

Dividing a Business in a Divorce in PA

When a couple gets divorced in Pennsylvania, the court will equitably distribute the parties' marital property between them. This does not mean that the property will be divided equally, rather, the court will distribute the property fairly given the circumstances and considering a variety of factors. We call this equitable distribution.

In Pennsylvania, only marital property is subject to equitable distribution, while the parties' separate property remains with the person who acquired it. Separate property is property acquired by a spouse prior to or after the marriage, as well as gifts and inheritances. In contrast, marital property is pretty much all of the property that is acquired by either spouse during the marriage. For many people getting a divorce in the Pittsburgh area, this includes a business.

The general rule of thumb is that if you acquire a business interest during the marriage using marital funds, it is marital property subject to equitable distribution. However, if you acquired the business interest prior to the marriage using individual funds, it is separate property and will not be subject to equitable distribution. In this case, there remains a possibility that any increase in the value of the business during the course of the marriage will be subject to equitable distribution.

Valuation: How Much Is It Worth?

When a business is subject to equitable distribution, the first step is to determine its value. The best way to do this is to hire an appraiser, because the valuation process can be complex and involve a variety of different factors.

One important thing to note is that the tax ramifications and other expenses associated with a sale or transfer of the business will be subtracted from its value for purposes of equitable distribution. In a recent Pennsylvania Superior Court case, the court held that this was the most fair way to determine the value of a business, even if the parties have not ever discussed its sale or transfer.

Another thing to be aware of is that the goodwill value of a business is only included in the valuation (and therefore divisible) if the company's success can be attributed to its corporate reputation, rather than personally to the individual. In other words, Pennsylvania distinguishes between personal goodwill and corporate goodwill (also known as professional goodwill or practice goodwill). Generally, corporate goodwill is associated with large companies (e.g., Apple). The corporate goodwill value of a business is subject to equitable distribution. In contrast, personal goodwill, is attributed to the individual, and is associated with small, mom-and-pop type stores. Unlike corporate goodwill, personal goodwill is not subject to equitable distribution in Pennsylvania. In determining whether a business has corporate or individual goodwill, ask yourself why customers go there. Is it because the company is popular and has a stellar reputation? Or is it because they love the people who run it?

How is a Business Equitably Distributed?

After determining the value of the business, the court will be able to equitably distribute that interest amongst the parties. However, the division of a business depends heavily upon the individual circumstances of the parties. For example, did one spouse run the business? Who put time and money into the business? What are the future financial implications for both spouses? The court will also consider a variety of other factors, including the other spouse's role, the tax implications of a sale or transfer of the business, and whether there was a prenuptial agreement.

A court could divide the business in a variety of different ways. For example, the court may grant the business interest to one spouse, and in doing so, give the other spouse more of something else (e.g., alimony, the marital home, etc.) The court could also award both spouses a share of the business. In these cases, one spouse always has the option of buying the other spouse out. Additionally, the parties could take action themselves and either sell their share to the other or to a third-party. In the latter case, the court will equitably distribute the marital portion of the proceeds derived from the sale.

*(For more information on this topic or any topic in divorce, custody, mediation, child support, collaborative law, PFA matters, alimony, or other family law matters, visit www.Pittsburgh-Divorce-Lawyer.com or contact **Notaro & Associates, PC** at **412-281-1988** for a free phone consultation with an attorney. You can also schedule online by clicking [here](#).)*