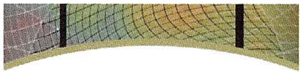


Priority Planning
Fraud Examination and Divorce Advice
Peggy Tracy, CDFA, CFE

P O Box 5237
Wheaton, IL 60189

Phone: 630-682-8540
Fax: 630-456-4105
Prioplan@aol.com
www.priorityplanning.biz

DIVORCE FINANCIAL INFIDELITY AND FRAUD

1) TYPES OF PROPERTY:

MARITAL – Everything earned of the marriage and "co-mingled" assets

NON-MARITAL- Inheritances, gifts, assets or debts brought into the marriage that were not "co-mingled"

2) ISSUES TO BE SETTLED – Important to resolve all income/asset puzzle pieces

Child Support

Maintenance (Alimony)

Property Settlement

3) EQUITABLE SETTLEMENT AND ISSUES THAT ARISE

1) Equitable does not mean equal
2) 50/50, 60/40 etc.
3) Many factors go into final resolution

4) DIVORCE FRAUDS – A Short List

1) Forgeries
2) Tax Fraud
3) Loan Fraud
4) Dissipation
5) Business Fraud
6) Insurance Fraud

5) FRAUD DETECTION TECHNIQUES

1) Changes in Lifestyle, Secrecy or income (red flags)
2) Follow the paper or electronic trail for truth
3) Determine true income and assets, not reported numbers
4) Review the flow of money in the family
5) Hire proper professionals to assist in the investigation
6) Social Media
7) Trust your gut instinct!

6) FRAUD PREVENTION TECHNIQUES

1) Review finances together and meet with advisors and tax preparers together at least once a year.
2) Stay informed of credit reports and debt (spendaholic\gambler)
3) Monitor accounts/investments online
4) Set family financial goals and system of internal controls
5) Change passwords frequently

Cressey's hypothesis

Perceived Opportunity

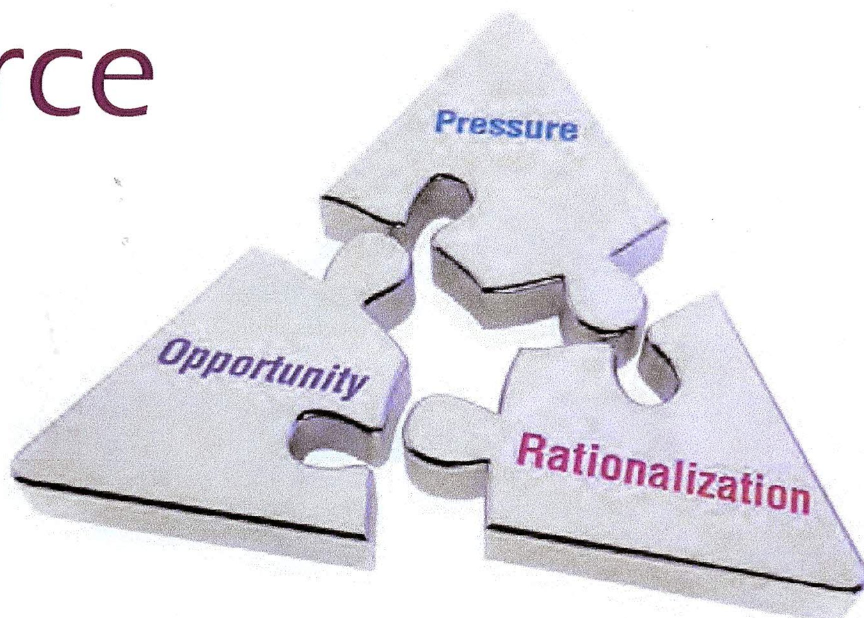
Fraud Triangle

Pressure

Rationalization

search it right

Financial Fraud and Divorce



There are warning signs that your spouse may have committed financial fraud in your marriage; the greater the number of red flags, the more likely that there is something fishy about the family's finances.

