



The Business Owner's Guide to Divorce in New York

For business owners, divorce is far more complex than for salaried professionals. Your business may be your most valuable asset, and courts apply stringent scrutiny to valuation, ownership, and settlement. This guide walks you through the process.

1 — Why Business Ownership Complicates Divorce

Divorcing business owners face unique challenges that salaried professionals do not:

- Equitable distribution applies to business interests. Under New York law, a business interest acquired during marriage is presumed marital property, regardless of whose name appears on the ownership documents.
- Valuation disputes are common. Courts rarely accept a business owner's valuation; expert testimony from forensic accountants is often required, adding time and cost to the divorce.
- Timing of acquisition matters. A business started before marriage may remain separate property, but appreciation during marriage may be marital. Passive income vs. active appreciation distinction is critical under *Lathers v. Lathers*.
- Tax and transition complexity. Transferring business interests to a spouse or buyout arrangements trigger capital gains, corporate structuring issues, and ongoing payment obligations.

2 — Is the Business Marital Property?

The classification of your business as marital or separate property depends on when it was acquired and how it was funded:

Scenario	Classification & Notes
Pre-marital sole owner, no spouse input	Generally separate property unless spouse contributions increased value significantly; growth may be partially marital
Started during marriage	Presumed marital property if effort, funds, or decision-making during marriage created value
Inherited business	Usually separate property unless substantially altered or expanded during marriage
Spouse contributed labor or funds	May trigger argument for marital classification even if titled in your name alone
Passive appreciation (market-driven)	May remain separate; active appreciation (sweat equity) typically marital
Passive income vs. active management	Passive income growth more likely classified as separate; active growth marital



3 — How Businesses Are Valued in Divorce

Courts do not accept arbitrary valuations. Judges rely on one or more of three standard methodologies:

- **Income Approach:** Calculates enterprise value as a multiple of earnings. Used for profitable, stable businesses. Multipliers vary by industry. Courts challenge inflated earnings claims.
- **Market Approach:** Compares the business to recent sales of similar companies. Less applicable to unique or specialized businesses; most useful for franchises or standard retail operations.
- **Asset Approach:** Sums the fair market value of all tangible and intangible assets (equipment, inventory, customer lists, patents, trademarks). Useful for asset-heavy businesses but can undervalue goodwill.

Goodwill in New York Divorces

Courts distinguish between enterprise goodwill (value beyond assets) and personal goodwill (value tied to your reputation/relationships). Enterprise goodwill is marital property; personal goodwill is not. This distinction significantly reduces the valuation in many professional practices.

Who conducts the valuation? Forensic accountants or valuation specialists prepare detailed reports. Each spouse typically retains their own expert; the court may appoint a neutral appraiser. The costs are typically split but can range from \$15,000–\$50,000+ per expert.

4 — Key Valuation Issues

Forensic accountants address several technical issues that can materially affect valuation:

Issue	Impact on Valuation
Double-Dipping Risk	Ensuring shareholder distributions (dividends, salary) are not double-counted as both distributions and earnings when computing enterprise value.
Cash Flow Normalization	Adjusting reported earnings for one-time items, personal expenses run through the business, and non-recurring events to reflect true operating capability.
Officer Compensation Adjustments	Determining if your salary is market-reasonable. Courts often adjust excessive or artificially low officer pay to standard market rates for similar roles.
Minority Interest Discounts	If you are not 100% owner, a discount (typically 20–35%) may apply for lack of control. Courts scrutinize these discounts; they must be supported by expert testimony.
Marketability Discounts	An additional discount (typically 10–25%) may reduce value if the business is not easily saleable. Courts are critical of inflated discounts.



5 — Protecting the Business During Divorce

New York's Automatic Orders (CPLR § 3104(d)) restrict certain transfers during divorce:

- Neither spouse may transfer, encumber, or liquidate marital assets without written consent or court order. This includes business transfers, distributions, or pledging of shares as collateral.
- Violation of Automatic Orders can result in contempt of court charges and sanctions.

Strategies for keeping the business operational:

- Seek court permission for ordinary business operations (payroll, vendor payments, client investments) to avoid paralysis.
- Consider a business continuity stipulation allowing both spouses to consent to pre-approved routine transactions.
- A Receiver or Court-Appointed Manager may oversee the business if trusting the other spouse is impossible.
- Buy-out options: One spouse buys out the other's interest in structured payments (QDRO-qualifying if applicable) or lump sum.
- Structured settlement: Instead of one spouse receiving 50% interest, they receive cash, retirement accounts, real property, or other assets of equivalent value.
- Sale of business: If neither spouse wants to run it, the business may be sold and proceeds divided.

