



MEET YOUR BUSINESS APPRAISER/ FINANCIAL EXPERT

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When your attorney explains the divorce process and reviews what is usually involved, he or she may indicate the need to employ the services of a business appraiser and/or a financial expert. Even though divorce is a legal matter, there are several tax, valuation, and financial issues involved in many divorces.

Most family law financial experts are qualified to value a business or professional practice owned by one of the spouses. However, there are numerous other ways that some financial experts serve divorce lawyers and their clients.

The following presents information on these services, and on selecting and hiring an appropriate divorce financial specialist for your case.

Valuation of Business or Professional Practice

As noted above, financial specialists are most often needed to value a spouse's interest in a closely held business or professional practice (in this article, both will be referred to by the word "business"). If one or both spouses own an interest in a business, it is necessary to value the business the same as it is to value the family residence and other marital assets.

The valuation of a business generally requires an analysis performed by a qualified business appraiser. Business appraisers are generally certified by an organization which requires considerable training and successful completion of a comprehensive examination. Such organizations include the American Society of Appraisers, the American Institute of CPA's, the National Association of Certified Valuation Analysts, and others.

Thus, if there is a business involved in your divorce, your attorney will need to engage the services of a qualified business appraiser. If you are the owner of the business, the appraiser will want to meet with you after reviewing various information concerning the business, including prior years' financial statements and tax returns. The expert will want your input concerning the background of the business, its current operations, and the outlook for the future.

If your spouse owns a business, you should talk to the expert if you are aware of certain aspects of the company

you believe should be brought to the expert's attention. If you are aware of any irregular accounting practices (e.g. not reporting cash income), you should bring them to the attention of your attorney who can then decide how to communicate the information to the expert.

You and your attorney should decide whether to ask the expert to do a preliminary valuation, perhaps as a draft, for your review prior to the issuance of a final valuation report. That will provide you the opportunity to ask questions about how various factors were taken into account and other aspects of the appraiser's analysis.

Menu of Other Services Offered by Some Divorce/Tax Specialists

As noted above, there are numerous ways some divorce tax/financial specialists can be of service in addition to valuing a business. These are summarized below.

Assist in Discovery Process – The expert can help your attorney select the appropriate financial, tax, and related documents to request in the discovery phase of a case. This is important since the expert knows the information necessary to perform his or her services. Because discovery occurs at the beginning of a case, it is advisable to hire the expert at an early stage to ensure the appropriate information is obtained.

Perform "Forensic Accounting" – Sometimes a spouse owning a business may under report income or overstate deductions. Either way, the result is lower reported net profits and, in turn, a lower value for the business since most are valued based on their earnings. This means the spouse not owning the business will receive less of other assets to offset the business value.

In such situations, "forensic" accounting services can be used to reveal unreported income and/or undisclosed assets. At my firm, we have four Certified Fraud Examiners who we call on if it is suspected the "books have been cooked." In such cases, it is advisable to hire an expert who has forensic accounting training or has access to specialists who do.

Thus, if you suspect your spouse has under-reported income or has padded the business expense account with personal expenses, inform your lawyer and ask whether the forensic accounting services are necessary.



Critique Opposing Analysis – A valuable service of your business appraiser is to review the valuation analysis performed by the expert working on behalf of your spouse. In doing so, he or she will identify areas of difference and suggest approaches to resolving them to facilitate a possible settlement.

And, if necessary, your valuation expert will prepare a written critique presenting the particular areas in which he or she believes the other expert's analysis is flawed.

Calculate an Equitable Award Claim – In some cases, one spouse makes financial and other sacrifices to enable the other to pursue a professional education (e.g. med school) and professional training (e.g. residency). This is generally done with the expectation the family unit will later benefit from the earnings of the medical practice. But, if a divorce occurs before the practice is fully established, the sacrifices will not have been repaid. There is a general framework based on a Michigan case by which an amount is calculated to reimburse a spouse for sacrifices, etc. not yet repaid by sharing in earnings from the medical (or law, accounting, architectural, etc.) practice. Some divorce financial specialists have expertise calculating these equitable awards. If you need this service, make sure your expert has experience doing so and is familiar with the relevant Michigan cases.

Compile Marital Estate – Some divorce financial specialists have expertise in compiling, valuing, and "tax affecting" the marital estate summary. This often includes calculation of the "separate" and "marital" property shares pursuant to Michigan Court of Appeals rulings on "active" vs. "passive" appreciation in value of property owned by you or your spouse before marriage (or received by gift or inheritance during marriage). It also includes the valuation of executive and retirement benefits (see below).

Value/Divide Benefits – Some financial specialists have the expertise to analyze, value, and assist in dividing



pensions, 401(k) accounts, stock options, IRAs, etc. This is particularly important if you or your spouse works at a company providing an array of different benefits, some of which may be unfamiliar to your attorney.

Assess Needs of Client – If necessary, your expert can help assess your or your spouse's short-term and long-term financial needs. This information is helpful both in considering alimony and in structuring the settlement to accommodate such needs to the extent possible.

