financial position of the company.

This case example illustrates the effectiveness of appointing CAR in matrimonial proceedings to protect, identify and if required, realise worldwide assets.

Furthermore, should the level of assets required to pay the financial award and associated costs be insufficient/ or a demand for repayment is made and unsatisfied, the debt can be used to petition for their bankruptcy and an Insolvency Practitioner would be appointed as a Trustee in Bankruptcy to investigate the financial and business affairs of the spouse and use their far-reaching powers, pursuant to the Insolvency Act 1986, to recover assets. These powers are a particularly useful tool to deploy when dealing with uncooperative individuals who reside in other jurisdictions.

For example, GT were appointed as joint trustees in bankruptcy of an Omani national following the ex-wife presenting a bankruptcy petition following the husband not paying the financial settlement under the financial Consent Order within UK family proceedings.

A litigation funder purchased the judgment debt and as no payment was made a bankruptcy petition was filed and GT were appointed trustees in bankruptcy ("the Trustees").

The Trustees used their extensive powers to investigate the financial and business affairs of the husband with a view to recovering assets for the benefit of the creditors of the bankruptcy estate, which included his ex-wife.

#### **Bankruptcy of a party before or after the financial Consent Order has been sealed by the family courts**

If one of the parties is made bankrupt prior to the financial Consent Order being sealed by the court within the family proceedings, then the family courts do not have the jurisdiction to make a Property Adjustment Order over the family home or any other properties that the parties may hold in their sole or joint names. If a Bankruptcy Order has been made against one of the divorcing parties, then it is only a Trustee in Bankruptcy that has the power to deal with the bankrupt spouses' assets. There are certain exceptions if it can be shown that the divorcing party made themselves bankrupt to defeat ongoing divorce proceedings. Investigations can be carried out by the family lawyers and specialist accountants to obtain evidence should the bankrupt party have been solvent at the time the bankruptcy petition was presented; such evidence may have been disclosed in the family proceedings under the disclosure process.

An example of this is when negotiations were taking place within divorce proceedings to have the family home, which was in the husband's sole name, transferred into the wife's sole name as part of the divorce settlement. Prior to the financial Consent Order being sealed by the Court, a creditor of the husband petitioned for his bankruptcy and a bankruptcy order was subsequently made before the financial Consent Order was sealed within the family proceedings. The result being that the solely owned family home of the husband was now an asset of the bankruptcy estate and the Trustee in Bankruptcy, under the Insolvency Act 1986, had the automatic right for an order for sale. The family home needed to be sold in order to pay off the bankruptcy creditors. This left the wife with no home in which to live and a limited financial settlement. The wife then needed to make a claim within the bankruptcy estate.

Once the financial Consent Order has been sealed by the Court within the family proceedings prior to the onset of any bankruptcy proceedings, then generally speaking a Trustee in Bankruptcy cannot make a claim to any of the assets transferred by the party subsequently made bankrupt to the non-bankrupt spouse within the family proceedings. Again, there are certain exceptions if it can be shown by a Trustee in Bankruptcy that any auxiliary relief orders contained in the financial Consent Order within the family proceedings were agreed through collusion or misrepresentation between the parties.

Once the financial Consent Order has been sealed by the family court and then one party is subsequently made bankrupt, the terms of the financial Consent Order must prevail. Caution should be considered over provisions for periodical payments, as these may be adjusted if the bankrupt spouse can no longer afford to pay such payments to the non-bankrupt spouse; or a trustee in bankruptcy seeks an Income Payments Order for the bankrupt spouse to pay a percentage of his income into the bankruptcy estate leaving less to pay the non-bankrupt spouse their periodical payments.

Any assets that are transferred into a spouse's name following the implementation of financial Consent Order who is then subsequently made bankrupt, will then belong to a trustee in bankruptcy to realise for the benefit of the bankruptcy creditors. The only exception to this is personal pensions which are assets that do not fall within the bankruptcy estate.

When finalising a financial Consent Order within the family proceedings it would be prudent to ensure that each party agrees to a declaration of solvency clause to safeguard against any suggestion of collusion or misrepresentation should one party subsequently be made bankrupt following the financial Consent Order being sealed by the Court.

Both Emma Easton of Turner Nicholson and Hannah Davie of Grant Thornton UK LLP will be happy to discuss any of the points raised within this article should you require any further information, or should you or any of your clients contemplating divorce proceedings or currently within divorce proceedings, have any concerns with regard to ownership or valuations of assets, dissipation, enforcement or insolvency.

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Comment,

## WHAT IS THE BOTTOM LINE? VALUING ART, ANTIQUES, AND OTHER PERSONAL PROPERTY IN A DIVORCE

“Art is the most intense mode of individualism  
that the world has known.”

—Oscar Wilde

The valuation and division of personal property such as a couple’s art collection or antiques are some of the most disputed parts of a divorce proceeding. Aside from the value implication of dividing the marital property, the parties are dealing with emotional attachments to the properties. Courts have observed that valuation is not incidental to the dissolution action, but at its very heart.<sup>1</sup> Furthermore, some experts have stated that valuation of marital assets is one of the most difficult and challenging aspects of divorce litigation.<sup>2</sup> Thus, a savvy attorney can use valuation and the division of personal property as an effective negotiation tool.<sup>3</sup> Because an effective valuation is important, most attorneys will hire an expert appraiser to provide the appropriate report and testimony to the court. “It takes time and money to locate and value property and requires able attorneys, accountants, and appraisers. The key to proper valuation is the ability to pay for these experts.”<sup>4</sup> That being said, the parties’ counsel should still be aware of the methodologies and techniques used by the appraiser to double check the work and to provide effective representation.

