

# LITIGATING THE DIVORCE OF A FAMILY-OWNED BUSINESS

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LITIGATION & FAMILY LAW SECTIONS

June 23, 2021

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## 1. Introduction & Preliminary Concerns

- a. Parties' desires:
  - i. Who wants the business? Does anyone want out of the business?
  - ii. What if both want to remain in the business, or what if neither wants the business?

## 2. Choosing Representation

- a. Transactional attorney
- b. Litigator/Trial lawyer
- c. Teaming up with Family Law and Business specialists
- d. Ethical considerations in representing a family owned business in a civil or family law dissolution

### **3. What's it worth: Methods of valuing the company, and the interests therein**

- a. Differences between corporate valuation and family law valuation
- b. Methods of Valuation
  - i. Assets after Debt, Actual Sale, Seller's Discretionary Earnings, Income Approach, Market Comp Approach, etc.
  - ii. Valuing a personal services business

### **4. Control of Business**

- a. Depending on parties' desires (to keep or not to keep the business):
  - i. Can the parties still work together professionally (and do they want to)?
  - ii. How will party #1 purchase the interests of party #2?
- b. Future Agreements between the Parties, re: control of business
- c. Outside management?

### **5. Misuse of Business Assets**

- a. Corporations Code sections 16403, 16404, 16503 and 17200
- b. Family Law Code sections 721, 1100, 2100, 2102

### **6. Tax Implications of Buyout**

- a. Depends on organizational form of business (LLC, S-Corp, C-Corp, partnership, etc.)
- b. Capital Gains
- c. Ordinary Income

### **7. Hypotheticals, War Stories and Questions**