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# **ASSET FORFEITURE**

## **Public Record and Other Information on Hidden Assets**

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U.S. Department of Justice  
Office of Justice Programs  
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Washington, D.C. 20531

Dear Colleague:

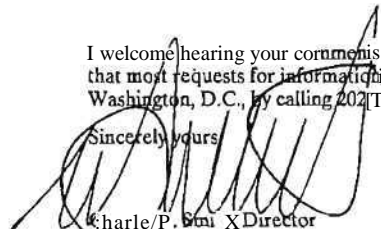
Illicit drug traffic continues to flourish in every part of the country. The cash received by the traffickers is often converted to assets that can be used by drug dealers in ways that suit their individual tastes. Since 1981, federal authorities have increased their attack on these assets through both criminal and civil forfeiture proceedings with remarkable success. The recent passage and use of state asset forfeiture laws offers an excellent means for state and local jurisdictions to emulate the federal success.

The Bureau of Justice Assistance (BJA), in the Office of Justice Programs, has funded a nationally focused technical assistance and training program to help state and local jurisdictions facilitate broader use of such laws. BJA selected the Police Executive Research Forum to develop and administer this program because of its history of involvement in practical, problem-oriented research to improve police operations and the Forum's central role in developing training materials for use by police agencies and chief executives.

As part of this project, the Forum has contracted with experts in the area of asset forfeiture and financial investigations to prepare a series of short manuals dealing with different concerns in the area of asset forfeiture. We hope these manuals help meet the rapidly unfolding needs of the law enforcement community as more and more agencies apply their own forfeiture laws and strive to learn from the successes and problems of their peers.

I welcome hearing your comments about this program. We have structured this project so that most requests for information or assistance can be handled through the Forum staff in Washington, D.C., by calling 202/466-7820.

Sincerely yours,

  
Charles P. Smith, Director  
Bureau of Justice Assistance

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## **Introduction**

In 1970, the federal Organized Crime Control Act was enacted, Part of this Act included the Racketeer Influence and Corrupt Organizations statute (RICO), which allowed for both the civil and criminal prosecution of individuals investing moneys derived from illegal sources into legitimate enterprises. This legislation also allowed for civil and criminal seizure of identified properties or assets that had been purchased with these illicit funds.

In the last ten years many states have enacted asset forfeiture and seizure laws, modeled to varying degrees after the 1970 federal statute, to target the great profits in crime that help sustain and further promote criminal enterprises. Some states also permit the prosecutor or law enforcement agency to convert seized assets to real dollars for agencies use in future investigations. For example, the seizure of a boat valued at six figures that was purchased as a result of illegal narcotics profiteering can certainly ease the strain of tight government budgets and increase the availability of "buy" or "flash" money.

Federal and state laws regarding ill-gotten assets have several important meanings to the law-enforcement community and the general public:

- The statutes provide another legal tool for prosecuting major offenders.
- The laws allow for a comprehensive crippling assault on major offenders allowing their illicit investment assets to be seized and removed as supplemental sources of "legitimate" income.
- Seizing and eliminating the illicit business assets of major offenders also strengthens the legitimate business community. The major offender/"businessman" will certainly inject his criminal tactics into the business community and secure for himself an unfair competitive edge. Elimination of the illicit assets can help eliminate this edge.
- And, as noted above, asset forfeiture can be a financial benefit to all levels of government if the illicit assets are converted to funds that benefit the law-enforcement community.

The major offender with cash ready for investment is usually surrounded by a cadre of professionals — attorneys, accountants, investment counselors, bankers and relators. These professionals are supplemented by a ready supply of individuals and corporate "straws" and "fronts." These associates may range from criminal cronies to the attorney's secretary, from trusted relatives to legitimate businessmen seeking new partners or lucrative, quick turn around investments.

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As major offenders use these professionals and associates to oversee their investments, law enforcement agencies face major barriers in detecting and identifying the real ownership and sources of investment. There are, however, methods and sources of information available to the investigator which, if applied diligently and explored fully, can reveal these assets and investments and at least partially remove the veil of secrecy that surrounds these transactions.

The purpose of this paper is to explore these unveiling methods and share these sources of information. Some are obvious and have been mentioned in many publications; others are less so. Many are interrelated, with the result that one source of information leads to the necessity of pursuing another source of information. Some may require special investigative tools, such as subpoenas, writs or search warrants; others simply require instinct, diligence, hard work and attention to detail.