In this Comment, I discuss the role that the attorney should take to prepare the client’s assets for an appraiser’s evaluation

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<sup>1</sup> Harriet N. Cohen & Patricia Hennessey, *Valuation of Property in Marital Dissolutions*, 23 FAM. L.Q. 339, 340 (1989) (quoting *Schanback v. Schanback*, 18 FAM. L. REV. 6 (Sup. Ct. 1985)).

<sup>2</sup> James J. Nolletti, *Exploring Decisions and Developments that Impact the Practice Today and Tomorrow*, in STRATEGIES FOR FAMILY LAW IN NEW YORK 1, 6 (2010) available at [http://www.chnnb.com/\\_pdf/strategies-for-family-law-in-new-york.pdf](http://www.chnnb.com/_pdf/strategies-for-family-law-in-new-york.pdf).

<sup>3</sup> CHARLES T. ROSOFF ET AL., VALUATION STRATEGIES DIVORCE § 7.1 (4th ed. 2013).

<sup>4</sup> Cohen, *supra* note 1, at 340.

and the methods and systems used by appraisers in providing valuations. The focus of this Comment will be on the valuation of personal property. Personal property is defined as “identifiable tangible objects that are considered by the general public as being ‘personal,’—for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible personal property that is not classified as real estate.”<sup>5</sup> In Section I, I evaluate the steps that a counsel should take to ensure proper valuation is done. In Section II, I will provide a general overview of what standards and methodology those appraisers typically use in providing valuation of personal property. In Section III, I will conclude with the examples of fine art and decorative art to demonstrate specific factors that play into the valuation of those items such as paintings and rugs.

## I. The Lawyer’s Role in Valuation

A lawyer should be diligent in seeking an accurate and detailed appraisal on the behalf of the client. Every aspect of valuation is significant: what property is valued, who does the valuation, the method used, and how the valuation is paid for. These issues, on the surface, are procedural, but in fact, are substantive in effect.<sup>6</sup> According to Thomas W. Crockett and J. Randall Patterson, family law practitioners in this area, competent attorneys must use every means to persuade the court that their client’s contribution to the marriage was substantial and maximize the value of the assets the opponent is expected to take from the marriage, while minimizing the value of the assets that the client is expected to take.<sup>7</sup> However, zealous advocacy can go too far and actually be detrimental to the client, if the appraisal and valuation is not conducted with objective standards. It is unfair to the appraiser and to the client to pressure the expert to provide an opinion within a particular valuation for nego-

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<sup>5</sup> ROSOFF ET AL., *supra* note 3, at § 7.2 (citing Uniform Standards of Professional Appraisal Practice).

<sup>6</sup> Cohen, *supra* note 1, at 340.

<sup>7</sup> Thomas W. Crockett & J. Randall Patterson, *Dividing the Property in a Marital Dissolution*, 62 Miss. L.J. 57, 81 (1992).

tiation purposes.<sup>8</sup> The goal is to engage an independent and reliable expert, not a hired gun.<sup>9</sup>

Appraisal can be used effectively to persuade the court and provide a favorable outcome for a client; however, the proper steps should be taken to justify the valuations submitted to the court. This section details the process that attorneys should use to prepare their client's assets for proper valuation and appraisal. The steps are: (1) understanding the discretion of the court; (2) collecting and cataloging a client's personal property; and (3) finding and retaining a qualified appraiser.

#### A. *Understanding the Court's Discretion in Determining Valuation*

The court has discretion to determine the value of personal property in splitting the marital property; however, the court's decision is contingent on the information provided to it by the parties. Therefore, an attorney should perform the adequate due diligence in preparing the client's assets for valuation and engaging the proper appraiser. In *Miller v. Miller*, an Indiana Court of Appeals case, the court held, "[I]n divorce cases the trial court has not only the power but the statutory duty to adjust and adjudicate the property rights of the parties involved."<sup>10</sup> The court further stated that adjusting property rights of the litigants was not only a mandatory duty of the trial court, but also that the court has broad discretionary power about how to do so.<sup>11</sup>

It is important to remember that valuation is conducted at the trial court level, and once valuation is made and judgment is entered, the valuation is not subject to modification.<sup>12</sup> The judgment cannot be set aside unless an appellate court finds an abuse of discretion.<sup>13</sup> However, there are also limitations that are im-

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<sup>8</sup> Robert E. Kleeman, Jr. & Gerald N. Weaver, *When to Use an Appraiser*, 17 FAM. ADVOC. 20, 21 (Spring 1995).

<sup>9</sup> *Id.*

<sup>10</sup> 256 N.E. 589, 592 (Ind. Ct. App. 1970).

<sup>11</sup> *Miller v. Miller*, 256 N.E. 589, 592 (Ind. Ct. App. 1970).

<sup>12</sup> Cohen, *supra* note 1, at 364.

<sup>13</sup> BARTH H. GOLDBERG, VALUATION OF DIVORCE ASSETS § 1:20 (rev. ed. 2013).

posed upon the trier of fact, which an attorney should analyze and store in his or her trial arsenal.<sup>14</sup>

If an appropriate and properly-backed appraisal is provided to the court, the trial court has a duty to use that information. “If testimonial evidence is presented as to value based upon written appraisals sufficient for the trial court to have affixed property values, it is error for the court not to so do [sic].”<sup>15</sup> The evidence presented to the court is crucial. Frequently, whether the determination of value in divorce proceedings is upheld turns on the evidence used by the trial court in reaching its decisions.<sup>16</sup> For example, in Indiana, a valuation submitted by one side is competent evidence of the value of property in a divorce proceeding and may alone support the trial court’s determination in that regard.<sup>17</sup> In Montana, the court is free to adopt any reasonable valuation (premised on expert testimony, lay testimony, documentary evidence, or any combination of those testimonies) which is supported by the record as long as it is reasonable in light of the evidence submitted.<sup>18</sup> Therefore, while the court has discretion to determine the valuation, the power to do so is not unlimited, and unless the evidence provided by the parties is insufficient, the court must use the information presented to it.

