

Does This Matter Need a Business Valuation?

A Guide for Clients, Mediators and Family Lawyers

Introduction

Most family law matters involving a business begin with the same instinct, which is to commission a formal valuation. In some matters that is a reasonable approach, since the pool and the complexity warrant a careful valuation. In other matters, however, the formal valuation may be unnecessary, premature, or disproportionate to the pool, and the client pays several thousand dollars more for a document that confirms what a simpler assessment could have told them.

This guide is for clients, family lawyers or mediators who want a clearer way to answer this question before authorising the cost. It is not a substitute for professional judgement, as the facts of each matter will sway any decision.

The real question

The real question of whether a formal valuation is proportionate to the matter at hand, and whether the information it will produce is necessary for the resolution the parties are seeking. Proportionality cuts both ways; a \$15,000 valuation on a \$100,000 business may not be reasonable, whereas a settlement without a valuation on a business worth about \$2 million may be unwise. The task is to work out which end of that spectrum you are on, before the commitment is made.

The temptation to default to a formal valuation is understandable. It is thorough, defensible, and shifts responsibility to an independent expert. The downside is that it is also slow, costly, and sometimes answers a question that did not need asking.

Signals that lean toward commissioning a formal valuation

Sometimes, the case for a formal valuation is very strong. If the business is clearly the most valuable asset in the pool, or one of the top three, and the parties disagree about its worth, a formal valuation is usually necessary and useful. Likewise, where there is a trust structure with layered entities, a group of related companies, or a corporate structure that has been reorganised in the two or three years before separation, the complexity itself may justify independent analysis.

A business where one party has run the books and the other party has had no visibility over the financials for years may often warrant a valuation, since the information asymmetry itself is the problem the valuation is designed to solve. The same is true where there is a credible concern about undisclosed assets, suspicious entity movements, or earnings that do not match the apparent lifestyle.

Signals that lean against a formal valuation

Sometimes, a formal valuation may not be necessary. A sole trader whose income is essentially a reward for their own personal services, with no transferable goodwill and no significant business assets, is not likely to require a valuation. The business is the person, and the question is better answered through an earnings analysis. A dormant company holding no operating assets, a recently incorporated entity with no trading history, and businesses whose entire value is tied up in a few pieces of commodity equipment may also fail the proportionality test.

Where the parties genuinely agree on a figure and have arrived at it with reasonable information, and the figure is modest in the context of the pool, a formal valuation may add cost without adding meaningful information. The role for an independent accountant in these matters is often simply to sense-check the agreed figure and flag anything that looks structurally wrong.

The in-between

Many matters fall between the two tests above, and this is where the real judgement call sits. The business is not obviously the heart of the pool, though it is not trivial either. The structure is simple on its face, though there are related entities whose status is unclear. The owner says the business is worth very little, though the financials show it has been generating serious cash for years. In these matters, more analysis is needed before the valuation question can be answered responsibly, because the answer depends on information that is not yet on the table.

That analysis may include a review of the financial statements and tax returns for the three years before separation, a mapping of the entity structure and any related-party arrangements, an assessment of whether the earnings pattern is consistent with industry trends and the owner's lifestyle, and a short list of questions that might need to be put to the other party before a formal valuation is considered.

This is often where the real forensic work lies; not in the valuation itself, but in the work that decides whether one is required and, if so, what questions it needs to answer.

A practitioner's checklist

Before you commission a formal business valuation, consider whether you can answer the following with reasonable confidence:

- Is the business one of the top assets in the pool, by any plausible measure of value?
- Is there a dispute between the parties about what the business is worth, or merely uncertainty about the figure?
- Does the business have transferable value, or is its value tied up in the owner's personal exertion?
- Is the entity structure straightforward, or are there related entities whose role is unclear?
- Is there any indication that the financials may not fully reflect the business as it actually trades?

- Has there been any corporate restructure, loan write-off, or asset transfer in the two or three years before separation that would complicate a valuation?
- Would the cost of a formal valuation be proportionate to the information it will produce and the pool at stake?

If you can answer those questions clearly, you should be able to determine whether a valuation is warranted. If several of them are uncertain, further analysis may be required before making the decision.

A fixed-fee way to answer the question

Where the valuation question is genuinely open, a short preliminary forensic review can resolve it. I offer that review as a fixed-fee product called the Necessity Report™, delivered in three to five business days from receipt of the financials, at a fixed price of \$997 including GST. The deliverable is a short written view on whether a formal valuation is warranted and, if so, the likely scope and complexity. It is deliberately not a valuation; it is the step that removes the guesswork before the valuation decision is made.

The intent is proportionality, since the Report has to earn its own fee against the valuation it might save or justify. Where a valuation is clearly warranted, the Report will say so and provide a scoping note that goes directly to the valuer. Where a valuation is clearly not warranted, the Report will say that too, and the matter can progress to settlement with reasons the parties can rely on. Where more analysis is required before the question can be answered, the Report will set out what that analysis would involve.

Closing thought

Proportionality is very important principle in family law and increasingly is a significant court expectation. A short upfront assessment of whether a formal valuation is warranted costs little and may save the cost of a valuation that was never needed, or the cost of a settlement built on an assumption that should have been tested.