For the purpose of this paper we will limit the nature of the hidden asset to those of real estate investment and investment in a business enterprise.

The reader will note that references to various state, county and local government sources of information have a "Pennsylvania flavor." This reflects the author's experiences with sources of information and laws in that state. The sources in your jurisdiction may be known by other names, but the same information is sure to be available regardless of the jurisdiction.

## The Initial Lead

The initial information or lead that generates hidden asset investigations may result either as a "spin-off" or developed lead from another investigation, or as a result of a "proactive" investigation specifically targeting a major offender.

The *spin-off* lead results from an investigation not directly relating to revealing hidden assets. It most often arises from a more traditional criminal investigation, such as that of a major narcotics trafficker, or as a result of intelligence gathering. This type of initial information may also surface indirectly when debriefing a criminal informant, conversing with a legitimate businessman, or conducting surveillance. For example:

- A meeting observed between a recognized major organized-crime figure and the president of a local meat cutters' union in southeast Pennsylvania was the catalyst that generated an investigation into the relationship between a health benefit provider and a union employee group. The result was a significant prosecution of an organized crime figure in this industry.<sup>1</sup>

- A major numbers banker visiting a work crew at a small multiple-unit dwelling led to a major recovery of hidden investments of ill-gotten gambling monies in various businesses in Chester, Pennsylvania.<sup>2</sup>

The spin-off lead also may be generated through analyzing telephone toll records, bank records or business records in an unrelated investigation. The payment of a utility bill or real estate taxes on a property unrelated or previously unconnected to the offender by investigators can be the single item leading to a major hidden-asset investigation.

In addition to the spin-off lead or the lead developed from another investigation, leads to hidden-asset investigations can be developed in a proactive manner. If the investigator allows, as his initial premise, that a major offender has generated capital for investment and that this capital may have been invested, then initial investigative procedures can be taken to determine the validity of this premise.

If proper legal process and cause can be developed, both mail covers and telephone toll analysis, in combination with the use of a Dial Number Recorder (DNR), are valuable tools in this proactive approach to initial leads. Telephone or mail contacts between the targeted offender and professionals and businesses involved in real estate investments or financing can prove to be critical leads. If patterns of contacts are observed, the likelihood of an investment transaction increases — as does eventual success in detection.

The types of contacts by mail or telephone that indicate asset investment include communications with relators and real estate businesses; banks and savings and loan institutions (particularly those not previously identified); and attorneys known as investment or real estate specialists. Others include contacts with accounting firms, insurance companies, utility companies, taxing authorities, commercial trash haulers, construction companies, home improvement and repair businesses, title companies, telephone companies and business consulting firms. These contacts are major indicators of asset investment, as well as your "lead sheet" — not only to documenting the asset ownership, but to identifying knowledgeable sources of information and potential witnesses for prosecution.

In addition to the analysis of mail and telephone records as proactive tools, the legal pick-up and careful analysis of your target's trash, at either their residences or known businesses, should never be overlooked as a potentially important proactive source of intelligence. It must be stressed, however, that this must be accomplished in a totally legal manner to avoid tainting the evidence.

If you are legally able to secure your target's trash, you may well obtain leads and information generated by the group of businesses and individuals identified above. In addition, you may find notes written by your target

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regarding his involvement in some previously undisclosed business or investment. Or you could discover hand-carried invoices or bills from a supplier to the hidden-asset business. Many businesses do this as a matter of practice. Others may be requested to hand deliver the material to avoid detection and to avoid the mails. Many sophisticated criminals today are wary of potential mail fraud charges and take extreme measures to avoid use of the mails.

If you have identified a particular professional involved in investment who has been determined to have extensive contact with your target, a "targeted surveillance" could be initiated on this professional. This could prove very productive if your target and this professional meet and are observed visiting a business site, or if they are involved in a business meeting with some previously unknown associates. The potential for additional initial leads from this scenario are vast. Depending upon your available resources—both time and staff—this approach should be considered carefully. However, a surveillance of this nature can be quite time consuming, costly and of limited productivity unless specific prior knowledge of a meeting is known.

Both the "spin off" lead and the "proactive" effort, if properly pursued, can generate that initial lead so vital to an asset-disclosure investigation. However, as important as proper pursuit is, of equal importance is the need for investigator awareness and education. The investigator in a major narcotics case must realize the great potential for asset disclosure in these matters and be alert to asking that extra question or two that could provide that initial detail or lead to asset disclosure. The investigator also must be aware of the need for attention to detail and the potential significance of a seemingly minor item. For instance, the discovery of a utility bill of less than \$10 paid by the major narcotics trafficker on a property previously unrelated to him can be that vital initial lead to a major asset disclosure investigation.