Courts have held that when both parties’ valuations are defective, the court may independently determine valuation.<sup>19</sup> In *Fellerman v. Bradley*, a New Jersey Superior Court case, the court held that the use of court-appointed experts accomplished the state purpose of valuing the parties’ property more efficiently because that expert is not considered a “hired gun,” and thus, there are fewer disputes regarding methodology used and conclusions in the appraisal.<sup>20</sup> That being said, an expert is typically not appointed unless the facts of the case are sufficiently complex.<sup>21</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 1:25.

<sup>17</sup> *Id.* (citing *Alexander v. Alexander*, 927 N.E.2d 926 (Ind. Ct. App. 2010)).

<sup>18</sup> GOLDBERG, *supra* note 13, at § 1:25 (citing *In re Marriage of Helzer*, 102 P.3d 1263 (Mont. 2004)).

<sup>19</sup> *Tripp v. Comm’r*, 337 F.2d 432, 434 (7th Cir. 1964); *Goldstein v. Comm’r*, 298 F.2d 562, 567 (9th Cir. 1962).

<sup>20</sup> 465 A.2d 558, 560 (N.J. Super. Ct. Ch. Div. 1983).

<sup>21</sup> See *Haymes v. Haymes*, 649 N.Y.S.2d 698 (N.Y. App. Div. 1990).



### B. *Collecting and Cataloging Client's Personal Property for the Appraiser*

In determining the fair market value of an item, the two most important factors are first, correctly identifying the object; and, second, analyzing the object's condition.<sup>22</sup> Therefore, one of the first steps that the attorney must do in order to prepare the client's assets for valuation is to collect and properly catalog the personal property for the appraiser. Barth H. Goldberg states, "[E]ach attorney . . . has [a] duty in every dissolution proceeding to discover the items of value to be included in the marital pot's valuation to insure that an equitable distribution is achieved."<sup>23</sup> This gives the attorney an idea of magnitude of the estate, the assets involved, and the possible issues that may arise.

The collection and cataloging step should be done as early as possible because it can provide an insight into what type of valuation is necessary, and whether valuation would be so costly that it does not justify the expense. An attorney should ask the client to help inventory the marital estate (both assets and liabilities) and provide some acceptable initial opinion as to value.<sup>24</sup> This can provide avenues to negotiate with the other side and reach a consensus rather than going through the steps of valuing the property and spending a substantial amount of fees on an appraiser. Reaching consensus early is especially important if the client is cost-sensitive.

Whether the attorney and client decide to use the information to settle or hire an appraiser, the cataloging should be done effectively to provide the potential appraiser with the most optimal information. In making a list of the items, it is helpful to use the system that most experts use in the field to allow for easy transfer of information and for streamlining the process. The standardized cataloging used in the trade is called the "Getty Id System," introduced in 1997 as a result of surveying accredited appraisers, museum curators, art dealers, the IRS board of review, and other experts in the field.<sup>25</sup> The system provides a professional minimum standards guideline of elements for

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<sup>22</sup> Vanessa G. Ellermann, *Marital Property: An Attorney's Guide to the Valuation of Art and Antiques*, 11 J. CONTEMP. LEGAL ISSUES 275, 277 (1997).

<sup>23</sup> GOLDBERG, *supra* note 13, at § 14:1.

<sup>24</sup> Kleeman, Jr. & Weaver, *supra* note 8, at 20.

<sup>25</sup> ROSOFF ET AL., *supra* note 3, at § 7.3.

cataloging items, which include: (1) a photograph of the item; (2) type of object; (3) materials and techniques; (4) measurements; (5) inscriptions and markings; (6) distinguishing physical features; (7) title / subject matter; (8) date or period / era; (9) maker or attribution; and (10) short description.<sup>26</sup> Some common items that are collected today include art collections (i.e. paintings, print), baseball player cards, books and bookplates, clocks and watches, coin collections, furniture, guns, jewelry, stamps, and musical instruments.<sup>27</sup> Each item may have unique features that only certain types of appraisers are able to evaluate; therefore, once the items are properly cataloged and labeled, the next step is to find an appropriate appraiser.

### C. *Finding and Retaining a Qualified Appraiser*

A “qualified” appraiser is hard to define because the appraisal profession is not regulated by any government licensing authority.<sup>28</sup> However, there are professional associations that provide certification to people who work in the field. Thus, to ensure that the client’s valuations will survive the toughest scrutiny at trial, it is wise to seek an appraiser that is certified by a well-known association. The associations provide a code of ethics, a system of certification, and recourse to clients who are not satisfied with the work performed by the appraiser, all of which can afford significant safeguards to the client and the attorney when presenting the information to the court.<sup>29</sup> Examples of well-known associations are the American Society of Appraisers, Appraisers Association of America, and International Society of Appraisers.

When an appraiser is reached, there are important questions that both the attorney and the appraiser will have to ask. The attorney should ask specific questions to gauge the appraiser’s expertise. Below are some sample questions the attorney can ask in order to determine the appraiser’s scope of services, qualifications, and possible conflicts of interest:

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<sup>26</sup> *Id.*

<sup>27</sup> GOLDBERG, *supra* note 13, at § 14:1.

<sup>28</sup> ROBERT D. FEDER ET AL., VALUING SPECIFIC ASSETS IN DIVORCE § 25.08 (2011).

<sup>29</sup> *Id.* at § 25.08.

