

High-Asset Divorce

How to Protect Your Business
and Your Brand



Contents

Introduction	02
Community vs. Separate Property	03
Community Property and Your Business	03
Separate Property and Your Business	03
What if Your Business is Separate and Community Property?	03
Dividing a Business in Divorce	04
Selling the Business	04
Jointly Operating the Business	05
Buying a Spouse's Interest in the Business	05
Prenuptial Agreements	05
Assets Outside Your Business	06
Doctors and Professionals	07
Private Practices and Partnerships	07
Sole Ownership Before Marriage	07
Sole Ownership Since Marriage	07
Partnerships and Group Practices	07
Preserving Your Brand During Divorce	08
Minding Your Reputation	09
Divorce Records and Public Information	09
Private Arbitrators and Mediators	10
Keeping Your Documents Under Seal	10
You're Not Alone	11



Alphonse F. Provinziano, Esq.

Divorce is one of the most difficult things you'll ever go through, even if you're the one who initiated it or you knew it was inevitable. That's true no matter who you are – but when you own a business and need to maintain your brand, things can get a bit more complicated. **You'll have to take certain steps to preserve your assets and keep your brand intact, and with your attorney's guidance, you can do both.**

Regardless of where you are in the divorce process, whether you're just considering it or you're ready to move forward, we can help make your divorce easier, less stressful and more beneficial to everyone involved. We'll help you protect your assets, your brand and your public image.

We've helped business owners, public figures, doctors and attorneys in the toughest of circumstances involving child custody and property division. We've won legal battles in cases where one parent refused to let the other spend time with the children, when one parent had drug issues or mental health issues and demanded unsupervised visitation, and when one parent suffered domestic violence at the hands of the other parent. We've also successfully negotiated settlements in which one spouse invested heavily in the other spouse's business with no return, in cases that involved one spouse preventing the other from accessing marital assets, and in cases where one spouse refused to divide a jointly owned business with the other.

We want you to know that while you still have to go through the divorce process, you have options – and we're here to help you explore them so you can make the best possible decisions for your business, your brand and your personal life. We'll be here to guide you every step of the way, helping you make the best choices for your divorce and your future.

Provinziano Family Law
8888 Olympic Boulevard
Beverly Hills
310-820-3500

www.Provinziano.com

Community vs. Separate Property

When you divorce, California law requires you to divide the property you and your spouse share. Usually, any assets you acquire or income you earn during your marriage is considered community property – and that includes businesses. If your business is separate property, it's not divisible during divorce. However, business ownership can be complex, and in some cases, businesses are part community property and part separate property.

Community Property and Your Business

Your business may be community property under California law. It depends on what efforts and financial contributions you and your spouse made to the business during your marriage, as well as when you acquired the business.

Generally, the courts can consider a business community property if you:

- Started the business during your marriage, and you and your spouse both contributed \ your effort or financial resources to the business
- Started the business prior to your marriage, but you and your spouse contributed effort or financial resources to the business during your marriage