## **Intelligence**

The value of intelligence to the hidden asset investigation is directly related to the quality, quantity and source of the intelligence information. In conducting a traditional narcotics related investigation over a lengthy period, great quantities of information can be developed from a multitude of sources. Sometimes information is maintained in a well-organized, retrievable and manageable manner, however, often it is not. This information is not considered true intelligence if it has not been maintained in a manageable manner and is not retrievable. It also is not considered intelligence unless some effort has been made to determine its validity, its source's reliability, or to confirm it through other investigative efforts.

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If the criminal intelligence relating to your investigation target has been managed properly, it is a primary source of leads and information for your investigation. Information that should be extracted from this organized intelligence should include at least the following:

- Names and identifying data of all participants, major and minor, in the criminal structure.
- The participants' past and present occupations, places of employment and their businesses.
- Female participants in the criminal structure, and wives and girlfriends of participants in the criminal structure, should be identified by all previously known names.
- All non-criminal associates and friends of members of the criminal organization should be identified, along with their businesses and occupations.
- Past and current business partners of all members of the criminal structure should be identified.
- All known associates in the financial community should be identified. Included should be those associated with real estate, banking, the law and accounting.

Information in these categories is important as raw material to connect with intelligence developed later in the investigation which may reveal the "front" or "front organization."

Previously used criminal informants who have knowledge of your target may prove helpful. Were these sources who had knowledge of the target's narcotics operation ever questioned concerning his investments? If not, they should be located immediately and be debriefed in this area. Also, leads may be generated from others who have previously investigated your target. Investigators and prosecutors do not commit to paper all of their knowledge regarding an investigation. That initial lead, so important to success in an asset probe, could be gained from them as a result of a simple telephone call.

All other information in law-enforcement files relating to your target that has not been organized properly should be thoroughly examined, and pertinent information in the above categories and any other data should be consolidated into a new, comprehensive intelligence system that allows ready retrieval.



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Having extracted, organized and consolidated all available intelligence from the traditional criminal files and intelligence, there likely will be significant gaps in the information needed to pursue your asset investigation.

Now you must fill those information and intelligence voids. Much of the balance of this paper will explore the sources of information that will assist you, not only filling these voids, but in providing additional information and potential witnesses and informants for success in a difficult investigative undertaking.

## Sources Of Information — Government Records

Government records are probably the most accessible records, with the most broad applications, available to assist in the hidden-asset investigation as it relates to real estate purchases or investments in a business enterprise. Of particular value are the records maintained at the county and state level.

### County Records

#### Recorder of Deeds.

This office is responsible for recording all deeds in the county regarding real estate transactions. The recorded deed contains the names of both the buyer and seller, in addition to a description of the property, and in most cases, the recorded selling price.

In addition, the deed may reveal the addresses of the buyer and the seller (known respectively as the grantor and the grantee) and the identification of the attorney or other representative of either the buyer or seller. The identification of the seller of the property or his representative is, of course, an immediate lead possibility for the hidden asset investigation.

In addition to maintaining deeds, the Recorder of Deeds also maintains and records all mortgages relating to real estate or property transactions. This document is the source of a number of vital pieces of information. One obvious piece of information is the source of a loan (mortgage) to purchase the property. The mortgage document identifies a lending institution that has agreed to finance the purchase of the property. This leads the investigation to possible sources of documentation and witnesses who may know and have done business with the target of the investigation.

The mortgage, and sometimes the deed, also may provide another potentially vital lead to true ownership and the unveiling of the hidden asset—the title company. If a title company was involved in the sale, that company will hold such important information as the settlement sheet, which reveals the distribution of monies to the buyer and seller resulting from the sale. In

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addition, the title company may retain copies of the financial instruments, such as checks, used to consummate the transaction.

Title companies may not be readily identifiable on a deed or mortgage. They may only be identifiable as a code stamped or handwritten on the public document. For example, you may observe the following: CT 12345 — 03. In this example, the letters "CT" identify Commonwealth Title Company and the number "03" identifies Commonwealth Title's #3 office at a certain location. The number "12345" identifies their file number.