- (1) What are your affiliations?
- (2) Have you had any business or personal dealings with the client or the other side that might interfere with or bias your report?
- (3) What are your fee structures?
- (4) Are you willing to appear and testify in court?<sup>30</sup>

The overarching factor that the attorney must keep in mind is the cost of hiring an appraiser. Appraisers are expensive, and if the cost of the valuation will outweigh the financial benefit of obtaining the asset, the attorney must have alternative strategies in mind to negotiate with the opposing counsel or find alternative opportunities for equitable division. Therefore, an attorney should ask about the fee structure of the appraisal in an initial meeting. The fee structure may be a flat rate or an hourly rate, depending on the appraiser.<sup>31</sup> Ethically, an appraiser is not allowed to base the fee on the value of the property.<sup>32</sup> Another important aspect when determining which appraiser to hire is the appraiser's willingness to testify at the trial. In-person expert testimony (compared to submission of an expert report) may make the application of valuation more persuasive to the court.<sup>33</sup>

Once the attorney decides to retain a certain appraiser, the appraiser will ask some initial questions as well. The appraiser will want to understand the purpose of the appraisal, location and description of the property, the availability of supporting documents, and the timeline required for the appraisal.<sup>34</sup> The attorney must be specific about the type of valuation sought, the intended use, and the intended users; all three are important elements that are required in the appraiser's report.<sup>35</sup> Another question that will arise is whether the appraiser is to be retained by one side or both sides. Joint experts make sense for some personal property, but industry experts advise against joint ap-

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<sup>30</sup> LESLIE LYNCH-CLINTON ET AL., VALUATION STRATEGIES IN DIVORCE § 7.19 (2013).

<sup>31</sup> *Id.*

<sup>32</sup> Feder, *supra* note 28 at 25.08.

<sup>33</sup> Lynn Weddle Judkins, Comment, *The Road to Splitsville: How the Timing of Valuation During Marital Dissolution Leads to Costly Detours*, 15 J. AM. ACAD. MATRIM. LAW. 465, 477 (1998).

<sup>34</sup> FEDER ET AL., *supra* note 28, at § 25.08.

<sup>35</sup> LYNCH-CLINTON ET AL., *supra* note 30, at § 7.22.

praisers for antiques and other unique high-value articles.<sup>36</sup> The next section will discuss the standards and methodology used by appraisers. This quick overview can help attorneys better understand and analyze the result of an appraisal to effectively present that information to the court and argue the superior validity of the valuations.

## II. Standards and Methodology Used in Personal Property Appraisals

While personal property involved in a divorce proceeding can be varied and require different special expertise to evaluate, personal property appraisers, nonetheless, utilize standard valuation methodologies and approaches. Appraisers use both objective methodologies and subjective qualitative comparisons.<sup>37</sup> This section will discuss the standards and the methodologies employed by personal property appraisers. First, the section will explain the professional standards for appraisers as outlined by the Uniform Standards of Professional Appraisal Practice (“USPAP”), issued by the Appraisal Foundation. Second, this section will provide an overview of the specific theories and valuation systems that personal property appraisers utilize and what they must include in their appraisal reports.

### A. Professional Appraisal Standards of the USPAP

The USPAP is the widely accepted standard for appraisal practice and report preparation among appraisal experts.<sup>38</sup> The Appraisal Foundation, founded in 1987, is a not-for-profit educational organization that regularly updates the USPAP to meet new demands on the appraisal profession.<sup>39</sup> The Appraisal Foundation’s website states that it is “authorized by Congress as the source of appraisal standards and appraiser qualifications.”<sup>40</sup> The organization’s Mission Statement states: “The Appraisal Foundation is dedicated to promoting professionalism and ensur-

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<sup>36</sup> Robert E. Kleeman, Jr. & Gerald N. Weaver, *supra* note 8, at 21.

<sup>37</sup> FEDER ET AL., *supra* note 28, at § 20A.01.

<sup>38</sup> *Id.* at § 20A.05.

<sup>39</sup> *Id.*

<sup>40</sup> APPRAISAL FOUNDATION, [appraisalfoundation.org](http://appraisalfoundation.org) (last visited Oct. 11, 2013).

ing public trust in the valuation profession. This is accomplished through the promulgation of standards, appraiser qualifications, and guidance regarding valuation methods and techniques.”<sup>41</sup>

As of the writing of this Comment, the USPAP’s latest version is the 2012-2013 standards and the full text can be found online.<sup>42</sup> The USPAP standards are generally accepted for professional appraisal practice in North America.<sup>43</sup> The USPAP has developed standards for all types of appraisal services, including real estate, personal property, business, and mass appraisals.<sup>44</sup> The standards that specifically address personal property are Standards 7 and 8.<sup>45</sup>

The USPAP Handbook states that Standard 7 can be used as a checklist by the appraiser and the users of the appraisal service to address the substantive aspects of developing a credible appraisal of personal property.<sup>46</sup> Standard 7 has six subsections that explain the basic requirements that an appraiser must comply with in developing a personal property appraisal.<sup>47</sup> The general steps outlined in Standard 7 are that the appraiser must: (1) identify the problem to be solved; (2) determine the scope of work necessary to solve the problem; and (3) correctly complete research and analyses necessary to produce a credible appraisal.<sup>48</sup> Of particular importance is Standards Rule 7-2, which lists “the key components of a correctly prepared appraisal, including the identification of the intended use and users as well as the identification of value within the assignment.”<sup>49</sup>

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<sup>41</sup> APPRAISAL FOUNDATION MISSION STATEMENT (Oct. 11, 2013), <http://appraisalfoundation.org>.

<sup>42</sup> See UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (Oct. 11, 2013), <http://uspap.org>.

