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Understanding Valuation Date Impact on Marital Dissolutions

By Ashley Mercuri

Imagine you are planning to sell your home. Based on your location, you expect spring to be the best season to attract buyers. With fresh blooming flowers, the promise of settling in before a new school year, and longer days to host viewings, spring offers the ability to present your home in the best light. Conversely, listing in the winter, when the trees are bare and snowy roads are keeping potential buyers at home, could mean a longer wait time for offers or, potentially, a compromise on your selling price. Although differing factors are at play, setting a listing date for your home is not unlike the concept of a valuation date. In valuation, favorable or unfavorable factors may come into play based on the valuation date utilized.

What is a valuation date? A valuation date is a specific date at which the valuation is performed. Based on professional valuation standards, the valuation may only consider events and conditions occurring up to and as of the valuation date. When valuing a business, this date may impact the value of the subject interest based on the business performance, industry and economic conditions, and other factors specific to that point in time. In the context of marital dissolution, various considerations and jurisdictional standards are involved in selecting a valuation date.

There are varying laws and legal precedents across jurisdictions which dictate the required valuation date as follows:

- **Date of Separation** - Some jurisdictions use the date of separation as the valuation date. This is the date the spouses begin living separately and/or decided to end their marital relationship.
- **Date of Filing** - In other areas, the required valuation date is the date on which the divorce petition was filed. Given that the date of filing and date of separation are at the outset of the divorce process, these valuation dates may not capture the most current value of the subject interest.

- **Date of Trial or Settlement** - Alternatively, some jurisdictions may require the valuation date to be the date of trial or the date the divorce settlement is finalized. This approach ensures that the most current valuation date is used. However, the challenge in this case is that there may be a very short window to complete the valuation once the necessary historical information through the valuation date is made available.
- **Discretionary Date** - Courts in certain jurisdictions may have the discretion to choose a date they consider to be fair and equitable to the parties based on the divorce proceedings and specific case-related factors (such as the length of the proceedings, conduct of the parties, or other significant events or circumstances).
- **Mutual Agreement** - In some cases, the divorcing parties may mutually agree on a valuation date that is equitable for both spouses.

It is essential to understand the local laws that apply to your case as well as the impact that differing valuation dates may have on the overall value of the marital estate. In addition to jurisdictional standards, there are other important factors to consider when selecting a valuation date:

- **Known or Knowable Information** - All information utilized in a valuation must be known or knowable as of the selected valuation date. This includes financial information, projections/forecasts, information regarding customers or competitors, products and services, acquisitions, the management team in place, and even unforeseen events (pandemics, fires, floods, or other damaging events). If an event occurs after the valuation date that was not known or knowable at that time, it should not be considered in the determination of value.

For example, if the date of filing (and the approved valuation date) is December 31, 2022, the value of the subject company may not consider events or circumstances taking place in 2023 if they are not already known or knowable as of December 31, 2022.

- **Business Performance** - The performance of a business may fluctuate from year to year. The level of revenue growth and improvements (or declines) in profitability may or may not be captured depending on the selected valuation date.

Using the same December 31, 2022 valuation date, if the subject company experienced a decline in sales and profitability in 2020 and did not fully recover until 2023, the valuation would only incorporate financial performance and growth realized or anticipated as of December 31, 2022. Any subsequent improvements in 2023 that were not expected as of the December 31, 2022 valuation would not be taken into consideration to determine the subject company’s value at that time.

- **Industry and Economic Conditions** - Factors such as market volatility, interest rates, industry opportunities or potential threats may differ depending on the selected valuation date, which could impact the value of the subject interest.

For example, if the industry structure is more favorable (or less risky) as of December 31, 2022, this would generally result in a lower industry risk premium at that date. All else equal, a lower industry risk premium will result in an overall higher value of the subject company. Due to the dynamic nature of markets and economies, the economic factors in place as of the valuation date may also impact the valuation conclusion.

Understanding the potential favorable and unfavorable conditions inherent in any potential valuation dates is vital. Carefully considering jurisdictional standards, financial and company-specific factors, and market conditions will aid divorcing parties in wisely selecting a valuation date and navigating through the related valuation process.

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