

Navigating the Division of Private Investments in a New Jersey Divorce: A Simplified Guide

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Divorce can be a complex process, especially when dividing financial assets. The process can seem even more daunting for those who own private investments, such as shares in a closely held business or investment partnerships. If you're facing a divorce in New Jersey and have private investments, understanding how these assets are divided can help you navigate this challenging time with more confidence. Here's a straightforward guide to help you through the process.

What Are Private Investments?

Private investments are assets that are not traded on public exchanges. They can include:

- **Shares in Private Companies:** Owning stock in a company that is not publicly traded, is considered a private investment.
- **Partnership Interests:** Investments in business partnerships or joint ventures.
- **Real Estate Ventures:** Investments in real estate projects that are not part of a publicly traded real estate investment trust (REIT).

How Are Private Investments Divided in a New Jersey Divorce?

In New Jersey, divorce laws require that marital assets be divided fairly, which is known as "equitable distribution." This doesn't always mean a 50/50 split but rather a fair division based on various factors. Here's a step-by-step look at how private investments are typically handled:

1. **Identify the Investments:** The first step is to identify all private investments owned by either spouse. This involves compiling detailed information about each investment, including its value, ownership percentages, and any relevant agreements or documentation.
2. **Determine the Value:** Valuing private investments can be more complicated than valuing publicly traded stocks. Since private investments are not publicly traded, they lack a clear market value. You might need to hire financial experts or appraisers specializing in valuing such assets. They will consider factors like the company's financial statements, revenue, profits, and market conditions to estimate a fair value.
3. **Assess the Marital Portion:** Only the portion of the private investment acquired during the marriage is subject to division. If the investment was made before the marriage, its pre-marital value is generally considered separate property. However, any increase in value during the marriage is typically divided if the asset requires the active efforts of either spouse. This can be particularly complex if the investment has appreciated significantly over time.
4. **Consider the Type of Investment:** Different types of private investments might require different approaches:

1. **Business Interests:** If one spouse owns a business, determining its value and dividing ownership can be particularly intricate. The court may consider whether the business was started before or during the marriage and how much of the business's value is attributable to the marital period.
2. **Partnerships:** If you are a partner in a business, your share might be divided based on the partnership agreement or subscription agreement, which might outline how to handle such situations.
5. **Negotiate and Reach an Agreement:** Once the value of private investments is determined, you and your spouse can negotiate how to divide these assets. This might involve selling the investment and splitting the proceeds, or one spouse might buy out the other's share. Another option to consider may be a transfer of shares directly to your spouse (if permitted) or an offset against another marital asset. Negotiations should be guided by fairness and consider each party's financial and non-financial contributions to the marital enterprise.
6. **Legal and Tax Considerations:** Dividing private investments can have tax implications. It's important to consult with tax professionals to understand the potential tax consequences of transferring ownership or selling investments. Legal advice can also ensure that all agreements comply with New Jersey divorce laws and are properly documented.
7. **Asset Protection and Estate Planning Considerations:** It is also extremely important to consider how any division may impact your asset protection plan and/or your estate planning objectives.

Seek Professional Guidance

Given the complexity of valuing and dividing private investments, it's advisable to work with professionals who have a deep understanding of these areas. Financial advisors, business valuers, and seasoned matrimonial attorneys can offer valuable guidance and help ensure that your interests are protected.

Conclusion

Dividing private investments during a divorce in New Jersey involves a careful assessment of their value, understanding which portions are subject to division, and navigating the complexities of asset division. While the process can be intricate, you can work towards a fair and equitable resolution with the right support and a clear understanding of your assets.

If you're facing a divorce and are unsure how to handle private investments, we strongly recommend consulting with a knowledgeable family law attorney licensed in your jurisdiction, as every case is unique and fact-sensitive. With the right expertise, you can manage this challenging aspect of divorce and move forward with greater clarity and confidence.

If you would like to discuss your matter or have any questions, please contact Rawan Hmoud, Esq. by email at rhmoud@offitkurman.com or by phone at D: 347-589-8528. In addition to her more than 17 years of experience in family law, Ms. Hmoud is the Practice Group Leader of the Family Law North group at Offit Kurman, PA. She works with a team of matrimonial attorneys covering New Jersey, New York, Pennsylvania, and our Asset Protection and Estates and Trusts teams.