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Protect Your Business In The Event Of Divorce

NEWS & EVENTS: IN THE NEWS

Protecting your ownership interest in a closely held corporation or family-owned business can be a pressing concern for individuals in the throes of a hotly contested divorce. Business interests formed and built during a marriage are considered marital property and are subject to division pursuant to Missouri law. Protecting your interests, moreover protecting the income stream from your business interests, is of utmost priority in the division of marital property.

In litigation or in the negotiation of settlements, disclosure of business financial statements is required so that the parties can value the marital interest to be divided. An expert, typically an accountant, is employed to assist in the analysis of the financial documents and to determine the value of the business interest.

The standard used to value the interest is fair-market value, or, otherwise put, the net amount that a willing purchaser/corporation would pay for the interest to a willing seller, neither being under compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

An expert can also determine whether there should be a discount in the value for lack of marketability – which is typical for closely held corporations or small-business interests, and a lack-of-control discount. If the litigant is only a 25% shareholder, it is unlikely that a buyer would want to buy a noncontrolling interest in such a business.

After the interest is valued, it is considered for division with the other assets of the marriage, e.g., equity in real estate and after-tax value of retirement assets. It is extremely rare that a court will order a spouse to become a partner in a closely held or small business with the other spouse. This is often a concern for small-business owners upon divorce. It is also a stressor for those spouses with business partners or family members who are also involved or owners in the business. Typically, after the business interest is assessed a value, the owner spouse will take that interest at the assigned value and the other spouse will take assets in lieu of the interest, e.g., retirement, equity, cash or any other asset of equivalent value.

While no one wants to go through a divorce, it is important to know where you stand financially with your business, and, more important, it's wise to prepare for the possibility of a divorce. Our firm works with many small-business owners in the pre-dissolution stage to assist in planning strategically for a potential divorce. We can also discuss the timing of acquisitions and debt management in preparation for divorce.

By Amanda McNelley

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