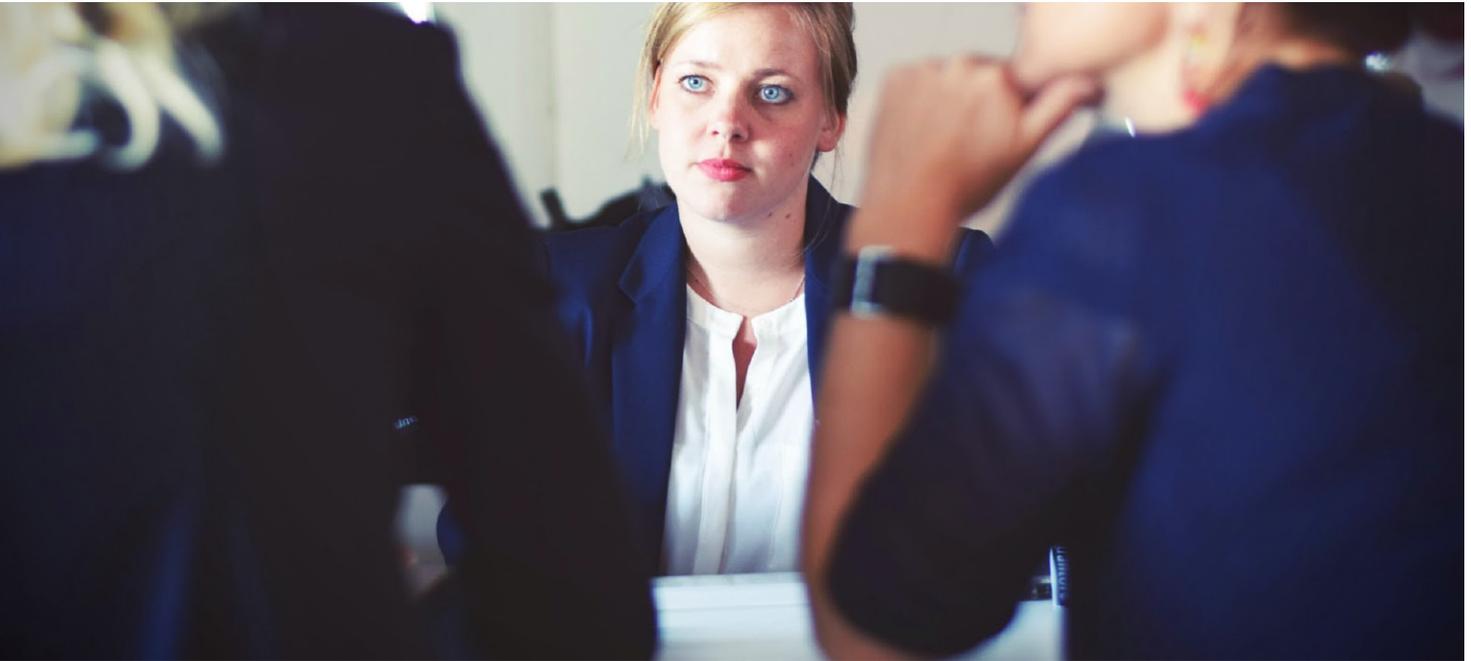
The courts may consider your business separate property if you acquired it prior to your marriage and it has required little or no effort on your part to maintain during your marriage.

Separate Property and Your Business

The judge in your case may decide that your business is separate property. That can happen if you purchased the property before your marriage and did not contribute efforts or funds to it during your marriage. In that case, you won't have to divide the business because it belongs only to you.

What if Your Business is Separate and Community Property?

Sometimes businesses are a combination of separate and community property. For example, if you acquired the business before your marriage but continued to work and contribute your marital money to it, the court may rule that the current value of the business, less its pre-marriage value, is community property. In that case, the pre-marriage value is not divisible as community property.



Dividing a Business in Divorce

If your business is community property – meaning that you and your spouse both contributed your efforts or financial resources – you’ll have to determine its worth and work with your spouse to divide it fairly. To do that, you’ll most likely need to have the business professionally appraised. The expert you work with will calculate profit and loss, determine the business’s value and, in some cases, provide expert testimony during litigation.

Even if your spouse never did any work related to the business, the courts can still consider it community property – especially if you used money that you acquired during the marriage to fund it.

Dividing a community property business can typically go one of three ways:

- You and your spouse can sell the business and split the profits
- You and your spouse can continue to operate the business together
- One of you can buy out the other’s interest in the business

Jointly Operating the Business

Some spouses are able to continue to operate a business together, but this approach isn't appropriate for everyone. You and your soon-to-be ex-spouse will have to see past your marital differences and work for the good of the business. Alternatively, you and your spouse might agree that one of you runs the business while the other accepts payments from future proceeds. Issues can arise during times when the business isn't making a profit, though – the spouse who agrees to receive payments will see a reduction in income until the business becomes more profitable.

Buying a Spouse's Interest in the Business

The most common way to divide a business during divorce is for one party to sell his or her interest in the company to the other spouse. This may be the simplest form of dividing a business, but it does require an accurate valuation – and the purchasing spouse must have the capital to buy the other spouse's interest. However, some couples work out plans that allow the purchasing spouse to pay in installments.

Prenuptial Agreements

If you and your spouse signed a prenuptial agreement before you married, some of the assets you acquired or income you earned during the marriage might not be subject to property division. However, prenuptial agreements are challenged in court all the time – and sometimes judges declare them invalid.

A prenuptial agreement is only valid if it:

- Is a written contract
- Contains lawful terms
- Has been signed voluntarily by both parties

Additionally, each party must have had at least a week to seek independent legal counsel before signing. Your soon-to-be ex-spouse may challenge your prenuptial agreement if any of those factors are missing – or if it appears to be unfairly slanted toward you.

