



## Valuing a Business in a Collaborative Law Setting



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Valuing a business is both a science and an art. Determining a business' value varies in complexity and time needed for completion; however, the end product can be concise, understandable, fair, and agreed upon. While divorce is emotionally challenging for both parties, it is critical not to lose sight of the importance of a proper valuation of business assets as the privately held business is often a couple's largest asset.

In this article, we discuss considerations when valuing a business and the importance of having it valued by a professional.

### Initial Considerations When Valuing a Business

First, the business valuation professional needs to determine if the business interest is separate or marital property. We begin by looking at the date of marriage and the date the business was acquired, the source of funds used to start the business, and the financial and labor-related contributions given by either spouse during the marriage.

Professionals should keep in mind that, simply because the business interest was acquired prior to the date of marriage, it does not necessarily mean the non-owner (non-titled or "out") spouse cannot receive value from it. Did the business-owner (titled or "in") spouse use marital funds to grow the business? Did the non-titled spouse work in the business? Once you have determined whether or not a spouse is entitled to a portion of the business, the value of the business interest must be determined.

Typically, the titled spouse, who would like to keep the business after the divorce, wants the business to have a lower value so he/she can be awarded the business and a portion of the other marital assets. The non-titled spouse would like to see a higher value placed on the business so he/she can receive a larger portion of the marital assets.

Regardless, having the titled spouse determine the value of the business is not the best route. Hiring an accredited, objective, third-party professional with specialized knowledge to perform the valuation eliminates acrimony and doubt in the process. Similar to the collaborative law process, business valuation relies on honesty, cooperation, integrity, and professionalism.



## Why Have the Business Valued by a Professional?

The importance of hiring a seasoned, accredited business valuation professional cannot be overstated. An accredited business valuation professional can support the methodologies, assumptions, procedures, and data used in arriving at the value of the business. Additionally, the professional can articulate how the value was determined in the most understandable terms. In the spirit of the collaborative law process, the business valuation professional can help the parties build a bridge toward a fair and reasonable compromise based on objective data and professional judgment with minimal conflict.

Some businesses, such as sole proprietorships, single-member LLCs, or small professional practices, do not require many hours of work on the part of the business valuation professional. In fact, most business valuations done in the collaborative law setting do not require a comprehensive business valuation report. However, performing “quick and dirty” valuations based on limited information or “rules of thumb” often results in an inaccurate value of a company. An experienced business valuation professional can assess the level of work required to value the business and offer several options as a “deliverable” or “end product”, thereby potentially limiting the expense incurred for the valuation. Specifically, if appropriate, a professional can perform a valuation using a methodology agreed upon by the parties and provide only the worksheets as an end product. If desired, the parties can request a limited report to accompany the worksheets, in which the valuation analysis and conclusion are written up in a clear and concise manner. An added level of detail can include additional methodologies used in the analysis of the business, along with a reasonableness test, if appropriate, to corroborate the value derived for the business.

## Other Considerations in Business Valuations

Of course, there is a myriad of considerations that may come into play in a business valuation, including, but not limited to, ownership characteristics, the complexity of the business’ equity/capital structure, and enterprise goodwill versus personal goodwill. Any of these considerations can impact the fees incurred for the valuation. However, a seasoned business valuation professional should be able to objectively consider the business and offer the parties several options that will meet their needs.

Finally, a lengthy valuation report, which is generally produced to meet Internal Revenue Standards (IRS) guidelines for estate or gift tax purposes or in a litigated divorce setting, is typically not needed for a business valuation done in the collaborative law setting.

Whatever the level of detail delivered for the business valuation, the valuation professional should walk the parties through the analysis, explaining how the value was determined and addressing all questions from both parties and the collaborative law professionals.