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OPINION

# Today's Business: Protecting a family business in CT divorce

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Attorney Melissa Needle, an active litigator, is founder of the Westport-based law firm Needle Cuda. Contributed photo

Ending a marriage is hard enough, but when a closely-held or family-owned business is involved, an already complicated situation can be even more difficult.

If you and your spouse have decided to divorce, you may be concerned about protecting your family's primary economic engine. Not only is the business one of the assets to be divided, but the divorce has the potential to adversely affect the orderly operation of the enterprise. Regardless of your differences, you and your spouse should focus on maintaining the continued vitality and value of the business.

Connecticut follows the rule of "equitable distribution" with respect to any assets owned by either or both spouses, regardless of when the assets were acquired. The scope of this rule includes a business in which either spouse or both spouses have an ownership share. Incidentally, it is important to note that "equitable distribution" does not mean equal, but rather fair.

When a property division dispute cannot be settled and needs to be litigated, it is absolutely essential to obtain a comprehensive, independent business valuation. Such valuations are not simple matters. Although the goal is to determine how much the business could be sold for in an arm's-length transaction, valuation experts may take different approaches.

The three main valuation methodologies used are:

- Weighing assets against liabilities (Book Value).
- Measuring past, present and projected earnings (Discounted Cash Flow).
- Comparing the business's value to similar entities in the same market (Relative Valuation and Comparables).

In such cases, it is typical for each spouse to retain their own expert, complete separate valuations, and present the competing narratives. Conflicts between the resultant valuations must be resolved by agreement or by family court judge.

Once the financial value of the parties' family business ownership interest has been agreed upon and/or determined, divorcing parties then face the practical matter of distributing that value between themselves. At this point, operational concerns, liquidity challenges, financing (the buyout of one spouse), or how best

to facilitate the sale of all or part of the business come to the forefront of the divorce action:

— Is there enough cash on-hand to buy-out your spouse's ownership interest? In the event that one of you would like to continue running the business, you might buy out the other's interest based on the fair market value. This is the most common approach.

— Can business operations continue with both parties involved under co-ownership? Just because you and your spouse are divorcing doesn't mean that you are required to sell the business. It may be possible to continue operations and keep the business relationship with your spouse intact. If so, each spouse keeps an ownership share.

— Can the business be sold or liquidated? If it is not possible to continue business operations amicably after the marriage has been dissolved, it may be best to find a buyer so you can obtain the maximum sales price while the business is fully operational.

Many other important considerations can come into play that influence this choice:

— Are the spouses involved business partners or is one or are both of them "key" to the business;

— Are there additional beneficial owners (other family members and/or third parties);

— Was the business started prior to the marriage?

Another important step if you hold business assets is to review a prenuptial or postnuptial agreement that you and your spouse have signed. It likely includes provisions that will impact what happens to the business and its proceeds should the owners split up.

Business ownership presents special issues in a divorce — but they are manageable if handled properly and with foresight. In these situations, it is

especially critical to engage an experienced adviser, one with a network of business valuers and related technical experts.

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