#### Liens Office/Clerk of Courts.

Locating a supplier or vendor to whom the subject of the investigation or his "front" or "front corporation" is indebted can be a valuable lead. Because the indebtedness may have been involuntary, this can lead the investigator to a target's antagonist, who may have reason to cooperate. Liens or judgments filed by businesses or individuals against other businesses can be located in county offices of various names. In Pennsylvania, this office is known as the Office of the Prothonotary. These files should be reviewed carefully. The filing of a lien does not always indicate that a true debt has been established. For instance, a mechanic's lien is filed by a subcontractor against the property owner to secure the subcontractor against the possible future contractor's failure to compensate for work completed.

If liens or judgments are located, the next step in developing lead material is checking with the Office of the Clerk of Courts.<sup>4</sup> This office maintains records of all civil and criminal actions in the county. A thorough review of these records should be made relevant to each judgment or lien. If civil litigation has been initiated, it can produce additional leads and information valuable to the hidden-asset case. Of primary significance in these files are sworn depositions and interrogatories, possibly used by both sides. These documents can be particularly revealing.

#### Health Departments.

Most county health departments have an inspection division that is responsible for routine sanitary or health inspections of various businesses within the jurisdiction. These inspectors are potential sources of information because of their on-site presence and their routine contacts with business employees and owners. In this capacity, they can identify former employees as possible future sources or they may provide insight into the true ownership of the business.

#### Weights and Measures Departments.

Like the county health department, the county weights and measures department (in most counties) has an inspection division. In this capacity the inspectors have access to the employees and the owners of the inspected

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business, and thus have information potentially valuable to the investigation. They may have leads, for example, to former employees or dissatisfied vendors.

Also, because of the weights and measures department's enforcement responsibility, an adversarial situation may exist, thereby bringing the true ownership closer to the surface or providing other insight into the true ownership.

#### County Taxing Authority.

The county taxing authority can be the source of several types of valuable information. Identification of who pays the taxes on a property and where the billing notice is mailed are often of interest. If the billing notice is mailed to a practitioner associated with the hidden owner, rather than the owner of record, a key lead has just been developed. The taxing authority also will have a record of payment of taxes that may lead to a previously unknown bank account, which could in turn be traced to the true owner. A tax dispute can lead to some connection to true ownership, either directly or through professional representation.

#### Sheriff/County Prosecutor.

Beyond general criminal intelligence, the sheriff and county prosecutor may maintain a general incident file related to businesses within the county, in addition to maintaining an emergency telephone contact number.

The incident file can lead to non-criminal reports or contacts with the managers or owners of a business, or identification of individuals involved in a non-criminal incident reported and investigated by county officials. This may develop further lead material or even connect the subject of the investigation to the business or property.

If an emergency telephone contact number is provided, it should be checked to determine if its subscriber is consistent with the recorded ownership.

### State Records

#### Corporation Bureau.

If initial leads in the investigation disclose corporate entities as possibly holding these assets, the first investigative source should be the state's Corporation Bureau or Office of Corporate Registry.

The quality and substance of information maintained by this office varies from state to state. However, certain data appears common to most jurisdictions. That information includes the following:

- Name of Corporation
- Purpose of Corporation
- Corporate Officers
- Corporate Directors
- Stock Distribution
- Date of Incorporation
- Registered Agent (if any)

Some states require additional data and periodic updates of changes in any of the above areas. Enforcement of these changes varies from state to state; some enforce aggressively, others less so. Certain states also require the periodic filing of financial statements that can be an asset to the investigator.

Those states with aggressive enforcement programs may seek to revoke corporate charters if certain filing requirements are not met. By forcing the corporation structure to file information or face charter revocation, states can help generate additional investigative leads.

In reality, the sophisticated major offender normally will not file information that will aid the investigation effort. But all avenues must be thoroughly examined in seeking even the slightest opening in the corporate veil. For example, if filed information can be shown to be false, the investigation could use the Corporation Bureau's regulatory authority to revoke the charter of the front corporation. If this action is fought by the corporation counsel or other representative, the resulting conflict could further remove the veil of secrecy.

#### Labor and Industry.

Many states, under their labor departments, require the filing of periodic lists of employees, revealing their names, social security numbers and salaries. In Pennsylvania, this is accomplished on a quarterly basis through the Department of Labor and Industry.

This provides a relatively updated listing of employees, their salaries and social security numbers. In addition, it gives the investigator the opportunity to identify former employees by comparing old quarterly reports with recent ones. As mentioned, former employees can be excellent inside sources of information.