<sup>43</sup> USPAP, APPRAISAL FOUNDATION (Sept. 22, 2013), <http://appraisal foundation.org>.

<sup>44</sup> *Id.*

<sup>45</sup> See UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, *supra* note 44.

<sup>46</sup> *Standard 7*, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (Oct. 11, 2013), <http://uspap.org/#/78/zoomed>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> FEDER ET AL., *supra* note 28, at § 20A.05; see also *Standard 7*, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, *supra* note 44.

Standard 8 outlines how appraisers should communicate their analysis for the ultimate user of the report and explains what should be included in the report, whether it is written or oral.<sup>50</sup> It enumerates the proper way of recording the appraisal process, including record keeping and document preparation.<sup>51</sup> Standards Rule 8-2 states that written appraisals must be prepared in one of three styles: (1) Self-Contained Appraisal; (2) Summary Appraisal Report; or (3) Restricted Use Appraisal Report.<sup>52</sup> According to the comments following Rule 8-2, a Self-Contained Appraisal Report or a Summary Appraisal Report must be provided if the intended user includes parties other than the client.<sup>53</sup> When the intended user is only the client, a Restricted Use Appraisal Report may be provided.<sup>54</sup> The appraiser and the attorney can refer to the subsections of Standards Rule 8-2 to see the specific requirements for each type of report, depending on the purpose and the objective of the appraisal.

Compliance with the USPAP standards is very important, and courts will invalidate an appraisal if the report does not comport with the standards. In *Scull v. Commissioner*, the parties provided separate appraisals of the couple's fine art collection, and neither appraisal was based on analyses in conformity with USPAP.<sup>55</sup> "Since the valuations were not made in conformity with logical and understandable valuation methodologies, the court did not find either party's valuations, experts, or expert reports to be convincing."<sup>56</sup> The court may adopt some portions of the expert testimony, but reject other portions based on persuasiveness and helpfulness.<sup>57</sup> Therefore, an appropriately-prepared appraisal is critical in reaching the client's goals and objectives for the asset distribution during the divorce proceeding.

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<sup>50</sup> See *Standard 8*, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (Oct. 11, 2013), <http://uspap.org/#/83/zoomed>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at *Standard 8-2 cmt.*

<sup>54</sup> *Id.*

<sup>55</sup> T.C.M. (RIA) 1994-21.

<sup>56</sup> ROSOFF ET AL., *supra* note 3, at § 7.31.

<sup>57</sup> *Helvering v. Nat'l Grocery Co.*, 304 U.S. 282 (1938).

## B. Methodology and Appraisal Reports of Personal Property Appraisers

To understand the methodology used by appraisers, one must keep in mind the appraiser's main objective. An appraiser's primary objective is to establish and describe the relevant kind of value to be used in the appraisal report.<sup>58</sup> The exact system of valuation that is used is up to the appraiser. The three main approaches to valuing personal property are (1) the cost approach; (2) the income approach; and (3) the market comparison approach.<sup>59</sup> Here is how each approach is defined:

**Cost Approach:** The research and analysis of the cost of a substitute property with equivalent function and desirability, providing an estimate of the depreciated reproduction, reproduction new or replacement cost new of the property.<sup>60</sup>

**Income Approach:** The research and analysis of the present worth of anticipated income.<sup>61</sup>

**Market Comparison Approach:** The research and analysis comparing sales of property similar enough to the property being appraised to permit detailed comparison and estimating value by comparison with properties sold in the relevant market.<sup>62</sup>

In personal property appraisals, the cost approach and market comparison approach are the most commonly used systems. The income approach is mostly applicable to income producing properties.<sup>63</sup> Unless the item to be analyzed has rental market or income potential, the income approach is not the most effective system of appraisal. The cost approach is a great way to begin a value analysis for personal property because it determines the minimum amount people would be willing to pay to replace an item of equal desirability or utility. However, the cost approach should not be used alone in personal property appraisals because many times the personal property being evaluated is too unique to provide an easily traceable "substitute" as envisioned by the

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<sup>58</sup> Babette Cohen, *Trash or Treasure: Valuing Personal Property – Art, Antiques, Jewelry, and Collectibles*, 17 FAM. ADVOC. 34, 34 (Spring 1995).

<sup>59</sup> AMERICAN SOCIETY OF APPRAISERS, *THE APPRAISAL OF PERSONAL PROPERTY* 19 (Patricia C. Soucy & Janella N. Smyth eds., 1994).

<sup>60</sup> LYNCH-CLINTON ET AL., *supra* note 30, at § 7.23.

<sup>61</sup> *Id.*

<sup>62</sup> FEDER ET AL., *supra* note 28, at § 20A.03 (providing definitions for all three approaches).

<sup>63</sup> AMERICAN SOCIETY OF APPRAISERS, *supra* note 61, at 19.

cost approach.<sup>64</sup> Therefore, personal property appraisers rely mainly on the market comparison approach, with a specific emphasis on fair market value indicators.

The market comparison approach requires research of various markets. Various markets that are analyzed include auction venues (i.e. international houses, local auction houses, and country auctions), retail galleries, private dealers, wholesale dealers, and liquidators.<sup>65</sup> The appraiser must indicate which market was used in the analysis and indicate why that particular market was used. Specifically in regards to a fair market value investigation, the appraiser must (1) determine the condition of the piece; (2) assess whether overall the artwork is desirable compared to other paintings by the same artist (which is a subjective decision); and (3) objectively research the appropriate market for the buying and selling of the piece.<sup>66</sup> In *Wendlandt v. Wendlandt*, a Texas Court of Civil Appeals case, during the divorce proceedings the husband used an expert to show that the fair market value of the personal property was based on the liquidated worth of the property at a distress sale (forced sale auction), which resulted in a very low valuation price.<sup>67</sup> The appellate court affirmed the decision of the lower court to exclude the expert testimony, holding that the value obtained in a distress sale is not a proper measure for fair market or actual value.<sup>68</sup> The husband's attorney faced this issue because the client wanted to deemphasize the value of the personal property, instead of employing objective criteria in valuation as outlined in the market comparison approach.