The judge in your case may rule that only parts of your prenup are valid, or that the whole thing is invalid. The court won't uphold parts of a prenuptial agreement that involve:

- Anything related to child custody or child support
- Spousal maintenance if the signing spouse chose not to receive independent legal counsel before signing the agreement
- Unfair, unjust, exploitive or deceptive terms
- Non-financial requirements or terms regarding the relationship itself

Your attorney can argue that your prenuptial agreement is valid, even if your spouse disagrees.



Assets Outside Your Business

Like your business, your other assets may be community property, separate property or a combination of both. If you owned an asset prior to your marriage, it's most likely separate property; if you acquired it during your marriage, it's most likely community property. There are exceptions, though, such as when you have a prenuptial agreement or when you owned an asset prior to your marriage but both contributed to it during your marriage.

One of the most common assets couples have to deal with during divorce is the marital home. If you purchased the home during your marriage, it's most likely community property under California law. If one of you owned your home before you were married but continued to make mortgage or tax payments on it during your marriage, it's probably part community property and part separate property. Vacation homes also count.

When you have community property, the best thing you can do is try to reach a settlement agreement with your spouse rather than asking the courts to divide your assets equitably. You and your spouse might agree to liquidate your assets and split the proceeds, or you may decide to trade some assets for others. For example, if you own two homes, one of you might take possession of each.

As long as you and your spouse have reached an equitable agreement – one that's fair to both of you – the judge is likely to sign off on it. However, if the agreement you reach is unfairly slanted in favor of either party, the court may order you to come up with something better. Likewise, if the judge in your case finds that your prenuptial agreement is unfair, he or she may declare it invalid and tell you to work out an equitable settlement.

Doctors and Professionals

Doctors, attorneys and other professionals face unique challenges during divorce – and that's true whether they own a private practice, are part of a partnership or work for others.

Private Practices & Partnerships

Because California is a community property state, all assets and debts acquired during the marriage belong to both parties equally. That goes for private practices and partnerships, which means that both spouses may be entitled to some of the business's value.

Sole Ownership Before Marriage

If you owned a private practice before you married (or your spouse did), the value of the practice prior to the marriage may remain separate property. That means it belongs only to the spouse who owned it before the marriage. However, if you continued to operate the practice after you married and the practice's value grew, the courts can consider the financial value of the increase to be community property – and that means you'll have to split it with your spouse.

If your practice was well-established but your spouse gave up his or her career to help you, or if your spouse worked for you at reduced pay (or without pay), he or she may be entitled to a larger share.

Sole Ownership Since Marriage

If you began a private practice after you married, the courts will likely treat it as community property. Community property is subject to division during divorce.

Partnerships & Group Practices

In a partnership or group practice, the practitioner's share of the business is what counts in divorce. That value is determined by:

- The type of business entity the group practice is
- When the group practice was established
- How the practice was funded
- Whether any participants received stock
- Whether there's a buy/sell agreement for the business

Your attorney will probably suggest working with a valuation expert who can determine the value of the participant's share in the practice.

Special Considerations for Doctors in Group Practices: When One Spouse is Not a Physician

A spouse who isn't a physician cannot take over a share of a medical practice. That means the couple must reach a financial settlement based on the practice's value – or the judge in the case must decide.



Preserving Your Brand During Divorce

While you and your spouse divorce, protecting your brand is essential. Otherwise, your company's value could drop. Ideally, you'll be able to keep your divorce quiet until it's all said and done – but that's not always easy to do. Use these tips to start protecting your brand:

- Agree with your spouse to keep things quiet. Let your spouse know that the things that happen between you can affect the value of your business – and that can impact both of you.
- Stay off social media. Avoid sharing any personal details on any social media outlet, even if you think it's private. Once something is online, anyone can grab a screenshot and share it publicly.
- Don't talk to the press about your split. Anything you say to a reporter, even if you think it's off the record, could end up in print.
- Keep your private life private. While you can discuss your situation with your closest family members and friends, it's typically a good idea to keep the gritty details confined to conversations between you and a licensed professional. When you talk to a therapist or counselor, he or she is legally obligated to keep your confidence – but friends and family are under no such obligation.

Minding Your Reputation

It's not uncommon for details of a split to make their way to the media. When you and your spouse divorce, it's essential that you discuss the possible ramifications of your personal details becoming public. If you and your spouse disagree on how private your split should be, your attorney may be able to ask the judge in your case to help preserve your privacy through a protective order. This type of order, if the judge grants it, could apply to you and your spouse, your attorneys, witnesses, jurors and law enforcement personnel.

