



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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## Ron's Corner

A basic rule of a community property law is that all property acquired during marriage is community property unless it falls under a specific exception. The major exception to the basic community property rules relates to separate property. There is a general presumption that property acquired during marriage by either spouse other than by gift or inheritance is community property unless traceable to a separate property source.

Whether a tracing is adequate is a question of fact for the trial court, which decision will be upheld on appeal if supported by substantial evidence. The burden is on the person who commingles to keep adequate records to protect separate property. *In re Marriage of Marsden (1982) 130 Cal.App.3d 426, 181 Cal.Rptr. 910*

Proper standard of proof to overcome the presumption that property acquired during marriage is community property is preponderance of evidence. *In re Marriage of Etefagh (2007) 150 Cal. App.4th 1578, 59 Cal.Rptr.3d 410*

Merely showing availability of separate property funds is insufficient to establish that they were used to purchase a specific asset. The burden of keeping adequate records falls on the separator. *Estate of Murphy (1976) 15 Cal.3d 907, 126 Cal. Rptr. 820, 544 P.2d 956*

As always, if you have questions, I welcome you to contact me.

Ron

## Rebutting Tracings and Meeting the Burden of Proof

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

The burden of proof in family law is the obligation of a spouse to bring forth evidence of a claim of separate property. In these instances, assets are presumed community property unless a party sufficiently traces and meets the burden of proof that an asset is separate property. Should the party provide sufficient evidence to prove his or her claim, the burden of proof is met.

In Family Law, when a matter is contested by a spouse who claims disadvantage, the burden of proof falls on the advantaged party to show via a preponderance of evidence that there was no undo influence or a breach of fiduciary duties. When tracing a claim of separate property, the separator must present clear evidence that the property is indeed separate since *Family Code § 760* establishes the presumption of community property.

## Preventing a Successful Rebuttal of a Separate Property Claim

Presenting the case for separate property can be a complicated task. It can involve analyzing several documents through tracing to establish solid evidence that a property is truly separate. Complex tracing demands that the forensic accountant possesses a conceptual understanding of tracing methodologies to achieve the most positive outcome for a client. He or she must employ due diligence and judgment to draw on whatever combination of procedures are at his or her disposal to reach a logical convincing conclusion. Such was the case of *In re the Marriage of Dorothy and Joseph Ciprari*. (*Forensic Accounting Today* <https://anfusocpa.com/wp-content/uploads/Newsletter-47.pdf> and <https://anfusocpa.com/wp-content/uploads/Newsletter-48.pdf>) In this case, as the forensic accountant, I was faced with an unusually complex situation that required a creative solution. I was able to construct an approach that clearly demonstrated that Joseph's claim of separate property was indeed valid. As a result, The Appellate Panel concluded that despite Dorothy's argument to the contrary, substantial evidence supported the trial court's ruling of separate property.

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## Rebutting Tracings that Fail to Meet the Burden of Proof

### First Case

In this case, I testified that the tracings were not carried out properly by the opposing accountant because they did not meet the burden of proof. I explained that the problem with this case was that the separator did not provide the expert on the other side sufficient records to perform a direct tracing. The shortfall of the tracing by the other side's forensic accountant was due to there being numerous years of marriage prior to the beginning of the tracing. This made their task difficult due to missing essential historical documents. In addition, I expounded that there were unsupported allegations of gifts received by the spouse during the marriage that were relied on to claim a separate investment. Documents that would support gifts received during a marriage include the fronts and backs of checks, copies of gift tax returns (*IRS Form 709*), written letters from the person making the gifts, and/or oral testimony from the gifting individual or entity. Simply providing a check copy with the word "gift" in the memo is not sufficient. In the case of numerous claims of gifts, substantial investigations must be performed to provide the court sufficient evidence to prove the gifts actually occurred.

### Second Case

In this case, a spouse presented partial information of an account that was in his name. I pointed out that this was not sufficient to prove separate property. Merely tracing funds from an account that might be in one of the spouse's names but failing to trace the actual source of the funds in that account does not prove the property to be separate.

## Should These Tracings Have Been Performed?

When sufficient records are not available to perform a proper tracing, there is no reasonable expectation for the court to rule in favor of the property in question as separate. Likewise, when there is a third party involved with the purchase of a property, it is difficult to determine that a property is separate when the advantaged spouse can only uncover partial account information. In cases like these, I would decline to perform the tracings and save the client from the unnecessary expense of an analysis that would not likely be accepted by a court.



## Why Attorneys Choose Us for Cases Involving Complex Tracing

### Our Ability to:

- Discern, select and consistently apply the most effective method of tracing to each case taking into account the unique nature of the respective case
- Get all the facts, no matter the level of difficulty and number of transactions to unravel
- Provide mistake-free conclusions
- Present the details and findings clearly to all parties (attorneys, clients, judges, appellate panels, etc.)
- Back up our findings with concise, accurate, convincing testimony
- Confidently handle the toughest cross examination

When you need a forensic accountant to perform tracing, choose

**Ron J Anfuso, CPA/ABV**  
An Accountancy Corporation  
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## We Are Hiring

We are seeking to add to our professional staff. If you know a competent CPA who might be looking for a change, we're offering a great opportunity for a challenging and lucrative career. Please contact Dawn Anfuso at dawn@anfusco.com or (310) 378-6606 ext. 2.

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