By Peggy L. Tracy, Certified Fraud Examiner

Divorce can create feelings of sadness, anger, and betrayal – especially if one spouse had an affair, or the divorce request came "out of the blue." Those feelings can lead to an intense mistrust of your spouse, which may make you believe that your spouse is hiding assets or engaging in other financial misbehavior. Before we start to discuss fraud and divorce, you need to know that serious fraud only occurs in a very small number of cases. So if your spouse is a salaried employee, and you've been living a normal, middle-class life for the last 20 years, it is very unlikely that there's a hidden offshore account full of cash waiting to be discovered. Now, let's talk about how and why fraud could occur in a divorce.

Hidden or missing assets and misrepresentation of family income are two common areas of money manipulation that, if left undiscovered, can lead to a disproportionate share of the assets going to one spouse. A divorcing spouse may convince otherwise honest relatives and friends to assist with concealing marital assets by telling them that their ex is racking up debts or emptying bank accounts. Concealment is the cornerstone of fraud.

During divorce, forensic (or investigative) accounting professionals can trace the paper-trail of funds through the various accounts of the marriage, determine the actual income of the family, verify claims of "co-mingling" marital and separate assets, or determine the validity of a potential claim for dissipation of marital assets (see "Dissipation Issues" for more on this topic).

A financial expert will review general records, including the couple's tax returns, bank statements, credit-card statements, business ledgers, appraisals of properties owned, and retirement accounts. The more money a divorcing person has, the more places it can be squirreled away out of sight. Employees of companies may have deferred compensation plans, stock options, bonuses, expense accounts, or other fringe benefits that they "forget" to declare. Business owners have ample opportunities to hide both income and assets from the lawyer's and spouse's eyes – unless someone has the financial skills to comb through the records and make a professional judgment about the authenticity of the books, records, and tax returns.

For families that have built up a sizable nest egg, the hiding places can become more numerous – and they also might intentionally become more complicated. Shell corporations, unfunded trusts, life insurance vehicles, unknown safe deposit boxes, and hidden brokerage/online accounts are among just a few of the hiding places that can be uncovered through good financial detective work. Schemes vary depending on perceived opportunity and motive, but the ultimate goal is to defraud the other spouse of their entitlement.

Red Flags

Evaluating changes in secrecy, lifestyle, and income can lead to important circumstantial clues that may lead one spouse to believe that fraud may be taking place. The most difficult element to prove in fraud cases – fraudulent intent – is usually proved circumstantially. It can be that "aha!" moment when faced with evidence that cannot be ignored any longer. Typical red flags include items such as:

- Change in the level of confidentiality between spouses.
- Mail being rerouted to an office or new mail being received.
- Unexplained changes in habitual behavior.
- Pattern changes due to addictions.
- Spending more time on the computer, closing the screen when the spouse walks in.
- Getting caught in lying or deceptive behavior.
- Concealing details of transactions from the spouse.
- Unusual and repeated cash withdrawals from bank accounts.
- Loaning or giving money to family and friends without spouse's knowledge or consent.

The greater the number of red flags, the more likely that there is something fishy about the family's finances. The longer a spouse has access to perpetrating a fraud, the easier it is to get away with it; the more time that passes, the more difficult it can be to access certain records or trace funds.

The Fraud Triangle

During the 1940s at Indiana University, Dr. Donald Cressey created the "Fraud Triangle" hypothesis to describe a new type of criminal: the white-collar fraudster. Similar to the idea of a three-legged stool (which cannot stand without all three legs), Dr. Cressey theorized that there are three elements that must be present for a person with no criminal history to commit fraud:

1. **Perceived Opportunity.** The person believes he/she can commit the indiscretion without being caught.
2. **Pressure.** This is the motive, usually of a social or financial nature. This is a problem the perpetrator believes he/she cannot share with anyone.
3. **Rationalization.** This takes place before the indiscretion. The rationalization is necessary so the individual can maintain his/her self-concept as an honest person caught in a bad set of circumstances.