However, the best-case scenario is that you and your spouse agree to keep quiet about the details and discuss them only with each other, your attorneys, and people you know you can trust, such as your closest family members and friends or licensed therapists and counselors.

Your attorney will most likely advise you to avoid doing anything that could compromise your reputation. The last thing you want is for your divorce to become any more contentious than it already is – and by agreeing to remain civil with each other, you and your soon-to-be ex-spouse can help preserve your personal and public reputations.

Divorce Records and Public Information

When you or your spouse files for divorce, the paperwork becomes public information. That means anyone can look at your court file. For example, if your spouse files for divorce alleging that you're a terrible person who stepped outside your marriage, that file could become part of the public record. Even if none of it is true, the court file will still contain the allegations. If you go on to settle with your spouse, those allegations are still part of your record.

The best course of action is to reach agreements with your spouse on your own, outside of court. Try to file for divorce using plain, simple terms that aren't open to interpretations that could damage your brand – such as filing for divorce due to irreconcilable differences. That way, the paperwork that goes through the court system is simple and detail-free. Your documents will contain the information necessary for you to divorce your spouse – but nothing else.

Private Arbitrators and Mediators

You and your spouse may agree to work with a private mediator or arbitrator. These two processes are different – but they both involve confidentiality and resolution.

Mediation

Mediation is a private process that involves a neutral third party – the mediator – who helps both parties to the divorce discuss and resolve their disputes. Generally, both parties sign a confidentiality agreement before beginning mediation. Each spouse has a chance to describe the issues, explain his or her interests and understandings, and provide information that can make negotiations go more smoothly. The mediator doesn't have the authority to make a binding decision, but the couple does. If the couple reaches an agreement in mediation, they can sign a written contract that can be submitted to the court.

Arbitration

Arbitration is, like mediation, a private process some couples use to reach agreements. Each party has the opportunity to make opening statements and present evidence before an arbitrator. After this hearing, the arbitrator has the authority to make a decision about the dispute. The parties can agree to keep the proceedings – and the terms of the final resolution – confidential. Arbitration has some other advantages over public trials, too. It can:

- Help a couple be more satisfied with the outcome. Both spouses are usually encouraged to build a resolution together, somewhat like mediation. The scheduling is flexible, too, which isn't possible with court trials.
- Save time and money. Arbitration is typically faster and less complicated than court hearings, so it can save both parties time and money. A recent study showed that the average time for filing to decision is about 475 days – but similar cases, when litigated through the court system, can take between 18 months and 3 years.

Keeping Your Documents Under Seal

Even if you and your spouse agree to keep allegations of misconduct out of your court paperwork, your attorney will most likely ask the judge in your case to put your documents under seal. That means the courts will keep your divorce information private. However, judges take this very seriously – so your attorney will have to convince the judge that letting private details into the public eye could damage your brand.

Your attorney can also ask the judge in your case to remove sensitive personal information from your court filings, such as financial information or anything that could negatively impact your children. In some cases, lawyers ask judges to only include the final settlement agreement in the judgment; the rest of the documents stay off-limits to the public.



You're Not Alone

For most people, having someone who understands what they're going through is a tremendous help. Because each attorney in our firm has extensive experience working with business owners, celebrities and numerous others who value privacy and reputation management, we quickly, confidentially and professionally handle high-asset divorce cases for some of the most prominent people in Beverly Hills and the surrounding communities. We can help you, too.

When you're ready, call us at **310-820-3500**. Tell us about your situation and we'll build a strategy that gets you – and your business – **the best possible outcome**.

Alphonse F. Provinziano, Esq.

Provinziano Family Law
8888 Olympic Boulevard
Beverly Hills
310-820-3500

www.Provinziano.com

Provinziano & Associates

8888 Olympic Boulevard
Beverly Hills
310-820-3500

www.Provinziano.com

The materials provided in this e-book are for information purposes only. These materials constitute general information relating to areas of law familiar to our firm lawyers. They do NOT constitute legal advice or other professional advice and you may not rely on the contents of this website as such.

The contents of this e-book don't necessarily represent the opinions of Provinziano Family Law or its clients. If you require legal advice, you should retain competent legal counsel to advise you. If you would like to retain Provinziano Family Law, please contact our office, and we will be pleased to discuss whether our firm can assist you. Any information shared with one of our lawyers at your consultation will remain strictly confidential. An attorney-client relationship will arise between you and our firm only if we specifically agree to act for you and a retainer agreement is executed.