Determine Income for Support – As a companion service to valuing a business, the appraiser can also determine the owner spouse's income available for alimony and/or child support. This can be difficult for the attorney to do if a closely held business and/or investment partnerships interests are involved.

Develop "Tax Smart" Property Settlement Proposals – Perhaps the most valuable services some financial expert provide is development of one or more settlement proposals while (1) avoiding tax problems and (2) taking advantage of beneficial tax provisions. If your expert is a divorce tax specialist and experienced in divorce settlements, he or she can be of enormous assistance in both developing proposals and evaluating those submitted by your spouse's attorney.

Assist at Settlement Conference or Mediation – Most cases are settled by negotiation between attorneys or at mediation with the help of an experienced divorce lawyer. Your expert can provide valuable assistance on financial matters in preparing for such proceedings. In many cases it is helpful for your expert to attend and, if not directly involved, to be on hand to help evaluate tax and financial aspects of "back and forth" proposals. At a minimum, it is generally advisable to have your expert available for consultation on "telephone standby."

Help Prepare for Trial/Arbitration – And, in the event your case is not resolved by settlement negotiations or mediation, your expert will assist your attorney prepare for trial or arbitration by preparing exhibits and providing questions both for his or her direct testimony and for cross examination of the other expert.

Selecting/Interviewing a Business Appraiser/Financial Expert

In some cases It is obvious that a business appraiser or financial expert is needed for one or more of the above services. In others, often where there are budget constraints, it may not be as clear. Because the services of an expert can be invaluable and, in fact, necessary when dealing with certain issues – most notably the valuation of a business or professional practice – it is generally advisable to at least consult with a financial expert regarding the cost/benefit of the services in question.



Your attorney is probably aware of someone with the appropriate knowledge, skill and experience to assist you on the valuation, tax, and financial aspects of your case for which expert services are required. If not, he or she will likely ask other experienced family law practitioners for a recommendation.

In my experience, it is very helpful for you to meet with the expert. After all, it is your case and your money. You should review the expert's resume (or "vitae") before the meeting. This will indicate the expert's professional certifications, published materials in family law journals and treatises, and other information indicating the expert's areas of expertise and experience.

The following are matters to considering covering in your meeting with the expert.

Appropriate Knowledge, Expertise – You need, of course, to be assured that the expert has the appropriate knowledge, skill, and expertise to serve the particular needs of your case. You and your attorney can gain this assurance in one or more of the following ways:

- Evaluate information received from the expert during your interview regarding his or her credentials, experience and specialized knowledge.
- If you would feel more comfortable, ask for references so you may speak to an attorney for whom the expert provided services similar to those you need.
- And, if you wish, request and review any published articles, treatise chapters, seminar outlines written by the expert on the specialty area involved.

Availability – And, ensure that the expert will be available during the time frame of the case and has the capacity to perform his or her expert witness services in a timely manner.

Fees – The basis for the expert's fees should be clearly established and, if the expert is engaged, should be clearly set forth, along with other matters, in an engagement letter/retainer agreement.

Compatibility – Finally, be assured that you and the expert are personally compatible. In other words, is this a person with whom you will be comfortable working?

Staged Approach – In discussing the scope of services the expert will provide, particularly if you are on a "tight budget," explore the possibility of the expert performing services on a staged basis as described above. For instance, if a business valuation is involved, it may be possible for a case to settle by using a preliminary estimated range of value determined by the expert.

And if the case does not settle and the preliminary estimate does not resolve the business valuation issue, the business appraiser will then proceed to complete the valuation analysis and draft a report suitable for trial. Since virtually all of the work performed in "Phase I" is foundational to "Phase II", there is little if any duplication of effort by using this approach in a case that does not settle on the basis of the preliminary estimate.

Trial Experience – It is important to ask about the expert's experience as a testifying witness, particularly in cases where the need for testimony is a distinct possibility. And, if so, it may be of considerable relevance whether the expert has testified in the county involved and is recognized there for competence and integrity.

What Matters should be Covered when Engaging a Financial Expert?

After you have decided you need a financial expert and, further, have made a selection, the following are checkpoints in engaging the expert's services:

If a business or professional practice is involved, the engagement letter should also indicate the appropriate standard – or measure – of value and valuation date.

Staged Approach? – Explore the potential benefits of using a staged approach for the expert's services. If it is decided to use this approach, the engagement letter should so reflect.

Serve as Consultant Initially? – Your attorney may also explore the merits of the expert acting in a consulting capacity until and if it becomes necessary for him or her to serve as an expert. As a consultant, his or her work with your attorney is protected by privilege and thus is not discoverable by your spouse's lawyer.

Conclusion

As indicated above, a business appraiser/divorce financial expert can be of invaluable assistance during the course of your divorce proceedings – from the outset in helping with discovery to the conclusion in evaluating settlement proposals, or in testifying at trial.

Whether there is a business or practice involved or not, you and your attorney should discuss early on the ways in which an experienced divorce tax/financial expert might be of benefit to you. Doing so will enhance the prospects for a fair and equitable settlement - one in which you receive full value for your share of the property acquired during your marriage.

