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What happens to my business if I separate from my spouse?

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The Jaskot Team

Similar to the treatment of any other asset, businesses that are owned by a spouse are assets which must be included in their net family property to calculate the equalization payment / property division required when spouses separate. However, unlike assets such as automobiles, bank accounts, or investments, businesses often have to be formally valued by accounting professionals to determine their accurate fair market value.



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If the business is owned solely by one spouse, the value of the business represents an asset for that spouse, which will have to be factored into any property equalization calculation.

A jointly owned business will also have to be formally valued, and the value assigned equally to each spouse assuming they have equal ownership of the business. Parties typically agree that one spouse will acquire the interest of the other for fair market value. Often times, the business can be sold to a third party with the proceeds split, and in rare cases the spouses can continue to operate the business together.

The exception to the general rule is when a business

is gifted during the marriage to a spouse by a third party. The most common form of gifting of a business or business interest occurs when family businesses are passed from one generation to the next and a spouse is gifted his or her interest in the business as part of a larger estate plan of their parents who are attempting to minimize tax liabilities and implement family succession planning. In a properly structured succession plan and estate freeze, the entire value of the business or business gifted to a spouse is excluded from their net family property calculation.

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