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Dividing Business Assets When One Spouse Owns the Business

By John M. Bovis April 9, 2018

Dividing assets in a divorce will have a lasting impact on your personal and professional future. Many couples share ownership of a business, making it subject to equitable distribution.

But dividing a business when one spouse owns the business may lead to other challenges that both parties need to understand.

Consulting with a family law attorney who understands how to protect business assets or maximize the assets you receive is the first step to protecting your own financial interests.

Business Asset Challenges in Divorce

Determining the value of business assets can be the first obstacle that divorcing couples face. The value of closely held and small businesses are difficult to determine.

Many divorce cases utilize financial experts to help determine the fair market value of a business and its assets.

Georgia law states that business assets may be divided if they qualify as “marital” property. Marital assets are those that were acquired during the marriage period.

If a business was acquired prior to the marriage, then it would be considered “separate” property and is not subject to equitable distribution.

But this isn’t always the case. Certain factors allow separate assets to be included among those that will be valuated and divided between both parties in a divorce.

Business documents must be made available in order for both parties to determine the value of the business’ assets.

A family law attorney can help you determine the value of business assets while protecting them from being divided or ensuring that you receive the assets you deserve.

What Courts Consider When Dividing Business Assets

The courts must evaluate various aspects of your business when determining if it will be considered marital or separate property. This includes the date of your marriage as well as the date at which the business was established.

The funds used to create or purchase a business play a role in this process as well as contributions made by both parties to the business during the marriage.

Separate assets related to a business may be subject to equitable distribution if resources were commingled during the marriage.

This commonly occurs in cases where the non-owning spouse invests financial (or other) resources into a business that was already owned by the other spouse.

How marital funds are used can change the status of business assets. Spouses who own the business should consider any contributions that were made during the marriage in order to determine their risk.

Spouses looking to gain some portion of the business assets must provide evidence demonstrating any contributions they made during the marriage regardless of whether or not they have ownership of the business.

Legal Protection for Your Financial Future

In order to protect your business from equitable distribution, you'll need to provide the right evidence to demonstrate ownership and the time at which you acquired the business.

For individuals looking to get their fair share of business assets, it's important to document any financial and non-financial contributions made to the business during the marriage.

More importantly, both parties must ensure that the business is accurately valuated in order to determine the true value of its assets.

Both parties will seek to protect their own financial interests, increasing the likelihood of disagreements over the value of the business.

Your attorney will give you the resources you need to make your way through this process while getting the outcome you want. Working with a family law attorney is the best way to protect your financial interests during and long after your divorce.