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Business Valuations in DIVORCE



In divorce, what happens to a business that is owned by one or both spouses?

The value of the business is included in the marital estate and divided by the Court. Accordingly, the business needs to be valued.

What key factors determine the value of a business within the context of a divorce?

The sale of the stock. Other considerations include whether the company will still function without the operating spouse, whether it is a personal services business, and whether there is goodwill in the company.

What various methods do you use and how to determine which approach is appropriate?

Income approach, market approach, and asset-based approach are methods for valuing a business. The parties should engage an accountant to determine the best methodology depending on the type of business. More often than not, the financial experts use the income approach to determine marital value.

How do premarital or postmarital agreements impact the valuation and division of a business?

A premarital or postmarital agreement allows the parties to contract around community property laws and provides a vehicle for the parties to make a different agreement regarding the disposition of the community business upon divorce.

What insights or examples of unique challenges have you encountered when dividing a business entity?

Often times, neither party has enough capital or liquid funds available to buy out the other spouse. It is common to see the parties agree to equalize the business with a mix of cash and a note that is paid to the non-operating spouse over time. Because the non-operating spouse is entitled to the cash value of his or her portion upon dissolution, it is critical to provide security for a note. Also, when both spouses work in the business, determining which spouse will continue to own and operate the business can be a challenging task.



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How might a business owner contemplating divorce go about protecting their interests?

For those parties contemplating divorce it is critical to gather your documents including both personal and business tax returns as well as any evidence regarding a separate property contribution.

How does the involvement of a joint appraiser contribute to the valuation process, and what are the benefits of this approach?

A joint appraiser acts as a neutral party and provides a valuation for the business. Hiring a joint appraiser helps keep costs down so that neither of the parties is required to hire his or her own accountant.

Where one spouse primarily operates a business, how do you ensure a fair division of its value, especially if the other spouse has contributed indirectly to its success?

California has developed a scheme to confirm one-half of the community value to non-operating spouse.

What trends or changes do you foresee in the field of business division within family law?

Artificial intelligence (AI) is currently playing a role in the legal community. In the future, we contemplate AI assisting in synthesizing numbers to streamline company financials which are critical factors in business appraisals.

SARAH T. SCHAFFER, CFLS, LL.M., is the founder and managing partner of the Schaffer Family Law Group, a full-service divorce, mediation, and family law firm known for effective legal representation and compassionate client service. For more information, please visit www.schafferfamilylaw.com.