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Can My Spouse Take My Business?

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The law may differ slightly from jurisdiction to jurisdiction. Generally, businesses started during the marriage will be determined to be marital property to be divided upon divorce. If the business is a partnership or a corporation, ownership by title will be determined. Suppose a spouse owns 100% of the business because of the stock ownership or the partnership interest or because of other evidence of ownership. In that case, the Court will generally require that the business be valued, and then a determination will be made as to whether the spouse who does not have an interest in the business will receive a buyout or an offset from other assets.

Business valuations are performed by experts. Often the parties will agree to use one business valuation expert as a neutral. However, in the spouses cannot agree on one valuation expert, there may be substantial variance in the opinions of the experts representing the interest of the parties. Those situations require the assistance of an attorney who has specific knowledge regarding business valuations and who has the ability to work with experts in the field.

Often there is a determination of personal goodwill. In those cases, an expert may opine that the value of the business is, in whole or in part, attributable to the owner of the business. In that case, the personal goodwill will not be divided upon divorce. This determination can be hotly contested in a divorce situation.

If the spouses each own an interest in a business, it is often partitioned in some way by a transfer of ownership between the spouses, with an offset for other assets or a buyout.

When dealing with businesses that began prior to the marriage, the entire business is not necessarily marital. Once again, a business valuation may be hired to determine the value of the business at the time of the marriage and the current value of the business. The spouse who does not own an interest in the business may argue that the increase in value is marital and should be divided equitably or equally between the parties, depending upon the applicable statutes and case law.