

Asset Searching for Recovery Actions - The Decision Maker's Critical Tool Part 1

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As certified fraud examiners (CFE), we all know the nuts and bolts of our respective areas of specialty, and hopefully, we are all growing professionally at an astounding pace. Crime does, unfortunately, pay – just not for the criminal.

After conducting asset research for over 14 years for such demanding institutions as FDIC, FSLIC, and RTC, as well as major hotels and casinos in the gaming industry, property management firms, and many of the nation's larger law firms, one thing that has emerged is a distinct lack of information – not about the type of items searched, but the depth and quality of other searches. In cutting to the chase, the following is the result of the compilation of asset search guidelines, and should serve to assist in setting at least a baseline standard for developing a viable domestic asset search strategy.

Subject Identification

Prior to beginning the acquisition of information on any subject of an asset search, the subject should be properly identified. Studies have shown that as much as 30% of the American population uses undisclosed aliases and/or "akas" to conduct and transact various levels of personal and professional business. This statistic does not take into account the existence of corporate, DBA and/or partnership entity names, which are created to transact the various forms of business on behalf of the principals of said entity. To properly identify a non-corporate subject, the following minimum recommendations are made for non-law enforcement environments: Obtain credit reports from the three major credit bureaus, per Fair Credit Reporting Act (FCRA) requirements.

However, make sure that obtaining the reports is in compliance with permissible purposes as defined in Public Law 91-508, Title VI (FCRA), to avoid tainting your pursuit should the matter ever be litigated. Remember, in the context of this discussion, we are focused on asset searches as recovery medium, and the basic assumption is that the asset search has already been determined to be sanctionable. This could be determined, for example, by a loan in default, a judgment that has been rendered, or a court order obtained for the release of the credit information in cases that are not clearly defined under the FCRA.

Remember this simple guideline: credit reports are legal post-judgment, for purposes of collection, and/or where consent has been given somewhere in the stream of the creditor/debtor relationship. In the case of a receivership institution (i.e., where a director is being scrutinized for alleged conversion of assets), consent may also have been given for a credit history during pre-employment evaluation or as a policy-based condition of employment.

This is referred to as "extended consent," and constitutes valid use, especially in matters where a criminal investigation is under way, and where the conversion of assets is factually alleged as the result of a forensic audit or proven by admission. Be careful, though, as "extended consent" from the employment perspective is still a gray area under the law. The following two items are available from credit bureaus and their sub-vendors but have less coverage extended to them under the FCRA, yet the "FCRA compliance attitude" should be used when accessing them:

- * Obtain social security traces from the three major credit bureaus.
- * Obtain address update/credit report header information from the three major credit bureaus.
- * Obtain voter registration information for the applicable jurisdiction germane to the primary, or most recent, residence of the subject. Some states have compiled voter data through private repositories, which should be checked for movement.

Match the information obtained through the independent sources to the information presented by the candidate in the form of the credit application with the institution, and/or the information developed independently by the institution in the initial credit qualification process.

Many other methods of identification exist, but the above represents the very least that should be done. The reason for obtaining the information from all three bureaus, instead of only one, is to develop any alias and/or aka data, as well as current addresses (not specified), and/or any additional addresses that may provide venue data. This will assist the asset searcher in determining whether to advise the client to proceed with asset discovery in additional areas unknown to the client at the time the asset search was requested.

Address verifications are usually difficult without a physical inspection of the address in question, including a visual identification of the subject entering and/or leaving the address. Address information that is cross-referenced and verifiable through the major credit bureau repositories is usually presented in an asset search, and in most cases is very reliable.

To discover the current telephone number of the subject, methods available to the fraud examiner include nationwide

telephone directories, criss-cross directories, directory assistance contact, and attempts at contact existing telephone numbers known by the client. There are other methods of telephone number development available. However, these methods should not be utilized by a CFE in order to avoid tainting the legality of the pursuit, in the event that litigation is ultimately undertaken.

Assets Determination

Assets determination usually constitutes an integration of certain liability data to offset the assets "worth" in order to arrive at a net equity position. This is especially true in identifying and analyzing real property assets. There are multiple forms of asset determination, which are described as follows: Real

Property Ownership: A search should be conducted of the applicable county jurisdiction. The exception is in California where a statewide assessor's index is available, usually through the "lien date" of the prior year. This repository is made available through a private company, and is in no way sanctioned by any public jurisdiction. For traditional searches throughout the rest of the U.S., per jurisdiction research is conducted at the assessor's office to determine if the name exists on the assessor's roll, and/or if the known property (address) crosses-verifies to the suspect owner.

A search of the applicable jurisdiction's Recorder's Grantee/Grantor index (or general index as it may also be known) is then undertaken to determine if the property is still vested to the subject, and if any open Deeds of Trust and other liens exist which identify liabilities against the property. The search in the recorder's venue should also identify (in jurisdictions where this is possible) the Documentary Transfer Tax Stamp amount, which should be divided by the applicable factor.

This yields a sales price for the property, which should then be scrutinized by contacting a local realtor to verify the current market value. This "thumbnail" market value determination would then be subtracted from the outstanding Deeds of Trust (encumbrances) for a net equity value of the property.