Tax courts have recognized that an appropriate retail market for artwork is auction markets, which are distinguished from a forced-sale auction.<sup>69</sup> "The fair market value of an item of property is measured by what would be paid for the item, not on the

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<sup>64</sup> See SANDRA TROPPER ET AL., VALUATION STRATEGIES IN DIVORCE § 7.28 (2013) (sample appraisal language provided that states, "The cost approach . . . [is] inapplicable to this appraisal assignment because the properties cannot be duplicated and retain their values").

<sup>65</sup> LYNCH-CLINTON ET AL., *supra* note 30, at § 7.23.

<sup>66</sup> FEDER ET AL., *supra* note 28, at § 20A.01.

<sup>67</sup> 596 S.W.2d 323 (Tex. Civ. App. 1980).

<sup>68</sup> *Wendlandt v. Wendlandt*, 596 S.W.2d 323 (Tex. Civ. App. 1980).

<sup>69</sup> See *Estate of Smith v. Comm'r*, 57 T.C. 650, 658 (1972).



net amount received by the seller.”<sup>70</sup> The exact system used to value the property is not as crucial as providing clear and substantive justification for using a particular methodology.

### III. Appraisal of Specific Types of Personal Property: Fine Art and Decorative Art

Depending on the collection of the client, an attorney may need to employ only one general personal property appraiser or separate specialist appraisers. Depending on the novelty of the item, individual items may require special attention. Therefore, the cataloging and identifying of the items are of particular importance in understanding the scope of the appraisal, and for the benefit of the client, the projected cost of that appraisal. This section provides a brief insight into two particular categories of personal property that are seen often in divorce proceedings.

#### A. Fine Art

Fine art is a “catch-all phrase” that includes various media such as painting, printmaking, photography, and sculpture.<sup>71</sup> The factors that should be taken into consideration when valuing fine art include: the maker, subject matter, condition, and provenance.<sup>72</sup> When evaluating paintings in particular, the key terms and points of analysis for appraisers include: acrylic paint, item size, frame size, oil paint, and tempera paint.<sup>73</sup> Because this category is vast and can include a variety of details that are unique to the individual pieces of art, personal property appraisers usually have specialties and are expert in valuing certain types of art items.<sup>74</sup> Therefore, the attorney should advise the client regarding the ability to find and employ a specialist appraiser depending on the property that needs to be evaluated.<sup>75</sup>

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<sup>70</sup> *Id.* at 659.

<sup>71</sup> ROSOFF ET AL., *supra* note 3, at § 7.5.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at § 7.6.

<sup>74</sup> FEDER ET AL., *supra* note 27, at § 26.01.

<sup>75</sup> Three main appraiser-accreditation organizations provide an online directory of personal property appraisers: The American Society of Appraisers ([www.appraisers.org](http://www.appraisers.org)), The Appraisers Association of America ([www.appraiserassoc.org](http://www.appraiserassoc.org)), and The International Society of Appraisers ([www.isa-appraisers.org](http://www.isa-appraisers.org)).

### B. *Decorative Art*

Another frequently seen category in matrimonial proceedings is decorative art. Decorative art refers to various “minor” arts, including furniture, art glass, silver, and porcelains.<sup>76</sup> “Many items which could be considered decorative art could also be labeled ‘collectibles’ depending on the popularity of the items at a specific point of time, as well as the quality of the execution and the prestige of the maker.”<sup>77</sup> Two of the most common types of decorative art in divorce proceedings are furniture and rugs.

Antique furniture usually provides for a high fair market value. However, contemporary furniture can also provide substantial value in its own right. “The fair market value of important pieces of contemporary design can be a multiple of the fair market value of an analogous piece of antique furniture of poor craftsmanship or in poor condition.”<sup>78</sup> Thus, proper identification and valuation of furniture is crucial to the equitable division of property in a divorce. Of particular importance, the appraiser of furniture must consider not only the aesthetics of the furniture, but also the utility.<sup>79</sup> It is important to note as well whether restoration would be required. The cost of restoration might be significant, and thus, should be calculated into the valuation. The appraiser should be notified regarding previous restoration efforts because the repairs may decrease or even increase the value of the piece.

In regards to rugs, a generalist personal property appraiser might be qualified to appraise the item; however, many times a specialist might be required.<sup>80</sup> When determining the value of rugs, the appraiser will take into consideration: (1) the region in which the rug was made; (2) the media of the piece (e.g., cotton, wool, silk, etc.); (3) whether or not it was hand woven/sewn or machine-made; (4) condition; and (5) age.<sup>81</sup> The condition of the rug can vary due to the amount of use because rugs are typically used for functional purposes, rather than mostly for decoration. The professional associations of appraisers should be consulted

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<sup>76</sup> ROSOFF ET AL., *supra* note 3, at § 7.10.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at § 7.11.

<sup>79</sup> *See id.*

<sup>80</sup> *Id.* at § 7.14.

<sup>81</sup> *Id.*

to find appraisers that specialize in the type of property that the client needs valued, especially if the item is unique.<sup>82</sup>

#### IV. Conclusion

The trial court has full discretion to determine the value of personal property; however, it is required to rely on the information provided by the parties in the case. Therefore, proper appraisal and valuation of personal property is critical to laying the groundwork for an optimal outcome for the client. The attorney should be diligent in collecting and cataloging the client's estate and preparing the items for the professional appraisal. Finding and retaining a qualified appraiser can take time, especially if the client's estate has a unique collection of personal property. Once an appraiser is retained, an attorney must ensure that the appraiser is abiding by the USPAP standards of conduct for appraisers and that the appraiser is employing appropriate and effective methodological systems of valuation. Overall, an appraisal can determine the strategy of an attorney in arguing for marital property division; therefore, appraisals should be developed meticulously and effectively for the ultimate benefit of the client.

