

## **My Business is None of Your Business! The Truth about Businesses and Marriage**

Many of my clients come to me and they want to know what is going to happen to their business when they get divorced. There are many ways that the court will resolve how to deal with a business depending on (1) the time that the business was established, (2) the source of the initial investment, (3) the type of business and of course any other relevant factors.

Where a business was owned by one spouse prior to the marriage, the business would under general community property rules be a separate property business. However since earnings during the marriage are community property, the community may be entitled to a share of the business based on the reinvestment of community earnings.

Additionally, where a spouse receives an inheritance or sells a separate property asset to form a business, it may be considered that the source of the funding was separate property and therefore the business should be a separate property business. While the business may still be separate property, the community again may hold an interest in the business.

There are numerous cases in California which discuss the policy behind awarding the community a portion of a spouse's separate property business.

In *Beam vs. Bank of America* (1971) 6 Cal.3d 12, the California Supreme Court stated: “[L]ong ago our court recognized that, since income arising from the husband’s skill, efforts and industry is community property, the community should receive a fair share of the profits which derived from the husband’s devotion of more than minimal time and effort to the handling of his separate property.”

The court in *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842 stated “Where community efforts increase the value of the separate property business, it becomes necessary to quantify the contributions of the separate capital and the community effort to the increase.”

In *Pereira vs. Pereira* (1909) 156 Cal.1 the court stated: “It is true that it is very clearly shown that the principal part of the large income was due to the personal character, energy, ability and capacity of the husband. This share of the earnings was of course community property.”

### **What does that mean for me and for my business?**

The business itself would continue to belong to the operating spouse, however, the community would be allowed a portion of that business. If the operating spouse is using income from the business towards the community expenses, the income contributed during the marriage would be deducted from any interest held by the community.

### **What if my business is a real estate investment or a company in which the operating spouse contributes minimal time and efforts?**

There are cases which attorneys use in arguing that a business increased in value due to the nature of the company rather than the efforts of the operating spouse. In those cases, the community is provided reasonable compensation for the services of the operating spouse where the majority of the business remains the separate property of the operating spouse.

In *Van Camp v. Van Camp* (1921) 53 Cal.App. 17 the court concluded that the salary and expense reimbursement paid to the separate property owner (husband) was reasonable compensation and that compensation was the proper measure of the income that should have been attributed to the community for the efforts of husband applied to his separate property business during the marriage. No guidance is given in the decision as to how to determine reasonable compensation.”

In *Tassi v. Tassi* (1958) 160 Cal.App.2d 680, the court stated that the test for reasonable value of services is what an independent employer would pay others to perform similar services. The court stated: “The salary allowed by such owners to themselves lies entirely in their own discretion and the surest standard would not be what such owners were accustomed to allow to themselves but rather what independent employers were in the habit of paying others for similar services in the free give and take of an open market.”

### **The bottom line:**

The ownership of a business is a complicated matter for couples in a divorce. Since there are many approaches to the division of a business as well as the characterization of a business, it is important to retain a family law attorney who works well with a business valuation expert. This will ensure that your interest is maximized and that the community as well as the operating spouse receives their fair share.



About Patricia C. Van Haren: Prior to attending law school and obtaining her degree, Patricia C. Van Haren worked in the legal industry for over 20 years as an Office Manager, Paralegal and Law Clerk. She also had her own business as a family law paralegal and mediator. She has assisted numerous couples through uncontested dissolutions. She has also worked extensively with law firms and attorneys through highly litigious contested dissolutions and custody battles. Ms. Van Haren went through her own divorce in the 90s, so she knows firsthand how difficult and trying a divorce can be. She uses this knowledge to help her clients deal with both the legal and emotional issues involved in getting a divorce. In addition to handling a divorce, Patricia can help in matters such as paternity matters, child custody and visitation, child support, spousal support, adoption, guardianship, and estate planning. She serves all of the Los Angeles County and Orange County areas.