Trusted persons can become trust violators at any point during the marriage. Some start lying and cheating soon after the wedding, others don't start until decades into the marriage, and others never go down this road. However, when someone sees him/herself as having a problem that he/she can't share, then applies a rationalization to the thought of committing a dishonest act to secretly resolve the issue, he/she is on the path to immoral or illegal behavior.

Dissipation Issues

A type of fraud specific to divorce is dissipation. Dissipation occurs when one spouse, essentially, wastes property or money without the knowledge or consent of the other spouse. There are many legal definitions of what constitutes dissipation, but they all involve minimizing marital assets by hiding, depleting, or diverting them. Some examples include:

- Money spent on extramarital relationships (hotels, trips, gifts, etc.).
- Gambling losses.
- Transferring or "loaning" cash or property to others.
- Selling expensive assets for much less than they're worth.
- Spending down business cash account.
- Excessive spending, including hobbies.
- Residence falling into foreclosure
- Ruining personal items.
- Work tools left out to rust.
- Destroying or failing to maintain marital property.

If there has been an intentional dissipation of marital assets, the innocent spouse may be entitled to a larger share of the remaining marital property; this is something to discuss with an experienced lawyer.

Other Fraud Issues

Aside from dissipation, other types of fraud can be discovered during divorce by investigating the family finances. There are cases of forgeries and questionable documents, tax fraud, loan fraud, and insurance fraud – but the majority of divorce fraud is centered within the framework of misappropriation of assets. Before launching an investigation, ask yourself whether there has been transparency and truthfulness about finances during your marriage and divorce. Did both of you take an active role in managing the money and taxes together, or did you allow your spouse to handle the finances during your marriage?

One of the easiest ways to prevent fraud in a marriage is to treat finances like businesses do: using a checks-and-balances system where both spouses see, understand, and review the finances. Holding family members accountable for missing assets eliminates the perceived opportunity and takes away the ability to commit fraud. Although this advice may come too late for you, deterrence and vigilance is the best way to stop fraud from starting in the first place.

Peggy L. Tracy (CFP®, CDFA™, CFE) is the owner of Priority Planning, LLC in Wheaton, IL. A Certified Fraud Examiner and Certified Divorce Financial Analyst®, she focuses on forensic accounting for divorcing clients. www.priorityplanning.biz

CLIENT

Finding Fraud

Advisors should think like detectives to catch client wrongdoing.
By Peggy Tracy

The expertise of most advisors usually stops short of forensic accounting or detecting client fraud. What do you do when there is evidence of missing assets or forgeries? To uncover intentional – and increasingly sophisticated – deceits, planners need to know about forensic accounting, financial planning, tax law and criminology.

Fraud can take a variety of forms and financial fraud cases can be brought under federal or state laws. So-called off-book fraud, which is often not covered up, can be as simple as a client working a side job, getting paid in cash and then spending the cash to fund an extramarital affair or gambling. On-book fraud requires falsifying records or lying to mask deception. A husband or wife might transfer money from a joint account, or open an individual account and spend it without the spouse's knowledge.

Often, the perpetrator's identity is known; the fraudster is most usually a spouse or family member, but might also be an outsider brought in for hire, such as a nanny, housekeeper or elder caregiver.

Donald Cressey, a criminology professor at Indiana University in the 1940s, coined the phrase, "the fraud triangle," which posits that any trusted person can become a trust violator. Three elements must be present for a violation to occur: perceived opportunity, a motive and a rationalization.

An individual must perceive that they have an opportunity to commit a crime or abuse without the chance of getting caught. The second element that must be present is motive. Trust violators are afraid of losing the approval of those around them and are unable to confide in others about their problems, which often are financial. Other motives may include midlife crisis issues, peer or societal pressure, excessive personal debt, or vindication over a real or perceived slight. A dependence on drugs or alcohol may also explain the reason for fraud.

The final component of the fraud triangle is rationalization. Justifying one's actions is part of the motive, where a perpetrator might think, "the person can afford it" or "the money will not be missed."

