

## Ask an Expert

### The Impact of Divorce on Your Business

When you make the decision to seek professional advice of any kind, it is important to choose someone who has experience dealing with your specific issue. For example, it's important to select a doctor who specializes in the treatment of the specific ailment from which you suffer. It is widely acknowledged that divorce is one of the most difficult transitions in life and that getting divorced is difficult, at best. When one or both parties to a divorce have an ownership interest in a business, the case automatically becomes more complex. The services of a forensic expert will be required to evaluate the business interest and/or analyze the cash flow that it generates. It therefore goes without saying that one of the most important decisions for a divorcing business owner, is the selection of counsel experienced in representing business owners.

For nearly 20 years, Meghan Bradley has concentrated her practice in divorce and family law, including matters that involve complex matrimonial litigation, substantial marital estates and business valuation. Her extensive experience, combined with her financial acumen, secures clients a distinct advantage in both settlement negotiations and litigation if a negotiated resolution isn't possible. Ms. Bradley has handled divorce cases involving the valuation of many different types of business including small privately held businesses, hedge funds, medical and professional practices and restaurants.

Despite the unique character of every divorce and every type of business, Bradley says there are a number of commonly asked questions that come up in virtually every divorce involving the ownership of a business interest. She addresses them here.

**Q.** *If I am going to get divorced, is the value of*

*my business interest relevant?*

**A.** The simple answer is: "It depends." In a divorce, marital assets are distributed between the parties in what is called "equitable distribution." If you owned the business prior to the marriage and have a well drafted Premarital Agreement, it is likely that the ownership interest will be excluded from equitable distribution, and that no formal valuation will be required. However, the key is a well drafted Pre-Marital Agreement that excludes the business interest from distribution in a divorce and is executed in full compliance with the Uniform Pre-Marital Agreement Act. Regardless, the issue of the income derived from such a business may still be an issue for child and spousal support purposes. If there is no Pre-Marital Agreement or the business interest was acquired during the marriage other than by gift or inheritance, its value will be a key issue in the divorce, and you are well-advised to obtain good legal advice.

**Q.** *If my ownership interest must be valued, how can I minimize the cost involved? Can't we just use the book value in my buy-sell agreement? Can't we just use a valuation that I recently had performed in connection with my estate planning?*

**A.** Skilled counsel can shuttle you through the business valuation process efficiently and cost-effectively and help you select the right expert. Most buy-sell agreements either provide the business's "book value" or specify that a particular valuation approach be utilized in determining the value for buy-out purposes. Business valuations are prepared for many different purposes. For example, valuations prepared

for the purposes of obtaining financing tend to inflate the value. On the other hand, valuations prepared for estate planning purposes tend to minimize the value.

A business valuation in the context of a divorce will necessarily take into consideration the terms of any buy-sell agreement and the values contained in prior business valuations. However, these will only be considered as indicia of value and will not be dispositive. One key to minimizing the cost of a business valuation is to work closely with counsel and to quickly provide your expert with all of the requested information and documentation



Meghan Bradley

**Q.** *Will the "percs" that I take from the business be relevant to the value?*

**A.** The value of a business is in one way or another related to the income or cash flow generated by the business. Your expert will review all of the business's books and records. If personal expenses are run through the business, adjustments are made to add back such expenses to the income generated by the business. Some examples of non-business related expenses are:

- cars for spouses or children
- trips that are in part or in whole personal
- home telephone or utility expenses
- "meals and entertainment expenses" that are really personal in nature.

Not only are adjustments made for these types of personal expenses, but an adjustment must often be made in connection with owner compensation. This is often the most significant "normalization adjustment." In most small businesses, owner compensation is not necessarily tied to the economic value of the services

rendered but rather to the owner's ability to take whatever he or she wants. Therefore, an expert's determination of reasonable compensation is a key issue in the valuation process.

**Q.** *How can I be sure that sensitive business information and trade secrets remain confidential during my divorce?*

**A.** Although reputable experts will not allow any personal and confidential information to leave their offices, it is also an option for parties, attorneys and experts to sign what is known as a Confidentiality Agreement. Such an agreement can be submitted to the Judge to be So Ordered. Now there is a court order requiring that all confidential information be kept confidential. This provides an additional layer of protection.

**Q.** *Will the Court inject itself into the everyday operation of my business during the course of the valuation process and divorce? Will my spouse have any say in how the business is run?*

**A.** So long as the business continues to be operated as it was in the past, and the status quo is maintained, the Court will have no involvement in business operations. However, if there is a change in the operation of the business that may impact the business's value or its continued existence, it is possible for the non-titled spouse to apply to have a receiver appointed. This court-appointed neutral party can take custody of the business and manage it in order to preserve it. However, This is considered an extreme remedy.

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*Article Provided by: Meghan Bradley of Charny, Charny & Karpousis, P.A. Founded in 1999, the Law Offices of Charny, Charny & Karpousis, P.A. is a full-service New Jersey based firm with special expertise in divorce and family law, business, real estate, and litigation.*