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The Labor Department in your state may also have a Labor Relations Board, a Bureau of Mediation or both. If the alleged hidden asset business employs a unionized work force, these offices may well provide leads, particularly if a labor dispute has arisen,

Department of Revenue.

Although state revenue departments, like the U.S. Internal Revenue Service, are statutorily prohibited from disclosing much tax information, they can be sources of certain vital information of a public record nature.

Some revenue departments license businesses. The department may issue sales tax licenses. Generally, these licenses and the applications for them are considered public information. If so, they will contain potentially useful elements of information. However, of even greater potential value is the local or regional state tax collector who has been assigned to a targeted business' delinquent collection. The revenue investigator may be able to provide inside information regarding the business, its true ownership, who represents the business and other "inside" information. A contact with a revenue investigator, however, must be conducted carefully to avoid improper receipt or disclosure of confidential tax information.

In some states and under specified conditions, law enforcement and prosecutors can obtain access to corporate, business and personal income tax information.

If you are able to access either corporate or personal state income tax returns in your jurisdiction, you have access to an invaluable source of information. Several leads to possible sources of hidden investments can be derived from personal and corporate tax returns.

Loans to and from stockholders, and loans to and from corporate officers, can be questionable and should be pursued. Also, mortgages, notes and bonds shown as liabilities on a corporate return must be closely investigated.

Another key item on both corporate and personal returns that should be analyzed carefully are interest payments. Interest income may have been derived from a source, often a bank, that was previously unknown to the investigator. This may lead to bank accounts controlled by the subject of the investigation that have been used for an illicit investment financed with illegally earned funds.

Tax returns also may disclose the identity of the accountant preparing the return. This provides the identity and location of a person intimately familiar with either the corporation or the target. In addition, the investigator now has potential access to additional important records—the accountant's work papers. These will be discussed in more detail later.

State Police/Fire Marshals.

Any record of a fire related to the subject business or property should be thoroughly pursued. Fire often relates to insurance. The identification of a previously unknown insurance company can be an important lead. Who pays the premium? Who are the beneficiaries? And the agent assigned or responsible for the policy can be an important lead because of his first-hand knowledge of the business.

When arson is investigated, additional witness interviews of employees, owners or other witnesses could prove useful.

Licensing Boards/Regulatory Bodies.

Like other types of state and local authority, the licensing and regulation of businesses and occupations varies from state to state and from jurisdiction to jurisdiction.

In a hidden-asset investigation, the various boards, agencies and bodies that license, regulate and inspect must be considered primary sources of information. And in most jurisdictions, the files and records of these agencies are considered public information and are readily accessible.

In Pennsylvania, a myriad of occupations and businesses are licensed, regulated and inspected. The Department of State alone licenses twenty-six separate areas, including accountants and real estate agents that can be significant to the hidden-asset investigation. State licensing ranges from architects to auctioneers, cosmetologists to chiropractors, and podiatrists to psychologists. In addition, licensing and inspection or audit occurs in banking, insurance, environmental resources, fish and game, liquor, milk marketing, public utilities, securities and transportation.

Obviously, the range of oversight is great, and the degree of useful information available from these various agencies ranges from a simple application that is approved routinely and without follow-up, to an application requiring in-depth financial statements, bonding and thorough background investigation before approval is allowed.

Whatever information the licensing board or regulatory agency requires, investigators should search for the following types of information:

- An application with basic information provided by the applicant that may be used to develop leads,
- Sources of financing often are required, which can be traced in an attempt to identify the hidden owner,

- Bonding and insurance sources may be identified which, when pursued, may lead to hidden ownership,
- Employment and occupation histories may be required that can aid investigations,
- Leads to accountants, attorneys and lending institutions can be found and lead to valuable information, and
- Inspection or audit divisions within the licensing and regulatory bodies provide on-site sources that may lead to quality informants or witnesses.

It must also be pointed out that the regulatory or licensing authority may do more than license; it also may exercise the authority to suspend, fine or even revoke the license necessary for the business to operate — a powerful legal weapon. Effective use of state regulatory agencies is a largely untapped investigative tool.

#### Federal **and** Local Records.

In pursuing the hidden-asset investigation, state and county records are of predominant importance, but federal and local records sources also must be combed. In many instances, similar categories of information will be developed from these sources. Both conduct regulatory and inspection operations, in that data, as categorized above, will be developed which could be useful. Federal and local data falls into two broad categories: (1) applications and documents as required by the agency, and (2) documents that will lead to potential informants or witnesses who can link the hidden owner to the hidden asset.