SUDDENLY SECRET

Many red flags can signal fraud is occurring, such as changes in lifestyle, a move toward secrecy or fluctuations in spending or income. Changes in lifestyle may become apparent before the fraud or bad behavior is discovered.

An advisor might ask: Is the spouse reporting that he's working more hours? Does the husband have a new hobby in which the wife is not included? Some changes are obvious and others can be subtler. Are certain family members being avoided? Has computer usage risen? Are there distractions that might deflect guilty behavior?

An advisor might also ask about changes in confidentiality. Does a working wife no longer talk about her day? Does the nonworking spouse no longer have access to family financial records? Is mail being rerouted to a post office box instead of home? Are

there unknown return addresses?

A few years ago, a financial planning client in Chicago took out a $100,000 line of credit against the house he owned with his wife, forged her signature and had the statements mailed to his office so his actions would go undetected. Eventually, the wife discovered her husband had gambled away the entire proceeds and was unable to pay their bills. Perpetrators often create complex financial trails to keep the victim unaware.

There are many signs a client may be lying to you, both physical and verbal. These can include a refusal to make eye contact, changes in facial coloring or evading questions and leaving the room. Perpetrators may get defensive, answer questions with questions or give too many facts or details.

Other clues to fraudulent acts can involve income and assets, either positive or negative. If someone has less spending money than before, it may signal an addiction or reduced hours at work. If someone has a sudden unexplained windfall, it could mean they have gambling winnings or stole someone else's assets or income.

FORENSIC EVIDENCE

An advisor might get involved after a spouse becomes suspicious and asks for help in uncovering what, exactly, is going on. An outside expert, such as a forensic accountant, may be able to trace sources of money entering or leaving accounts. Clues might come from examining net worth statements from one year to the next, looking for large discrepancies or spending patterns, as well as analyzing deposits, wire transfers and checks.

Consistency and transparency are the keys to sound financial planning. If there are any discrepancies, they must be logically explained. An example of this might be looking at the withdrawal or distribution section of a brokerage account. Every transaction should be accounted for and assigned a legitimate reason for withdrawal. Unknown movement of money is a red flag that other accounts or assets may exist. Money manipulation can occur with our most sterling and respected clients.

TRAIL OF EVICENCE

Although the suspicion of fraud can rest on circumstantial evidence, proving fraud requires direct evidence. Bank statements, credit cards, loan applications, estate planning documents, brokerage accounts, life insurance policies and tax returns are common sources of information.

When looking for fraud or misallocation of funds, examine the general ledger and financial statements, tax returns, incorporation and partnership paperwork, receipts from suppliers and vendors, as well as employee records. Fraud examiners often search through thousands of pages to put together a case.

Investigations often use electronic data. There has been a surge of subpoenas in the last decade that have allowed authorities to review hard drives and handheld devices in both homes and offices. Cellphones, GPS systems and tollbooth receipts can provide a trail of someone's travels. ATM withdrawal locations are also recorded. Social media websites are the most recent places to search for evidence.

FAMILY RESPONSIBILITY

Advisors can also help prevent fraud by following certain sound practices. The more autonomy clients give others over their assets, the more opportunity someone will have to overstep their moral boundaries. If someone believes they will not be caught, they are much more likely to commit the indiscretion. Deterrence is the No. 1 protector of assets being squandered or moved.

One best practice is to avoid situations where one spouse will sign a tax return without reading it. Clients should never be asked to sign papers that are put in front of them without understanding what they are signing. An advisor should review and explain everything. An advisor can also encourage families to have an annual meeting just like a business. Such meetings should include as many family members as possible so that many members understand the financial picture.

As guardians of your clients' financial assets, you're at the front lines of detection. It is never easy to know when to raise an alarm, or how to respond to clients' concerns or when to bring in outside experts to track down potential trouble. But your clients will be grateful for your diligence and preparedness. FP

Consistency and transparency are the keys to sound financial planning. Any discrepancies must be explained logically.

