

Will My Wife Have An Interest In My Business If We Divorce?

September 12, 2013 | by Cimmerian Morgan

Dear Ask the Attorney:

I own a business with approximately 25 employees. Although my wife has never worked in my business or assisted me in the operation of my business in any way, she is claiming that if we get divorced, I will have to pay her for her “interest in” the business. Is she correct?

B.W.

*Our guest blogger is **Cimmerian A. Morgan, Esq.**, counsel to the firm and a member of **Einhorn Barbarito’ Matrimonial and Family Law** departments. Mr. Morgan has successfully litigated many divorce cases concerning equitable distribution of business interests. He is familiar with the valuation process and the complex body of case law relating to this important facet of matrimonial litigation.*

Dear B.W.:

Depending on various circumstances, if one spouse in a divorce action has an ownership interest in a business, that ownership interest can be deemed a marital asset subject to equitable distribution with the non-business owning spouse. Consequently, your wife may indeed have a “marital interest” in your business. However, to answer this question definitively, more information would be needed on the facts of your marriage and business.

In general terms, a “marital interest” in a business is a financial interest that a spouse acquires as a result of having been married to the business owning spouse for a period of time during which the business developed and/or appreciated in value as a result of the business owning spouse’s active efforts.

The value of the non-business owning spouse's interest in the business is determined in the context of equitable distribution of marital assets. Although there are many complex issues which can be implicated by a divorce, few are more complex and consequential than the issue of equitable distribution of an ownership interest in a business. This issue often necessitates that the ownership interest be valued by a forensic accountant. Once the value is determined, the amount of the non-business owning spouse's marital interest must be determined.

Proper resolution of these issues requires knowledge of the applicable law, as well as the ability to apply that knowledge to complex facts. It is therefore critical in any divorce case concerning equitable distribution of a business that each spouse retains a matrimonial attorney with substantial practice experience in this area and a command of the extensive body of law relating to equitable distribution of business interests.

“Ask the Attorney” is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case are different; therefore you should seek competent legal representation.