Because it would be repetitious in many cases, no further discussion will be given to the local and federal sources of information. Suffice it to say that at the local level, licensing boards and agencies, health inspectors, zoning boards and taxing authorities can be prime sources, in addition to such sources as local law enforcement and prosecutors. At the federal level, the same licensing and inspection authorities, in addition to the various federal law enforcement and investigation agencies, are key sources.

### Sources Of Information — Affiliated Businesses

In addition to using previously collected information and intelligence and government records as sources of information and leads, information must be gathered on businesses affiliated with the business or real estate investment being investigated. There are two categories. The first category is the business

that supplies services necessary for day-to-day basic business operations. This includes suppliers of raw materials, vendors and trash collectors. The second category is the provider of professional services—for instance, the accountant, banker and realtor.

Before probing these two categories of affiliated businesses, the investigation should have accomplished the following:

- Identified, analyzed and consolidated all available intelligence into a retrievable, understandable intelligence system.
- Completely identified all participants in the criminal organization and developed background information on their businesses and occupations.
- Completely identified all noncriminal associates of your criminal target who have relations to the business community or the professional community.
- Established one or more initial leads to an undisclosed investment in real estate or a business enterprise.
- Searched all potential public records available regarding these initial leads and incorporated these findings into the intelligence system.

Up to this point, most of the sources of information discussed would be considered part of the public domain and readily accessible. Information required from these affiliated businesses, however, in most cases, will require legal proceedings to fully secure them.

Also, your investigation has now moved from its confidential phase to an overt stage where your attorney (whom you will need) most likely will be required to engage in enforcement litigation with attorneys opposing your access to records. Hidden asset investigations cannot succeed without the combined efforts and talents of the investigator *and* the attorney, working as a team.

#### The Former Property Owner/Lessor.

The investigation likely will turn up, at some point, a physical property. It may simply be a piece of land, or it could be a small building, an apartment house or a restaurant. This physical property may have been purchased, it could be leased, or it may be used on a lease/purchase arrangement. Regardless of the nature of the relationship of the hidden owner to the property, there are several common denominators.

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In each interview or contact with anyone associated with the hidden asset investigation, the investigator must obtain the two necessary ingredients for success — *documentation* and potential *witnesses*.

An initial interview with either the owner (if the property is leased) or the former owner (if the property has been purchased) should be conducted. The interview should cover the following:

- Why did you sell or lease the business?
- How did you advertise that the business was for sale or lease?
- Identify all individuals who expressed any interest whatsoever in the purchase or lease of the business.
- What were the terms of the sale or lease agreement?
- Where was the agreement of sale or lease consummated? Who was present?
- How were (are) you compensated for the purchase or lease of the business?
- What changes in vendors or employees have occurred since your sale or lease?
- What documents do you have concerning the purchase or lease?

Responses to these inquiries may identify the subject as having personally shown an interest in the property at some time; it may identify a title company involved; it will surely identify Realtors involved; it may identify associates of the target as expressing interest, or as serving as new employees, vendors or financial sources; it will identify banks or payment and lending institutions; it will identify former employees and former vendors as potential sources; and it may identify the target's accountant or attorney.

Contact with these affiliated businesses will provide varying degrees of cooperation. The recalcitrant interviewee should be made aware of the possibility of legal processes and that he is not a target of the investigation, if this is so. If he continues to be uncooperative, legal proceedings should be used.

In these contacts, the investigator also must remain attentive to the smallest item that can seem unimportant but that could lead to a major

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breakthrough. For instance, a single call from a Realtor to the seller expressing interest in the business, but with no follow-up, can develop a lead to other property investments or a key future witness.

### **The Realtor.**

Having made that contact with the owner/lessor and having established involvement by a Realtor, the Realtor is the next logical contact.

The Realtor can be the source of a variety of information, and the Realtor's role can range from full knowledge of hidden ownership to merely servicing an account. The Realtor's cooperation will vary in proportion to his role and his knowledge; if deeply involved, he likely will be uncooperative.

The Realtor could have been contacted by the hidden owner who, after expressing interest in the asset, replaced himself with a front or front corporation, or a close criminal associate of the subject could have assumed the same role.

In addition the Realtor may have executed the Agreement of Sale and established escrow accounts for the deposit of down payment monies. These documents may be retained by the Realtor and are vital leads. A new bank account with a record of deposits for asset purchase purposes may lead to or connect to the subject of the investigation.