Peggy Tracy, owner of Priority Planning in Wheaton, Ill., which focuses on divorcing clients, is a CFP, CPA, certified divorce financial analyst and certified fraud examiner.

GO TO FINANCIAL-PLANNING.COM TO TAKE THE CE QUIZ ONLINE

Divorce and Overspenders

By: Peggy L. Tracy, CFP ®, CDFA, CFE

Have you ever noticed that people can be divided into two groups? Some are spenders and others are savers. You can tell when two savers get married. They have a high rate of savings and investments and tend to live on less than their means. Credit scores are high and they handle money with sensibility and delayed gratification.

When two spenders tie the knot, their finances may be a bit more precarious since words like spending plan or budget are usually not part of their lexicon. Both spouses enjoy gathering toys, travel and spending money rather than saving for a rainy day. As long as they continue to make more than they spend, money problems have a minimal impact on their total financial picture. When married spenders are living beyond their means all the ingredients are in place for a recipe of maxing out credit cards and turning into a personal debt disaster.

Spender v. Saver

The third scenario is a saver getting married to a spender. Over time, the values the saver holds dearly will be tested time and time again. Good luck trying to talk to a spending personality about deferred satisfaction incurred while accumulating retirement savings or watching their college funds grow over time. It does not compute to the spender who is generally a person who wants to live in the moment and not forego the current satisfaction they get in the actual process of purchasing items.

This final scenario is one that I see often in my work as a forensic accountant. In this case, spouses were of a like mind and either savers or spenders when they first met and married. Over time, one of the parties changed in their money habits and became either a spender or saver while their spouse remained firm in their original money type. An example would be the ubiquitous mid-life crisis, where someone seemingly goes off the edge and can revert to behavior that includes the purchase of large toys.

Addiction or Excuse for Bad Behavior

A recent study, published in December, 2008 of the *Journal of Consumer Research* suggests that as many as 8.9% of our population, approximately 25 million Americans, may be considered to be compulsive shoppers/spenders. This is not an isolated problem and it co-exists equally between the genders, according to a 2006 study from Stanford University.

Psychologists call it Compulsive Buying Disorder, which is characterized by poor impulse-control. It has the potential to create emotional and financial distress, both of which can wreak havoc on a marriage. Others refer to it as “spendaholism” or being a “shopaholic.” The long term consequences can be devastating with broken relationships,

job issues, ruined credit history and general financial troubles extending over a period of time.

Mary Todd Lincoln was apparently addicted to shopping. She would run up large bills on credit and carefully conceal them from her husband. On one occasion, allegedly, she purchased 300 pairs of gloves. Another shopping expedition saw Mrs. Lincoln spend $3,000 on jewelry and $5,000 on a shawl. She would get an emotional "high" from spending the money followed by a depressive reaction when needing to pay. She referred to it as "stress relief" from her duties and responsibilities as First Lady.

Many years ago a potential client came to see me. He had filed for divorce due to this exact problem. He was not aware his wife had racked up personal spending debt of $40,000 during their marriage. She did everything she could to hide it from him until the creditors started calling at night and she had to confess. They went to counseling and worked out the underlying issues that was causing her to consistently overspend (or so they thought.) Then two years later he found out she again had put them into large credit card debt. That time she used some inheritance money of her own to pay it all off and swore it would not happen again. You see where this is heading? It happened a third time over the same eight year period and the husband decided to file for divorce. She was undermining the future financial security of the family and he had enough.

Signs you are living with an overspender

Some of the signs of living with an overspender to be aware of include but are not limited to the following:

1) Your spouse has become a big fan of the mailman
2) They conceal shopping habits by hiding bags
3) New, unexplained items show up in your home
4) Your spouse applies for a credit card without telling you
5) They handle all the household bills and make sure you never see them
6) There is a new secrecy surrounding money
7) There are periods of unexplained absence

It is my experience female spendaholics tend to buy many small items, including clothing, shoes, handbags and items for the home and children. Male spenders, generally, purchase fewer, but larger items, such as motorcycles, cars and golf equipment. I worked on one case where the spouse owned over 39 sets of golf clubs. Men also utilized more spending money through ATMs and cash withdrawals than women. Women tend to get their pocket cash while in the grocery store or bank.

