

What's it Worth?

THE NEED FOR VALUATIONS IN DIVORCE



By Robert E. Kleeman, Jr., CPA/ABV, ASA, CVA

OnPointe Financial Valuation Group, LLC
An Affiliate Firm with OnPointeValuation, LLC
8310 South Valley Highway, 3rd Floor
Englewood, CO 80112

bobkleeman@onpointevaluation.com

(303) 771-8100

www.OnPointeValuation.com

©ROBERT E. KLEEMAN, JR., 2009
All Rights Reserved.



ONPOINTE VALUATION, LLC

In today's climate, it isn't only the large cases that require the Attorney to advise his/her client regarding valuation issues related to the marital estate. Assets such as the marital residence, personal property, investments and interests in closely held businesses are all difficult to value, yet the Courts require the parties to provide values for use in the ultimate distribution of the assets. Costs associated with expert valuations can be very high, and if the matter does go to litigation, there are the additional costs of the experts deposition and trial testimony, not to mention the additional time for the attorney. Yet it is clear that it is not always necessary to incur those costs. There are ways to solve the problem while holding down the costs. Certainly, no one expects the attorney to be an expert in the field of valuation, but the difficulties involved with these valuation issues do require that the Attorney have a working knowledge of what can be done to obtain values to be used in the dissolution process.

Our purpose is not to make each of you an appraiser, but to offer guidelines and suggestions to focus your attention to the issues, and to offer you a number of choices regarding these issues. Obviously, each case has it's own individual characteristics, and no one solution will be appropriate for every matter. The successful practitioner will use these suggestions as a toolkit, using the appropriate tool for the appropriate problem. This listing is also not necessarily all inclusive. Creativity in solving these problems is to be encouraged, because the overall winner is not just your client, but also you.

Asset valuation, like beauty, is in the eyes of the beholder. It is critical, as a first step, to get the "beholders" viewpoint. Many disputes arise because one or both of the parties have never had to address the valuation issue. Most people tend to overvalue the assets. Far too often, the value of a business interest is not separated from the reasonable compensation that the owner/employee should be earning. Many small businesses have little market value, and just provide the owner with a job.

Early on, the question "**Can the parties reach a reasonable value between themselves, saving the cost of appraisals?**" needs to be asked. They may be aware of the selling price of similar homes in the neighborhood. Some assets, such as pensions or profit sharing plans, may have an annual valuation prepared by the employer. Personal property may be covered by insurance, with values placed on the assets for purposes of the policy.



Make a determination if any of the assets will need to be sold. Sometimes it is clear that the parties will not be able to afford to maintain certain assets which are currently owned. Why bother valuing an asset which will be sold? Focus instead on the method of distributing the proceeds from the sale.

If the property is divisible, (i.e., an investment partnership or other passive assets) it may be in the best interest of the parties to forego a valuation, and divide the interest in the property. Many of these assets have a long term holding period in order to maximize the value. These assets may also provide current cash flow which one of the parties can use to reduce maintenance needs.

Work with your client to remove the "My appraiser, Your appraiser" syndrome. It may not be necessary to have two different appraisers involved, one on each side. If you find a truly independent appraiser, the valuation conclusion will not differ based on which party it was prepared for. If you really feel that you need two appraisers, perhaps only one should be hired to provide a complete appraisal report, and the second appraiser should function in a review capacity. For this to work, you need to let the appraisers talk with each other to work out any differences in opinion.

Even where the assets are very large dollar items, and where a joint expert is not an alternative, you may be able to reduce your litigation costs by using the ADR process for the valuation issues. Consider the use of a valuation neutral, brought in for the purposes of mediating or arbitrating the valuation issues. The valuation neutral should have significant valuation experience and credentials, and should be well recognized by his or her peers. The neutral can be involved without additional experts, or can become involved after each side's experts have reached their valuation conclusions.

Using an appraiser is a case by case decision, but that decision can dramatically impact the litigation. Using an appraiser in a matter does not have to be cost prohibitive, and with proper planning and some creative approaches, you can provide your client outstanding results, while minimizing the costs. The appraisal expert can be one of the most valuable tools at your disposal. But, if you don't know how to use the tools, you will find it difficult to solve the problem.





Robert E. Kleeman is Managing Director of OnPointe Financial Valuation Group, LLC. His practice concentration includes business valuation and litigation support. In addition to being a well-known speaker, he co-authored *The Handbook for Divorce Valuations* and has written several business valuation articles.

bobkleeman@onpointevaluation.com
(303) 771-8100

www.OnPointeValuation.com