The Realtor may also have a management role in the asset, depending on the nature of the business. He could, for example, be responsible for collecting rent, maintaining the property or paying utility bills. If so, this allows for new avenues of inquiry. Exercising a management role means a Realtor has a more intimate knowledge of the hidden asset than the Realtor merely providing servicing. The management Realtor should be questioned regarding former and current tenants, vendors and employees of the hidden asset.

### **The Title Company.**

Most transactions between buyer and seller involve title insurance. The purpose of title insurance is to assure the buyer that the asset is free from any unknown encumbrances or debts. This protection is provided by a title company. In many cases, the title company is the location where the asset actually changes ownership. For this reason, title companies can be excellent sources of information. Unfortunately, most title companies require a subpoena or some other legal process before relinquishing their records.

Not only does the title company maintain documents important to the investigation, but the company officer assigned the transaction may have first-hand knowledge of the asset's ownership because title insurance is buyer generated. As with the Realtor, the title company officer must be questioned thoroughly in all aspects of the transaction, from initial contact by the buyer to consummation of the sale.

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The records maintained by the title company will include the settlement sheet, which will show the distribution of monies between buyer and seller. Also, the title company should retain copies of any financial instruments used in the transaction. These instruments could be checks, money orders or other financial instruments. If cash was involved, a record of that is also available from the title company. In addition, **like** the Realtor, the title-company escrow account may have been used as a repository for down payments or other transactions involving the asset purchase.

### **The Bank Account.**

The financial transaction may relate to a bank, or it could relate to another category of financial institution: a savings and loan association, a brokerage account, a credit union, a pension fund, or any combination of these institutions. Or it could be a pure cash transaction.

At all financial institutions two functions occur: money flows in and money flows out. In a hidden-asset investigation, the money flowing from the account may be the investment in the hidden asset. The money flowing into the account may be even more important.

When an account has been identified as the source (or possible source) of an illicit investment, you must secure that account in its entirety. That account can only be secured by proper legal process to the bank or other institution, or directly to the subject business.

Often it is preferable to secure the financial records directly from the subject business or the suspected front, for a number of reasons. You will be securing the original document, which is, of course, the best evidence. Also, you may obtain the records even faster and you will eliminate the possibility of poor quality documents so often associated with financial institution duplication.

This method is suggested but must be tailored to your investigation. If your effort is overt at this phase of the investigation, the bank or financial institution can be used as a backup source for documents not received from the subject business or suspected front.

Upon receipt of financial records, tracing of investments begins. Assuming that the investigation has revealed an investment of a specific amount from a front's corporate account, the following should be analyzed at once:

- All opening account deposits should be obtained and examined.
- All major deposits shortly before and shortly after the date of investment in the illicit enterprise should be obtained.

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- All cash deposits during the same period as (2) should be noted.
  - Establish a dollar threshold based on the magnitude of the account and record all deposits greater than that threshold.
  - Complete (4) for all withdrawals of funds.
  - Pay special attention to even-dollar disbursements.
  - Identify and investigate all regular payments for potential leads.
  - Note all wire transfers and credit and debit memos for follow-up investigation.

Pursuit of the above items should be the initial steps in the analysis of bank or financial accounts. The purpose is to identify funds of major proportion flowing in and out of the account to the subject of the investigation or his accounts. It may also generate new lead material.

In the analysis of bank accounts, it is crucial that attention be given to detail and items small in size. Although you may want to focus initial investigation on the major items in the account as suggested above, do not overlook the balance of the records. They could be critical.

There are an array of banking records that could prove valuable, including certificates of deposit, credit card advances and currency transaction reports. Loan records deserve special attention.

If a deposit analyzed in the financial records was generated as a result of a loan, it should be pursued diligently. Several questions should be addressed. Who applied for the loan? How were the proceeds deposited to the account of interest to the investigation? And perhaps most important, how was it secured or collateralized?

Answers to these questions regarding the loan could tie your target to the business, especially the security or collateral for the loan.

Along with bank records, consider the banker. The banker could be the liaison between the loan for the investment in the illicit asset and the subject of your investigation. He may also have intimate knowledge of the business and may even be an informal advisor. Include the banker in your investigation as a possible valuable source of "inside" information concerning the ownership and operation of the illicit enterprise.

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## The Accountant.