Najmeh Mahmoudjafari

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<sup>82</sup> See websites cited *supra* note 75.



# Hidden Treasures - Providing insightful, relevant intelligence to clients enabling them to make better informed and strategic decisions

These really are the most extraordinary and strangest of times. No sooner did we think that the world might just be getting back to some kind of normal, then here we are again, back at ground zero, confused and bewildered as to when this will all end. For many these are desperate times, for others an opportunity, never more so than in the Private Clients arena where the cloud of COVID has created a perfect storm, affecting client's commercial activities, investments, family and matrimonial status.

Whilst for some enterprising and lucky individuals, who have successfully timed their investments and entrepreneurial commitments to perfection, you feel these are the fortunate few. For many within the Private Client family, you sense that these next few months will require difficult decision to be made and for some may prove to be 'make or break'. COVID is agnostic to wealth, status, and position but clarity of thought and access to relevant, timely, reliable and quality information will, arguably, prove more valuable to those who need it now than would otherwise have been in the recent past.

Whilst not necessarily on the lips or immediately on the minds of many, Corporate Intelligence can be an effective way of providing insightful, relevant information and intelligence to make better informed and strategic decisions in these challenging times. It is a service that in some sectors is widely discussed but generally not well known about or understood. The best tools, software and analysts, with data that may historically only have been accessed by government agencies, makes Corporate Intelligence an interesting and exciting place to be.

As most readers will be keenly aware, intelligence requirements vary considerably depending on the lay-client or situation. Nevertheless, with the increasing uncertainty that COVID has brought, many of our recent conversations with clients have been around reactive intelligence gathering, helping parties to respond appropriately to difficult situations and take the right steps in the recovery of funds.

## **Reactive intelligence**

Recent work on a trust and estates dispute for an expert solicitor team, focussed on tracing assets held by a family estate as part of pre-litigation intelligence gathering. Such work is critical when considering legal strategy, funding, insurance options and negotiation tactics.

An asset tracing or means investigation may require a number of tools and techniques to be deployed, combining a variety of skills in open source intelligence gathering, human source enquiries and document and data analysis, which might include:

- Using visualisation and conceptual clustering tools, to identify likely assets from seized email accounts or documents.
- Examination of web domain infrastructure to reveal links between subjects and other connected entities.
- Mapping of online social networks to investigate 'real-world' links between subjects and other persons of interest.
- Monitoring of public social media posts to establish details of the subjects' lifestyle, recent movements and trophy assets.
- Comprehensive searches of statutory and commercial databases, together with targeted 'open source' research to establish the extent of a subject's property assets in the UK and abroad.

A comprehensive and well-constructed means report can be an effective tool to support negotiations or present to court. Use of visualisations such as charts, graphs and maps can be used to good effect to demonstrate complex concepts and summarise lengthy narrative. In several recent cases early identification of assets has helped to make better informed funding and strategy decisions and paved the way for robust negotiations and prompt recoveries.

Of course, corporate intelligence engagements can be pro-active instead of re-active to help clients navigate a myriad of estate planning considerations or deal with commercial uncertainties head-on.

### **Pro-active research**

Consider the potential impact of timely and accurate intelligence around estate and investment planning, personnel vetting and media exposure. Here the objective is to help clients identify, manage and avoid risk in the coming months and years.

This type of diligence work must be proportionate and tailored to address the most significant risks but might include:

- Multi-lingual media research to accurately profile a subject and ascertain details of their activities and media profile.
- Corporate and regulatory record analysis to establish links, measure recent performance and identify compliance 'red flags'.
- Enquiries and interviews with sources in industry to establish background and reputation.
- 'Red Team' research to profile a client's exposure to cyber and social engineering attacks or identify threats to privacy.

Given what is often at stake when investing in new people and businesses, it is critical that clients have confidence in the background, conduct and exposure of those around them. The same intelligence gathering process can be used defensively, switching the focus to identify vulnerabilities and potential exploits to pro-actively protect the clients' interests.

However, the corporate intelligence process is used, the goal is always consistent, to provide accurate, timely and cost-effective intelligence to assist clients in making better informed strategic decisions. The methods may change but the intention is always to add value to the existing knowledge position with robust analysis and supporting information.

### **Onshore and Offshore collaboration**

As our world reacts to unprecedented events, we are seeing our clients respond with increasing diversification and ever more varied needs. The requirement for cross-border collaboration between expert teams increases daily.

Grant Thornton's investment in its offshore presence has led to seamless collaboration between assignment teams and an offshore-compatible offering to clients. The same is true of the corporate intelligence service, which benefits significantly from the input of in-country experts to complement the London based team and provide a truly global reach in support of our clients' multi-national needs.

As the effects of governmental cash-injections and lockdown bounce-back begin to wear off for clients and their businesses, the need to make critical and timely decisions will become unavoidable. By making best use of a corporate intelligence process, you can fore-arm your clients with the knowledge they need to take robust and confident action as part of their successful first-steps into the post-COVID world.

Authored by:

Chris Phillips, Dan Sutch and Hannah Davie, Grant Thornton UK LLP

## Divorces, Death and dealing with the Deceased Estate

### Case Study - Boris Berezovsky (deceased estate in bankruptcy)

#### Background

Boris Berezovsky was born in January 1946. He was a Russian business Oligarch, government official and mathematician.