One of the main reasons spending is secretive is due to the type of products/services being purchased. If you are spending money on bad behavior that you cannot afford, that is a double whammy to a spouse. Gambling, alcohol/drug dependency, overeating or adultery are examples of addictions that can become out of control. These behaviors encourage addictive individuals to spend more and more, often incurring large credit card

bills and personal debts. In many cases, spouses are raiding their retirement and financial assets to fund their addictions. Many of these secretive behaviors can go on for years undetected.

Triggers of Spendaholism

What could trigger bouts of spending addiction? A marriage that does not have a transparent wrapper around the finances and the communications could easily set up a situation where overspending might occur. Secrecy, motive and concealment are the other variables needed to carryon a spousal ruse. It may also stem from an emotional subconscious reason of needing to get back at the spouse for some slights, whether real or imagined.

Some of the reasons heard when confronted with an overspending problem:

1) He paid no attention to me
2) Enjoyed the friendliness of retail workers
3) Felt a "retail high" while shopping that became an addiction
4) Never added up all the credit card balances. Just continued to open new accounts
5) Keeping up with their stature in the community
6) Arguments or anxiety spark an urge to shop and then hide the goods
7) She had an affair, so I took the credit card to get even
8) I make the money so I can spend it as I like

Divorce Consequences

Some of the most difficult divorces are those families where both spouses are spenders. There may be few financial or real assets to split in the property settlement. Good luck trying to craft two full sets of personal expenses out of a family unit that is in the habit of spending all the income that is generated. The news is also not good for those that live beyond their means. When they get divorced their debts generally exceed their assets and they end up trying to split the debt equitably or they may need to file for bankruptcy. There may be no other option. That is the day of reckoning for many poor financial spending habits.

Signs of Lying: How to Catch a Liar

Physical Signs of Lying

1) The liar has difficulty swallowing.
2) He is displaying a forced smile on his face.
3) The liar is making a gesture that doesn't match the speech.
4) His gestures appear stiff or mechanical.
5) In an intimate relationship with a liar, you notice he is not touching you.
6) He doesn't pay attention to what is going on and appears distracted.
7) You notice he is sweating profusely
8) He is less expressive with his arms and tens to hold them close to his body.
9) You notice nervous habits such as ear rubbing, whistling, etc.
10) The liar makes no direct eye contact with you.
11) The lair may stare at you in a very unnatural way.
12) You notice some rapid breathing.
13) He speaks at a higher pitch than normal.
14) The liar's voice is barely audible or he is mumbling.
15) You detect shakiness in hands or voice.
16) He is sitting hunched, instead of straight.
17) He has a tendency to move away from you or towards an exit.
18) His face becomes flushed or turns white.
19) He is touching different parts of his face (nose, ears, mouth, eyes).
20) He is using an object as a barrier between you and him.
21) If a liar shrugs their shoulders, it is a very light shrug.

Verbal Signs of Lying

1) The liar answers a question with a question.
2) The liar answers a question by depersonalizing it.
3) She accuses you of lying that reflects what she is doing.
4) She answers a question with another one designed to delay the answer.
5) If she claims she is not doing something, chances are she is.
6) The liar delivers a statement with a flat voice, without any natural emphasis
7) She provides more information than necessary.
8) She is giving too many facts and details, showing the answer has been rehearsed.
9) She looks relieved when the subject is changed.
10) She makes radical assertions, such as "I never" or "I always."
11) She is not answering a directly to a direct question.
12) She is evasive and not willing to give any specific details.
13) The liar overreacts in expressing an opinion, thereby covering true feelings.
14) You can almost trust any Freudian slip.
15) Using humor and sarcasm to answer a serious question can be hiding the truth.
16) If you have caught someone lying before, it may happen again.