6 — Tax Considerations

Transferring business interests in divorce triggers significant tax consequences:

- Asset vs. Stock Transfer: If the business is structured as a C Corporation, a stock transfer is cleaner. If it's an LLC or S-Corp, asset transfers may cause ordinary income vs. capital gain treatment.
- Installment Sales: If paying the spouse over time, elections under IRC § 453 may defer income taxation of future payments.
- Capital Gains: Appreciation in the business value after divorce is your sole property. Ensure the judgment clearly allocates gain/loss responsibility.
- Cash Distributions: If the business makes distributions to settle the divorce, those may trigger income taxes to the distributing entity.

CPA Consultation Required

Do **not** finalize a business settlement without consulting a CPA or tax attorney. The tax tail can wag the economic dog. A seemingly equal settlement can become heavily lopsided after tax consequences are calculated.

7 — What to Gather for Discovery



Early and complete document production accelerates valuation and settlement. Organize these materials for your attorney and accountant:

- P&L; Statements: Last 3 years (monthly or quarterly preferred)
- Balance Sheets: Last 3 years (as of year-end minimum)
- Tax Returns: Corporate and personal, last 5 years
- Buy-Sell Agreements: Any agreements binding ownership transfer
- Shareholder Agreements: Any voting agreements or protective provisions
- Operating Agreements: If LLC, original and all amendments
- Corporate Minutes: All board meetings and shareholder actions
- Payroll Records: W-2s and 1099s for all principals, last 3 years
- Accounts Receivable Aging: Current customer/client list with outstanding invoices
- Accounts Payable Aging: Current vendor obligations
- Bank Statements: 12 months of all business accounts
- Loan Documents: Any financing; terms and current balance
- Lease Agreements: Real property and equipment leases
- Insurance Policies: Liability, D&O;, key person, life insurance
- Trademarks, Patents, Licenses: Proof of ownership and renewal dates

8 — Frequently Asked Questions

Can my spouse get 50% of my business if we divorce?

Not automatically. Courts apply equitable distribution, not equal division. If you started the business before marriage and your spouse did not contribute, the court may award them a smaller percentage or require you to buy them out. However, if the business grew significantly during the marriage due to both parties' efforts, a 50% claim is plausible.

What if I try to hide income or assets?

Discovery and forensic accounting will uncover it. Intentional concealment results in contempt charges, attorney fee sanctions, and an adverse inference (the court assumes your hidden assets are worth more than you claimed). The remedy is often a larger award to your spouse.

What if my spouse was not involved in the business but claims it's marital property?

If your business was started before marriage with pre-marital funds and your spouse made no contributions, it may remain separate property. However, any appreciation or growth during the marriage may be partially marital. Your attorney must argue separate property status with clear documentation.

How long does a business valuation take?

A thorough forensic valuation typically takes 2–4 months. If both parties's experts disagree, additional expert depositions and court battles can extend this to 6+ months. Early agreement on a valuation method or neutral appraiser accelerates resolution.

**What if my spouse worked in the business? Does that change things?**

Yes, significantly. If your spouse was an officer, employee, or manager, they can argue a marital contribution to business growth. You will need to document their actual role, hours, and compensation (or lack thereof). Their involvement strengthens claims for a larger marital share.

Can we agree on a business valuation ourselves without a forensic accountant?

You can attempt it, but courts review spouse-agreed valuations for reasonableness. If the agreed value is far below market, the court may reject it and require expert appraisal. A jointly retained neutral appraiser is often a cost-effective middle ground.

What is goodwill and why does it matter?

Goodwill is value beyond tangible assets — brand reputation, customer loyalty, etc. New York divorces split goodwill into enterprise goodwill (marital) and personal goodwill (yours alone). A professional practice (law, medicine, dentistry) may have significant personal goodwill, reducing the marital share of firm value.

Do I need a forensic accountant if my spouse and I agree on value?

No, if you both genuinely agree. However, if either party later disputes the agreed value, courts may appoint an expert or allow discovery challenges. It is safer to have an agreed value supported by at least a basic appraisal or valuation summary.

Ready to speak with an attorney?

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