Berezovsky was politically opposed to the President of Russia, Vladimir Putin, following Mr Putin's election in 2000 and remained a vocal critic of Mr Putin for the rest of his life. In late 2000, after the Russian Deputy Prosecutor General demanded that Berezovsky appear for questioning, he did not return from abroad and moved to the UK, where he was granted political asylum in 2003. He was subsequently the subject of criminal proceedings and convictions "in absentia" in Russia for fraud and embezzlement charges.

The wealth was held through complex corporate and trust structures. Berezovsky stated that the trust structures were intended to prevent (what he believed to be) the unlawful expropriation of his assets by the Russian State.

There is also evidence that despite the existence of these structures, Berezovsky continued to exercise control over these assets and regarded himself as the ultimate owner of the assets held within them and/or that it would be open him to recover the assets from the structures when he wanted.

#### Marriages, Divorces and Death

Berezovsky had two children with his first wife, Nina Korotkova, who he divorced in 1991.

He married his second wife, Galina Besharova, in 1991 when he was a professor of maths in Moscow, said to be earning £60 a month. Berezovsky had another 2 children with Ms Besharova, but they separated after only two years, and then finally divorced in 2010.

Berezovsky's wealth was largely accumulated after he and Ms Besharova separated. However, when they divorced, Berezovsky asserted that he had assets including property worth over £500 million (excluding potential recoveries from litigation), which included substantial property held in various trusts, companies and other entities. Berezovsky and Ms Beharova settled the divorce proceedings, but at the time it was said to have been the largest ever divorce settlement.

After Berezovsky separated from Ms Besharova he started a relationship with Yelena Gorbunova. Berezovsky was with Ms Gorbunova for 15 years, during which time they had two children.

Berezovsky died in March 2013. The circumstances surrounding his death caused lots of speculation and the coroner recorded an open verdict.

#### The Deceased Estate

Berezovsky's death revealed a large and complex Estate with seven beneficiaries as well as there being five named Executors. Three of the Executors renounced probate, one was conflicted, and one had no experience to deal with such a complex Estate.

There were considerable assets to be secured and realised and ongoing litigation, where Berezovsky was the claimant as well as substantial litigation as the defendant, which needed to be dealt with. The beneficiaries, along with the applicants and claimants of the litigation desperately needed someone capable to take control of the Estate and take the reins in relation to the ongoing litigation.

Aeroflot, the Russian Airline, had commenced proceedings against Berezovsky before his death and applied for the appointment of Court Appointed Receivers in respect of the Estate. An application under the Civil Procedure Rules resulted in an order dated 29 April 2013 pursuant to which Messrs Kevin Hellard and Nicholas Wood of Grant Thornton UK LLP were appointed as Joint Receivers of the Estate. The Receivers had limited powers granted by the Court, which were to identify and secure assets and establish the Estates liabilities. The Receivers also had the power to deal with the ongoing litigation.

The Receivers stayed in office for 12 months before one of remaining Executors came forward, a family member of Berezovsky. However, the Court felt that dealing with the Estate was too complex for her to deal with alone. Therefore, the Court appointed her as a 'Special' Administrator, so that she could deal with the grave and personal effects.

The Court also appointed Messrs Hellard and Wood, as 'General' Administrators on 10 April 2014. The General Administrators had responsibility on behalf of the Estate for the legal proceedings and had powers to realise assets and also investigate the assets and liabilities within the Estate.



The Estate was established as being insolvent by the General Administrators who presented a petition for winding up the Estate and placing it into a formal insolvency process. Mike Leeds of Grant Thornton UK LLP (Grant Thornton) along with Messrs Hellard and Wood were then appointed by creditors as Joint Trustees in bankruptcy of the Estate in January 2015.

Since then the Trustees have used their open source Corporate Intelligence capabilities to investigate the complex web of companies and corporate structures put in place by Berezovsky. Assets have been traced that were transferred to third parties prior to Berezovsky's death along with assets held overseas in complicated ownership structures involving offshore companies and trusts.

The Trustees also took conduct of substantial litigation in which Berezovsky was a party. They engaged with litigation funders and adverse costs insurers to enable them to pursue and defend the various legal claims. This approach proved to be successful, and substantial realisations have been made for the benefit of the Estate.

To date assets have been identified and realised which are estimated to be worth over £130m. Potential further assets have been located in UK, Gibraltar, France, Russia, Eastern Europe and BVI. The realisation strategy for these remaining assets is ongoing.

Claims from creditors, property claimants and family members have been identified which are estimated to exceed £400m. This includes high value legal proceedings brought by creditors worth over £230m, which the Trustees continue to defend.

## Conclusion

Engaging independent professionals to act as Receivers, Administrators and Trustees in Bankruptcy when dealing with a complex disputed deceased estate has real benefits for beneficiaries, executors and other affected parties.

Independent professionals can take responsibility for dealing with an entire estate and have the required expertise to identify, realise assets and participate in litigation, which provides reassurance to the executors and can provide real financial benefits for those with an interest in the estate.

They are also able to act independently at every stage through the entire journey of dealing with an estate, from initially identifying and securing assets to investigating transactions entered into. As well as investigating creditors' claims, realising assets, participating in litigation and distributing assets to beneficiaries.

In addition, if an estate is thought to be insolvent, independent professionals can be appointed to act as Trustees in Bankruptcy, which removes any personal risk for the Executors and beneficiaries.

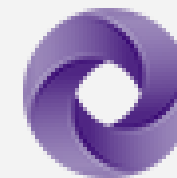
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# Sequor Law Summer Series: High Net Worth Matrimonial Asset Recovery: Tips and Best Practices from the Experts

## Meet our Panelists



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