In the hidden-asset investigation, the accountant for the targeted business enterprise can be an important source, not only for documents but also as an "insider" and possible witness. Like the Realtor and the banker, the accountant's degree of cooperation will be directly proportional to his personal and professional involvement with the subject of the investigation and the investments.

The documents held by the accountant most vital to a hidden-asset investigation are known simply as the accountant's work papers. These work papers will identify expenditures made by the enterprise; sources of business income; loans obtained by the business; loans made by the business; and other financial records. Generally, the accountant's work papers are not only an excellent supplement to the bank records, but also may serve as a primary source of new information or records.

Of particular interest in the work papers are notes or memos made by the accountant during the preparation of tax returns, in conversation with those operating the hidden-asset business, or both. For example, if a business loan had been made to a corporate officer, there may be a note indicating the purpose of the loan. This note also could identify who approved the loan, and this could lead to your target.

The accountant's work papers may also include copies of tax returns prepared by the accountant for the hidden-asset business. If you do not have access to state or local tax returns, these work papers may provide you with access. These papers also may provide possible new sources of information, such as former accountants, vendors, real estate or asset investments by your target, and employee records.

In addition to his function as accountant and preparer of tax returns, the accountant may serve as a business advisor or investment consultant to the business or your target. His activity in this role may shed further light on the case.

## Vendors.

As mentioned earlier, the identification of vendors, particularly former vendors, can be critical to a hidden-asset investigation. The vendor has access to the day-to-day operation of the business and often has critical insight into the business management and financial workings. The vendor may have direct contact with the true ownership, particularly in the early stages of the vendor/business relationship.

Vendors can range from renovation contractors and insurance providers to trash collectors and vending-machine managers. The more substantial the

vendor's dollar role in the hidden-asset business, the more likely a direct contact between the vendor and your target has occurred.

For example, as evidenced in a past investigation, a vending company supplied a variety of vending machines to a bar/restaurant owned by a major criminal figure but fronted by an associate. The vending company offered an interest-free loan to the business for using their vending machines, with the loan being paid on a monthly basis from 50 percent of the vending machine receipts. The loan was substantial and of major concern to the hidden owner. As a result, he negotiated the loan repayment agreement and his name and a record of his involvement appeared in the vending company records. This was not conclusive evidence on its own, but served as a critical element that subsequently was combined with other investigative evidence in a successful hidden-asset investigation.

Former or current vendors who have been identified as experiencing financial problems with the suspect business may be primary leads because their adversarial relationship makes these vendors more likely than others to cooperate.

The vendor's own records may prove helpful. The investigation should check samples of payment sources relating to the vendor; review any contractual agreements between vendor and target business; and identify all vendor employees involved with supplying goods and services to the target enterprise.

## Tenants/Former Employees.

If the hidden-asset business leases space or apartments to tenants, the tenants may give valuable information. The tenants and former tenants share a business relationship with the hidden asset and, as such, should be questioned regarding payments of rent; identification of collectors; identification of vendors, and who responds to complaints.

One of the best sources of information regarding any business is the former employee. His usefulness to the investigation centers on his role in the business, how long he functioned in that role and why his employment was ended.

A former employee involved in the hidden-asset business from its inception is most valuable because of his knowledge of the hidden owner's initial involvement. Also, a former employee who had a role in the financial aspect of the business is invaluable. As mentioned earlier, analysis of state Labor and Industry reports can be valuable in locating former employees prior to obtaining bank or business records from other sources.

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## Conclusion

The hidden-assets investigation is difficult, time-consuming and costly. But, it is critical and must be pursued to prevent the corruption and disruption of the legitimate business community and to deter the illegal marketplace from meshing successfully with the legitimate marketplace. Success in the hidden-asset investigation also discourages other major narcotics financiers or dealers and their corrupt business and professional associates from future investment.

To succeed in the hidden-asset investigation requires sincere commitment and total dedication by the attorney/investigator team. In most cases, it requires a proactive effort, rather than the traditional reactive investigation. And it requires dogged attention to detail, logic in your methods, organization of effort, and patience. But it can be successful.

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## Endnotes

1. Health Care Fraud: A Rising Threat; Pennsylvania Crime Commission, 1981.
2. *Chester City Racketeer*; Pennsylvania Crime Commission, 1978.
3. Use of a mini or personal computer, if available, and legal in your jurisdiction is an excellent tool for managing this kind of data.
4. May be identified elsewhere as County Court, Circuit Court, Court of Quarter Sessions or some other designation.



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