

Financial Aspects of Divorce

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Divorce is often a chaotic life event, and the financial issues involved may add to the discord. Dealing with the division of marital assets, payment of outstanding debts, alimony and child/spousal support can be overwhelming. While the divorcing parties often believe that the marital estate will be divided equally — in other words, a fifty-fifty split — that is often not the case.

Equitable Distribution: Fair, but Not Equal

Equitable distribution is a legal principle by which the courts divide assets, liabilities and earnings acquired during the marriage in an equitable (fair) manner, regardless of titled ownership.

New York and New Jersey are both equitable distribution states. In New Jersey, equitable distribution is addressed in N.J.S.A. 2A:34-23(h), which provides that a Court may “effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage.” To render a decision, the Court first identifies the assets to be equitably distributed, requires the valuation of the assets for this purpose, and decides how this distribution is to be made.

If one spouse owns a business, for example, equitable distribution requires the business owner to “buy out” the other spouse’s interest, but at less than 50% of its value. The reason for this lower percentage is two-fold. While the untitled spouse certainly contributed to the marriage, the business owner deserves to be recognized for the “sweat equity” invested in the business. Then, too, the business owner can only get his/her fair share of this asset by continuing to work at the business and retaining its value. The untitled spouse gets a liquid asset, typically cash, that can be invested as he or she chooses.

Family Law Attorneys: Assistance with Financial Issues

Divorce attorneys draft complaints and motions, gather evidence, conduct research, take depositions and ultimately prepare the final settlement agreement.

When a case has complicated discovery and financial issues, such as dealing with a family-owned business, a professional practice, a professional license or commercial real estate, financial expertise is required. The divorce attorney’s responsibility is to guide the client through these issues and ensure the case is resolved fairly and in compliance with the law. That goal can only be accomplished with the help of the right financial professional, typically a forensic accountant.

Forensic Accountants: Not All the Same

The forensic accountant will begin this type of engagement by completing an analysis of the family’s personal and business records, not solely for what they disclose, but more importantly, for what is missing. The analysis will most likely start with the parties’ bank, brokerage, credit card statements and tax returns.

Matters requiring resolution in matrimonial litigation frequently include executive compensation; deferred compensation; the valuation of stock options; restricted stock, some vested, some not; closely held businesses; patents; retirement and insurance plans, etc.

Forensic procedures may need to be performed to find hidden assets, determine the amount of unreported income or the calculation of the tax liabilities that will result from the agreed upon settlement.

Addressing these issues requires the assistance of a forensic accountant with significant experience with business operations, training in valuation procedures, and strong knowledge of the relevant case law, as well as the ability to perform the forensic procedures to find hidden, transferred and dissipated assets.

If the parties' assets include a closely held business, that asset is considered an active asset and the involvement of the owner is a factor impacting its value. Active assets are typically valued as of the date of the divorce complaint. The value of investment/passive assets, on the other hand, results primarily from changes in the economy, government regulations, technology and industry. A publicly traded stock is an example of a passive asset. In matrimonial matters, it would be valued as of the date of the divorce decree.

A forensic accountant will be required to determine the value of the parties' closely held business as of the date of the divorce complaint. If there are concerns with respect to transferred or hidden assets, the forensic accountant can perform the procedures necessary to validate or refute those claims. The analysis of the business will begin with the financial records of the business, e.g., the profit and loss statement, the balance sheet, the general ledger and the operating results of the business over the most recent business cycle, typically five years. Depending on the type of valuation required, it may also require an in depth analysis of the economy, the industry and sales of comparable businesses.

A forensic accountant who has the appropriate experience with matrimonial litigation can uncover:

- Unreported income
- Fake debt
- Overpayments to creditors
- Hidden, misappropriated or transferred assets
- Assets purchased with cash

Forensic Accountants: Skill Set

The global economy, changes in the case law and technological developments have added to the complexity of this type of litigation, requiring a forensic accountant with a unique set of skills and significant experience with matrimonial case law. The credentials and tools that a forensic accountant should offer for matrimonial litigation include:

- A minimum of one valuation credential; e.g., the ABV [Accredited in Business Valuation], CVA [Certified Valuation Analyst], CFF [Certified in Financial Forensics], ASA [American Society of Appraisers]
- Experience providing trial and deposition testimony
- Detailed knowledge of the case law with matrimonial dissolution matters
- Experience using data mining software; e.g., IDEA
- Working knowledge of the tax code and tax return preparation
- Business experience

Contact Us

PKF O'Connor Davies, LLP has forensic accountants among its professional staff, many of whom are experienced in cases involving matrimonial matters. If you have any questions or concerns, please contact the partner in charge of your account or Shelley Brown, MBA, CPA, ABV/CFF/CVA, Principal at 201.639.5760 or shelley.brown@pkfod.com.

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