

AZ CPA

JANUARY 2014

The Arizona Society of
Certified Public Accountants

Conflicts of INTEREST *Still Cause* Trouble **for CPAs**



Business Valuation/Forensic Focus

**Avoidance of a Secured Loan
as a Fraudulent Conveyance**

Misconceptions About Community Property

Succession Planning

www.ascpa.com



DriveTime®

www.drivetime.com/careers

LOOKING FOR TECHNICAL ACCOUNTING EXPERIENCE IN AN AGILE WORK ENVIRONMENT?

Work with "Big 4" Professionals while gaining industry experience.

DriveTime is the nation's leading used vehicle retail and finance company focused on the subprime market. We're based in Phoenix, AZ and we're looking for accounting and tax professionals who are ready to take their career to the next level and grow with our team as we take on new challenges and maximize opportunities.



WHO ARE WE LOOKING FOR?

SEC REPORTING SENIOR ACCOUNTANT

- Up to \$100K / plus bonus
- CPA Required / 3 - 5 years or more experience / **Public Accounting** experience preferred

EXPERIENCED STAFF ACCOUNTANT (x3)

- Up to \$65K / plus bonus
- CPA preferred / 2 - 3 years or more experience / **Public Accounting** experience preferred

SENIOR SALES TAX ANALYST

- Up to \$75K / plus bonus
- CPA / IPT designation preferred 3 - 7 years or more experience

TREASURY ANALYST

- Up to \$85K / plus bonus
- CPA preferred / 2 - 5 years or more experience / **Public Accounting & SQL** experience preferred

TAX ACCOUNTANT

- Up to \$55K / plus bonus
- CPA preferred / 1 - 2 years or more experience / **Public Accounting** experience preferred

SENIOR AUDITOR

- Up to \$75K / plus bonus
- CPA preferred / 3 - 5 years or more experience

Apply Today!



(602) 667-2528



joseph.terracciano@drivetime.com



Corporate Office Located in **Phoenix, AZ** / Relocation cost paid upon qualification



Misconceptions About Community Property

by David Cantor, CPA/ABV

So exactly what is considered community property in Arizona? There are a few misconceptions about this, such as:

- *If it is acquired during marriage, it is community.*
- *Everything becomes community when two people get married, even if they owned it before marriage.*

These are two of the biggest “myths” that can lead to confusion when two people get divorced in Arizona. While there is some validity to these myths, taken as a whole they are incorrect. Basically, the presumption is that all assets are in fact community, unless the person claiming separate property can prove and trace these amounts. A few examples of this separate property are assets brought into the marriage, assets acquired during marriage via gift or inheritance, or earnings and/or proceeds from separate property assets (rents for example).



Separate property can lose its character if the party knowingly gifted the funds to the community for things such as living expenses, asset purchases or merely commingling accounts without even trying to keep the funds separate or account for them.

In *re* Marriage of Cooper (130 AZ 257; 635 P.2d 850; 1981 Ariz.) states: "Where community property and separate property are commingled, the entire fund is presumed to be community property unless the separate property can be explicitly traced." Additionally, the Court went on to state: "The burden is upon the person claiming that the commingled funds, or any portion of them, are separate to prove that fact and the amount by clear and satisfactory evidence."

In addition, as indicated in *Re* Marriage of Nace (104 Ariz. 20, 448 P. 2d 76, 1968), the mere fact that assets have been commingled does not result in the conversion of those assets to community. In *Re* Marriage of Porter (67 Ariz. 273, 195 P. 2d 132, 1948) goes even further by stating "In any event, the loss of the separate property results from the presumption in favor of the community in the absence of identification of the separate property, and not from the mere fact of intermixture." In other words, the burden is on the person claiming separate property to utilize Family Law accounting methods to make their case. Usually this involves what is known as a Tracing.

A tracing is a complicated and detailed task wherein every transaction

in the commingled account(s) in question is analyzed, summarized and apportioned between community and separate property. Simply showing bits and pieces, such as specific deposits, transfers or withdrawals will usually not meet that burden of proof.

Take the case where a wife received a \$20,000 gift from her parents (clearly separate property) five years before divorce and deposited those funds into a joint account (still separate property), but over the next five years community funds were deposited into the account as well as community expenses were paid. This \$20,000 is now wholly commingled and the burden is on the wife to show that the \$20,000 in question still exists. For the wife to claim any part of the \$20,000, she must show to the Court that the \$20,000 is still intact within the account. The only way to do this is to Trace and allocate all of the transactions subsequent to the deposit.

Simply going in and saying that the account balance is now \$35,000, therefore the first \$20,000 belongs to the wife is not sufficient. What if, for example, two years after the deposit, the balance in the account was only \$5? Then, via deposits of community wages, it is back up to \$35,000. How

can that \$20,000 even still exist, let alone belong to the wife?

One of the terms often used during these types of disputes is "intent." What was the intent of the spouse claiming separate property when certain transactions occurred? Separate property can lose its character if the party knowingly gifted the funds to the community for things such as living expenses, asset purchases or merely commingling accounts without even trying to keep the funds separate or account for them. The flipside is if the spouse opened accounts in their respective name only, never deposited community funds into that account, always used community funds for community expenses, then there is the appearance of intent to keep the property separate.

When you have separate property, some simple steps can help protect those assets:

- Keep those funds in separate bank accounts and don't commingle them with community assets
- Keep detailed accounting records related to the claimed separate property assets
- Consider how transactions during marriage are handled when separate funds or commingled funds are used.

Ultimately, the determination of separate property is up to the court, if a case makes it that far. However, a lot of these issues can be avoided by judicious planning and consulting an expert experienced in these matters ... even before there is a contemplation of divorce. Planning in advance can not only protect your separate property assets but also save time, aggravation and fees should there ultimately be a divorce. **AZ CPA**

David Cantor, CPA/ABV has been practicing Family Law accounting almost exclusively since 1990 and is the managing director of Family Law Services for Epps Forensics Consulting PLLC. He can be reached at (480) 620-8486 or dcantor@eppsforensics.com.