

Valuing and dividing assets at the time of divorce

ANDREW ZASHIN, ESQ.
Special to the CJN

Divorcing one's spouse is, at minimum, an emotionally and financially expensive proposition. Aside from custody arrangements and support agreements, divorcing spouses also need to divide their property and any ownership interests they may have in business entities and partnerships.

Divorce cases become even more complicated when a family business is involved. Uninformed or poorly counseled clients may not obtain the results they deserve. Any divorcing spouse should seriously consider the following factors when considering his or her divorce property settlement.

The most important factor is to hire an attorney who has expertise in family law. Ohio courts have held that

poor legal advice is not sufficient to relitigate or otherwise re-open a separation agreement after a divorce is final. A spouse may invest many years in a marriage but has only one opportunity to obtain a fair and equitable settlement.

Additionally, an experienced family law attorney has access to experts who can help determine the full scope and value of the marital assets. Generally speaking, a divorcing spouse should not rely solely on a family accountant or business adviser regarding the value of the marital assets, especially business interests. A family accountant or business adviser



is often closely involved with either or both spouses and therefore may not be sufficiently independent to render an objective opinion.

Also, the family accountant or business adviser's involvement is usually limited to minimizing taxes; he or she may not possess the necessary experience and/or credentials to accurately value marital business interests.

Any portion of retirement benefits which accrues during a marriage is almost always considered marital property. As such, it is imperative that an accurate determination is made regarding the value of a spouse's retirement benefits so that the other spouse will receive his or her proper share.

Often, one spouse may have a stake in an established business prior to marriage. In such a case, the "non-owner" spouse may not have a marital interest in the business itself. However, this changes when the "owner spouse's" direct efforts during the marriage causes an increase in value of the business. In this scenario, the non-owner spouse may have a marital interest in the increased value due to these "direct efforts."

Even when the value of a business increases during a marriage, there are times when that appreciation can remain the non-marital, separate property of the business owner spouse. A trial court must determine

whether the increase in value of a closely-held business during a marriage is "active" (i.e. due to the direct efforts of a spouse) or "passive" (i.e. due to efforts of other parties or market forces).

In the former situation, the non-owner spouse has a marital interest in the "active" increase in value, while in the latter instance, the non-owner spouse has no marital interest in the "passive" growth of the business assets.

Recently, a court found that in a closely-held business situation, the increase in value of the business largely resulted not from the efforts of the owner-spouse, but rather from the efforts of a management team. In that case, only the percentage of the increased value directly attributable to the owner-spouse is considered to be a marital asset.

Dividing the property interests of a divorcing couple is a complex endeavor. Too often, nuances and mutually beneficial opportunities are lost

in an adversarial courtroom setting. A divorcing spouse may obtain more favorable results through a negotiated separation agreement than might be possible through full litigation in court. Therefore, it

is imperative that a divorcing spouse has counsel with a track record of resolving complicated cases both outside of court and in ways that maximize value and that benefits the parties and their children.

Andrew A. Zashin is co-managing partner of Zashin & Rich Co., LPA, and is a certified family law specialist and an adjunct professor at Case Western Reserve University School of Law.

A spouse has only one opportunity to obtain a fair and equitable settlement.



Congratulations to Andrew A. Zashin for being listed in Ohio Super Lawyers 2007 as a Top 100 Attorney in Ohio and a Top 50 Cleveland Attorney.

Andrew A. Zashin | Best Lawyers in America · Super Lawyers Top 100 in Ohio Inside Business Leading Lawyers · Fellow of the American Academy of Matrimonial Lawyers Super Lawyers Top 50 in Cleveland · Certified Specialist Family Law · Martindale Hubbell AV Rated (highest ratings for Ability & Ethics) · Adjunct Professor of Law, Case Western Reserve University School of Law

ZASHIN & RICH CO., L.P.A.
cleveland | columbus

Zashin & Rich Co., L.P.A. represents individuals in all facets of domestic relations law and employers in all aspects of workplace law.

cleveland: 55 public square, 4th floor
cleveland, ohio 44113
p: 216.696.4441 | f: 216.696.1618

columbus: fifth third center, suite 1900 | 21 east state street
columbus, ohio 43215
p: 614.224.4411 | f: 614.224.4433