

What Business Owners Need to be Aware of in the Event of a Divorce



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Business owners face unique challenges in a divorce. Divorces involving a business are often more costly for the parties and can take longer. Here are common issues that most business owners – and their spouses – need to be aware of:

Your business is an asset and a source of income

The value of the business as an asset and as income is often determined by a forensic accountant, and frequently court-ordered. A forensic evaluator may review all books and records for the business – even if you are not the sole owner – and can be very

costly. The evaluator will assign a value to the asset, a portion of which you may have to pay to your spouse in a divorce.

Business income in a divorce is not as simple as looking at a tax return. For example, according to New York child support laws, if a business pays for any of your living expenses, e.g. your vehicle, gas, cell phone, those costs can be included in your income for support purposes. Cash income or bartered services can also be factored in.

You will need to produce your books and records

In all divorce cases, each party is entitled to financial documents from their spouse. All books and records of your business are fair game, including electronic records. You will be required to compile the documentation yourself, on your own (or employee's) time away from running your business. If you have partners or other shareholders, they may also be subpoenaed to testify at a depo-

sition or trial, and to produce records.

Your spouse may have a claim to your business

If your business interest was acquired during the marriage, or if you own it with your spouse, then it is marital property subject to division. If you owned your interest prior to your marriage, you may still have to pay your spouse. If your spouse can prove that the business value increased during your marriage, and that they meaningfully contributed to the increase, they may be entitled to a portion of the value, anywhere from 5% to 40%.

Ultimately, if you wish to avoid your business being examined under a microscope, you may decide to settle your case by offering your spouse a financial settlement. If you are a business owner considering divorce, consult with a matrimonial attorney who will know the issues business owners face and how to best protect you.