Additional research of real property ownership comes in the form of updating the assessor's rolls through the recorder's offices to determine if the subject's name has come into title to additional parcels of property, subsequent to the "lien date" of the assessor's records, which is in many jurisdictions up to sixty to ninety days old.

The searches in the recorder's offices should also identify recent transfers of ownership of an individual's real property, wherein the ownership may have been transferred to a family member, closely held corporation, or other entity. Based upon the guidelines established by the client, the searches can be permuted to include additional research on additional names developed during the study, which the examiner may feel has a direct relationship to the subject of the report. It is important to note that asset searches are usually requested on specific names of individuals, and it is an industry standard of practice to conduct the research on the specific subject name. Competent investigative agencies contact the client in some way to disclose additional names discovered during the searches.

Searches should also include information developed on real property assets jointly held in the name of the husband and wife. This information is usually indexed by virtue of the husband's name, or the first name that appears on the conveying deed.

It is important to understand that an asset search does not automatically search property held in the name of a wife unless the asset search is specifically ordered on the wife's name. If so, the wife's name would then be included as a primary search name (parameter), and assets held in the wife's name would then be covered. Quite simply, an asset search on a husband should usually also reveal information on spousal assets held jointly, but not necessarily include assets held by the wife individually or as sole owner, or under different name styles such as aliases or maiden names.

Vehicle Searches: Searches should be conducted of the applicable states Department of Motor Vehicles to identify all vehicles owned under the name and address given to the state repository for search purposes. Several states do not provide this service, as the tax registration responsibility for vehicular ownership rests with a county or parish jurisdiction. Where states will not provide this information, the applicable jurisdiction or jurisdictions should be researched to determine if vehicles are owned by the name given as primary search parameter. It is also important to understand that most assets search requests are not only based upon single name searches, but usually single jurisdiction searches as well.

Some examiners may feel justified in providing additional "over-the-county-line" information in order to bolster the information developed without an additional asset search. However, single county or parish jurisdictions should be expected as an industry standard. Analyze credit reports to determine if current outstanding) and/or previous loans may have existed, linking this type of asset to the subject. Many times vehicular, vessel, and aircraft assets are not identified through standard search parameters, but are identified if the subject may have the asset registered in a different jurisdiction; if the asset may be registered under a different name; or if the subject may be a guarantor on the loan.

Vessel Ownership: There are three possible forms of accessing vessel ownership information. The first is on a state-by-state basis at the Departments of Motor Vehicles. The second is at the county or parish level. The third is a search of the U.S. Coast Guard's Watercraft Index, a nationwide repository of registered vessels over a certain length. Depending upon the location of the asset search to be conducted, one or all of these methods should be utilized.

Aircraft Ownership: Other than by "intelligence" information which may have been submitted to the institution at the outset of the credit qualification process, the only method of developing aircraft registration information is to perform an FAA Airman's Search to determine if an FAA Pilot's license has been issued, and/or if an individual has an aircraft registered in his or her name within the Federal Aviation Administration's files. As with the vessel ownership search through the U.S. Coast Guard Watercraft registration, there is only one national root repository that makes this service available. The service is resold through other database repositories, yet it is advised that the "root" repository be utilized in order to minimize data transfer/loss from vendor to vendor.

Banking Information: Bank account searches may be the world's "second-oldest profession." There is no specific way to access bank account information, other than by a multitude of artistic pursuits including the development of information within a consumer's credit history; director contact with a banking institution; the use of sources in the U.S. Federal Reserve Clearinghouse System; or by sources and contacts developed by the fraud examiner with local, state, or national banking institutions.

This is truly the "art and science" of an asset search, in that the ability to successfully identify banks rests heavily with the fraud examiner's prowess in this arena.

The standard guidelines for bank account searches are "exact name basis only" searches, with less emphasis placed on jurisdictional lines, since most bank account searches are developed via intelligence leads. In many instances, an asset search will refer "no record found" to a banking institution under an exact subject name.

The subject's name may appear as a signatory on an alternate account, possibly under the name of a disclosed or undisclosed entity, or as a signatory on an account held under the name of another. Bank accounts will not usually be disclosed in this fashion. Unauthorized information pertaining to a no searched consumer could compromise that person's privacy under federal privacy laws, the FCRA and the CCPA, as well as many other statutes.

It is safe to say that most agencies are quick to obtain at least some banking information. This should rest with the successful Write of Execution language, constructed by counsel as served upon the institution's regional administrative and/or corporate offices (for examples send a request to tomlawson@apscreen.com).

In Part 2 of this article, we'll look at other financial and business information that should be gathered during an asset search, liability-related data which impacts the subject's net worth as well as other information. Thomas C. Lawson, CFE, CII is President and Founder of APSCREEN International, the world's leading full service Consumer Reporting Agency since 1980. Lawson is called "one of the real pros" as he has helped to reshape laws including those for employment screening, permissible credit reporting, asset discovery and fraud examination. Tom is a Life Member of: ACFE, ASIS, SHRM, PIHRA, PNRRA, PRRN, CII, WAD, WIN, FCAOC and OCEMA.