

Dividing business assets in family law property settlements

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When a relationship breaks down, the division of assets during property settlement is a major issue that often requires careful negotiation or court intervention. This process becomes more complex when business assets are involved. Business interests may include sole trader operations, partnerships, companies, or trusts, and their division is a key part of family law property settlements in Australia.

This guide explains how business assets are valued and divided during property settlements under Australian family law and provides insights into what you can expect if you or your ex-partner owns or operates a business.

Understanding business assets during family law proceedings

In Australian family law, business assets are treated as part of the overall property pool to be divided between parties. This means that, along with the family home, bank accounts, investments, and other personal property, business interests are also included in the settlement.

What constitutes a business asset?

Business assets can take various forms and include:

- shares in a private company;
- partnership interests;

sole trader businesses;

intellectual property (such as patents, trademarks);

business goodwill;

business accounts and cash reserves;

equipment, machinery, and stock;

commercial real estate or leasehold interests.

Both spouses may have an interest in the business, even if one party has no direct involvement in its day-to-day running. Australian family law courts recognise that even a non-participating spouse may have made indirect contributions (e.g., supporting the household or raising children) that entitle them to a share of the business value.

How business assets are valued in a property settlement

Valuing business assets is one of the most crucial steps in a family law property settlement. Business valuations can be complex, especially for privately owned businesses or family-run enterprises, where profits and expenses may not be straightforward.

Key factors considered in business valuations

Business structure

Whether the business is a sole trader, partnership, company, or trust impacts how it is valued.

Assets and liabilities

This includes tangible assets (property, equipment) and intangible assets (goodwill, intellectual property).

Earnings and future income potential

The current and future earnings of the business will be analysed, as will potential growth or decline in income.

Market valuations

For some businesses, the market value can be determined based on what a willing buyer would pay in an open market.

Goodwill

Business goodwill refers to the reputation, brand value, and customer loyalty associated with the business, which may add to its overall value.

Business valuations typically require the expertise of forensic accountants, business valuers, or financial experts. The parties may agree on a single expert to value the business, or each party may hire their own expert, which can lead to disputes over differing valuations.

Considerations when dividing business assets after separation

Once the business has been valued, the next step is determining how it should be divided. The division of business assets will depend on various factors, including the needs of both parties and the overall property pool available for division.

Options for dividing business assets

Selling the business

One of the simplest solutions is to sell the business and divide the proceeds between the parties. However, this may not be a viable option if the business is the primary source of income or is closely tied to the identity of one spouse.

One party retains the business

In many cases, one spouse will retain the business while the other receives a cash settlement or other assets of equivalent value. This allows the business to continue operating without disruption, but it requires a fair valuation of the business and may involve refinancing or liquidating other assets to “buy out” the other spouse.

Co-ownership

Though less common, some couples choose to continue co-owning the business, especially if both parties were involved in its operations. Co-ownership agreements can be tricky, and it’s important to have a clear legal structure in place to govern how decisions will be made, profits shared, and exits handled.

Transfer of shares

In cases where a business is structured as a company, one spouse may transfer their shares to the other in exchange for an agreed sum or other assets. This is common in family-owned companies where one party takes over the business entirely.

Splitting the business

In rare cases, it may be possible to divide the business into two separate entities, allowing each spouse to take control of their portion. This is typically only feasible for businesses with clear divisions in operations or assets.

Contributions and adjustments when dividing business assets after separation

Australian family law requires a consideration of both financial and non-financial contributions when dividing assets, including business assets. This means that the court will look at each party's contributions to the acquisition, maintenance, and improvement of the business.

Key contributions considered

Direct financial contributions: Money invested directly into the business by one or both parties.

Indirect financial contributions: Contributions that supported the business indirectly, such as covering household expenses or taking on debts that allowed the business to grow.

Non-financial contributions: Contributions such as managing the household, raising children, or supporting the spouse who ran the business.

Future needs: The court will also consider the future needs of each spouse, including their earning capacity, age, and health. If one spouse will retain the business, the other may be entitled to a larger share of other assets to compensate for their reduced future earning potential.

What if there is a dispute and dividing the business assets

Disputes over business assets in property settlements are common, especially if one party feels they have been excluded from the business or that the other party is hiding business assets. In these cases, it's important to gather all relevant financial documents and seek professional legal and financial advice.

Common areas of dispute

Valuation disputes: Disagreements over how the business is valued or what valuation method should be used.

Undisclosed assets: If one party suspects the other is hiding business assets or income, forensic accountants may be brought in to investigate.

Control of the business: If both parties want to retain control of the business, disputes can arise over who should continue operating it.

Legal and tax considerations when dividing business assets

Dividing business assets in a family law property settlement can have significant legal and tax implications. It's important to be aware of these and seek advice to avoid costly mistakes.

Key considerations for business assets in property settlement

Capital Gains Tax (CGT): Transferring or selling business assets as part of a property settlement can trigger CGT. However, in some cases, relief is available under Australian tax law for family law property settlements.

Legal ownership: In some cases, the business may be legally owned by a company or trust, which complicates the division process. It's important to understand the business structure and how assets are held before making decisions.

Get help from a family lawyer

Dividing business assets during a family law property settlement can be complex and emotionally charged. It's essential to seek professional legal advice early in the process to ensure that your rights and interests are protected. Valuing and dividing business assets requires a clear understanding of both the legal framework and the financial intricacies of the business itself.

Whether you're negotiating a property settlement out of court or preparing for litigation, having an experienced family lawyer on your side will help ensure a fair outcome.

> ***IMPORTANT NOTE****: your lawyer cannot provide you with tax or financial advice. It is important that you also seek independent advice from your accountant and/or financial advisor in relation to negotiations for the division of business assets after separation.*

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.