

Dividing Private Equity the Smart Way: Protecting Both Sides in Divorce

November 11, 2025
By Sandra A. Brooks

1/1/13	12.6	3.08	71,900	910	4,500	
1/1/2/3	8.6	+3.61	369,000	3,102	8,041	
1/1/2/3	1.84	+0.55	810,200	1,502	8,041	
1/1/2/3	3.64	-1.09	9,471,300	34,366	12,132	
1/1/2/3	392	-0.25	4,269,300	1,663,847	559,999	
1/2/3	6	-0.83	17,872,600	107,264	18,875	
1/2/3	5.5	-0.65	1,395,000	2,118	4,173	
1/2/3	5.5	-0.65	1,938,500	11,526	3,894	
1/2/3	1.46	-0.38	669,100	980	1,399	
2/3	SP	0.22	0	0	2,780	
2/3	XD	-0.85	-3.65	21,459,600	17,880	3,904
2/3		-0.84	-0.00	349,800	294	391

Private equity assets add a layer of complexity to divorce that goes beyond the standard division of bank accounts and retirement plans. These interests often involve tiered payout structures, vesting schedules, capital commitments, and unpredictable future value. When a spouse holds interests in private equity funds or serves as a General Partner (GP), Limited Partner (LP), or carried-interest recipient, courts and lawyers have to navigate issues that blend valuation, tax, compensation, and property law.

The first step is understanding exactly what the spouse owns. This can include limited partnership interests, general partner interests, profits interests, co-investment rights, or carried interest. Each behaves differently and may be treated as either compensation, an ownership stake, or a hybrid.

Courts look at when the interest was granted and what it compensates. If the interest was earned for work performed during the marriage, some or all of it may be considered marital property. Interests granted before the marriage, or tied to nonmarital contributions, may be partially or entirely separate. Many cases involve a mixed classification that requires a detailed analysis of vesting, performance hurdles, and labor contributed during the marriage.

Unlike publicly traded securities, private equity interests rarely have a clear fair market value. Many are illiquid, subject to complex waterfall structures, or highly dependent on future fund performance. Divorce lawyers typically bring in valuation experts familiar with fund economics. These experts may use discounted cash flow models, scenario analysis, or simulations to estimate a present value.

Because private equity interests are hard to value and even harder to divide directly, courts and attorneys often use one of two approaches.

Offset Method

The spouse who holds the private equity interest keeps it, and the other spouse receives an equivalent share of different assets. This is common when the interest can be valued with reasonable confidence.

If/When Distribution Method

If the value is too uncertain, the parties agree that future distributions will be shared if and when they occur. This keeps the non-titled spouse from receiving a payout on an asset that may never materialize.

Both methods should address tax consequences, capital calls, and potential clawback obligations.

Most private equity agreements restrict transfers and do not permit a spouse to become a partner or member. Divorce decrees

typically circumvent these restrictions by requiring the titled spouse to remain the legal owner while sharing future distributions pursuant to court order or settlement.

If future distributions are to be shared, the agreement must include reporting requirements. These often include providing K-1s, capital account statements, distribution notices, and annual fund updates so both sides can monitor the interest over time.

Private equity interests demand careful handling in divorce because they blend compensation, investment value, and long-term risk. When properly analyzed and structured, they can be divided in a way that protects both parties while avoiding unintended tax or financial consequences. The key is early identification, experienced valuation support, and a settlement structure that reflects the realities of private equity economics.