

# **DIVORCE: spouse hiding assets in Companies or Trusts? What to do.**

When parties get divorced, the focus is always on two things - who gets what and what about the children. Looking at the first aspect, it is fair to warn spouses that hiding assets can lead to you getting a hiding in court.

Where parties are married in community of property, one has to divide the assets and debts to determine who gets what. Where parties are married out of community of property with the accrual, one must calculate the accrual claim between the parties by considering each party's assets and liabilities.

Often, one of the spouses does not have any assets in his/her name, as all the assets belong to a trust or a company. Although the spouse is not the owner of the assets, they benefit from using the asset as if it is their own. Upon divorce, such a spouse will not have any assets to share with the other spouse. The assets will be protected from the divorce, as they belong to the trust or company, a separate legal entity that will not form part of the divorce.

This might feel extremely unfair to many who find themselves in this situation. In some cases, having assets in other entities is perfectly legal, and they will never be considered your private property in a divorce. However, there are instances where a spouse intentionally hides assets in a trust or company to prevent the other spouse from sharing in the asset. In these circumstances, the court can intervene and order that the assets of the trust or company be part of the estate and divorce proceedings. We call this 'piercing the corporate veil' or 'piercing the trust veneer'. For purposes of the divorce, the court will deem the assets of the company or trust as part of the individual person's estate.

Piercing a corporate veil or trust veneer is an intricate and complex exercise. Each matter will differ, based on the circumstances of the case.

The general rule is that the company or trust is deemed a separate entity from that of the person's private estate. Its assets will be kept separate from a divorce and not be shared between spouses. The court will deviate from this rule in the following two instances:

1. When a trust is simulated or a sham - typically when a trust is used as a person's alter-ego, and no true intention exists to keep and manage the trust separate from that person, except when it suits them; or
2. Where the trust or company as an entity is being abused - typically when a person uses this entity to fraudulently hide assets.

One example of an instance where company or trust assets will form part of a divorce is when a spouse, on the "eve of a divorce", transfers assets or money to their company or trust to keep it out of reach of the other spouse, with the fraudulent intention to hide the money or asset from the soon-to-be ex and depriving that person of their rightful claims.

Another example is when a person registers a trust and uses it to buy all assets in the name of the trust instead of in their own name and uses the trust income as if it is their own without involving any trustees in the decision-making of the trust. Ultimately, managing the trust as if the trust does not exist separately or as if he/she themselves is the trust.

These two examples are occurrences that we most often see in practice, but there are many other instances where a court could find that the company or trust was used to the disadvantage of the other spouse. It would be wise to approach an experienced divorce attorney to properly advise you of your rights in circumstances like these.