

The Value of a Family Business in a Marital Estate – Tangible or Intangible?

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One of the most valuable assets in a Marital Estate is the family business. The business often has both tangible and intangible value. Tangible value is represented by the current market value of the assets less the liabilities. This is sometimes referred to as the adjusted book value or the adjusted net asset value.

The intangible value is represented by the net value of the company's earnings in the future. This is measured by the excess of the present value of anticipated future earnings or cash flows less the market value of the net tangible assets. This intangible value is not reflected in the financial statements of the business but arises when a business is valued pursuant to a divorce proceeding. Since the valuation process is a combination of financial analyses and artful business judgment applied by the appraiser, the intangible value varies based on the perspective of the individual appraiser.

The intangible value, normally referred to as Goodwill, can take several forms. Personal Goodwill is that portion of the Goodwill identified with a business owner or professional. It is based on skill, reputation, training, standing in the community, personal relationships and other attributes that are "attached" to and inseparable from an individual. As such, Personal Goodwill is not transferable to another owner or entity but is retained by the individual. As a result, this form of Goodwill is not an asset identified in the Marital Estate.

Enterprise or Business Goodwill is that portion of a business's Goodwill that is a part of and arises from the collective efforts of the business. This may arise from the reputation, location, name value, history, national brands represented, employees, signage, telephone numbers or other similar factors that are a continuing part of the business enterprise. Upon a sale of the business, this form of value would be transferred to the purchaser.

As a result, Enterprise Goodwill is part of the Marital Estate as it is salable and identified with the business unit.

It is evident that a careful and thorough analysis of a business and its attributes (and value) is a critical part of a Marital Dissolution proceeding.