# The disposition of business assets in a Texas divorce

Within the property division process, the Texas family law distinguishes community property from separate property. The analysis is necessary for the purpose of allocating property to parties pursuant to a divorce. This is because community property is treated different from separate property. Assuming there is not a property division agreement, under Texas law, all jointly held community property is divided by the family law court and distributed to divorcing spouses. However, some property can be variable and difficult to characterize. This is often the case when one spouse to an ending marriage holds ownership in a business.

Whether one is a company owner or spouse of the business owner, he or she should integrate corporate law principles into the assessment of the property division process. One could be entitled to a fair share of business-related community property; however, this could be overlooked if the assets are disguised in what appears to be a separate business. If this is the case, one spouse could walk away with the businesses' assets, which were supposed to be divided equitably in the divorce within the community estate.

### Property division of business assets

A corporation is generally considered its own entity, meaning it is characterized as separate property. In most divorce cases, a spouse's interest in a corporation is subject to division by a family law court; the remainder of the corporate property is off limits and not pushed into the community property portion. However, there is an exception to this rule when an "alter ego" exists.

### The "alter ego"

If a business is an "alter ego" of a divorcing spouse, courts may transfer assets out of the separate company and divide them among litigants in the property division process. A business is an alter ego of spouse if the corporate veil of the business is "pierced," changing the disposition of company property. The corporate veil will be "pierced" if a family law court finds that there is essentially no distinction between the business and a divorcing spouse (as if the business no longer exists and the two are one in the same). Furthermore, the divorcing spouse will be considered the alter ego of the company if a spouse's use of the business damaged the community estate (the couple's marital assets) beyond repair to the point where it would be fraudulent or unfair to separate the spouse from the entity. This might happen, for example, when a personal business completely funds a family's income.

When the property division process begins, courts will look at all jointly held property. It is important to ensure that all assets subject to property division are included in the community property estate. Likewise, it is just as important to protect separate business assets, if necessary. To make sure that your property division resolution is equitable, retain the assistance of a qualified family law attorney in your area. A lawyer can explain business principles and how they apply to your particular situation.