

# CHAIM STEINBERGER, P.C.

ATTORNEYS AT LAW

150 EAST 58TH STREET, SUITE 2701

NEW YORK, NEW YORK 10155

(212) 964-6100

FAX (212) 500-7559

[www.theNewYorkDivorceLawyers.com](http://www.theNewYorkDivorceLawyers.com)

[admin@nydl.com](mailto:admin@nydl.com)

*Shepherding you safely through difficult family transitions!*

## DIVORCE IN NEW YORK

### UNIQUE ISSUES IN HIGH NET-WORTH DIVORCES

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High net-worth individuals have an even greater need for a skilled advocate and lawyer than most. Just “good enough” won’t do. High net-worth individuals will see right through the mediocre lawyer and recognize that that person is not up to the task.

Although the issues might superficially seem the same for typical divorces and high net-worth ones, they are more varied and more complex by an order of magnitude in high net-worth cases. The tax ramifications are more involved. Asset valuations are in an entirely different category. Art, coin, and other unique works must be valued. Cash flow is more intricate. Discovery and finding hidden assets or sources of income is more challenging. Separate Property must be more conclusively protected. Moreover, the “flavor” of the case is entirely different.

With more money comes a greater ability to fight and feel vindictive. There’s more to lose so people, naturally, feel more motivated to fight. Moreover, some people feel more entitled therefore less amenable to reasonable suggestion. It is therefore even more important to have a lawyer who can, and will, skillfully develop a winning case-strategy and put in the hard work to see it through. A lawyer who won’t go off half-cocked, who won’t pour lighter fluid over scalding embers, one who will conduct negotiations in such a way so as not to provoke further fighting but instead calm people down and bring out their most reasonable selves. It is important to staunch the hemorrhaging of time, effort and resources so that people can move on with their important, productive lives.

Moreover, in addition to all of the issues involved in common divorces, high net-worth individuals need extra guidance to deal with particular issues. Capital gains and future tax liabilities must be considered in a way they need not be in the common cases. The tax basis of

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properties needs to be considered. The value of stock options (or EPU's), be they vested or unvested, needs to be accurately determined and a strategy for dealing with them crafted. Despite great wealth, there may be cash-flow issues that must be considered, sometimes creatively. Deferred and other unique compensation arrangements and bonuses must be incorporated. Perquisites might create support liabilities that the cash flow won't carry. Creative child- and spousal-support arrangements might need to be developed for the unique situations at play in an individual case.

The use of a superior lawyer is therefore imperative in these high net-worth cases, one who can see not only the facts before them but that can foretell and predict a few steps ahead in the chess game of life and prepare a winning strategy. A craftsman rather than a mechanic. One who cares and is devoted to the clients and will spare no effort to succeed.

#### Unique Issues When One Spouse Owns/Operates a Business:

Ownership or operation of a business introduces a host of yet additional issues into a divorce. When a business was created during the marriage, it will typically be considered "marital property" and be subject to equitable distribution, and distributed approximately evenly in a marriage longer than 7 years. The value of the business must therefore be determined. Determining its value, aside from personal good will, is often complicated.

If the business was owned prior to the marriage, then only the appreciation of the business during the marriage is "marital" and subject to equitable distribution. The present value of the business must be compared to the value of the business on the date of the marriage to determine the marital appreciation. Thus the business appraiser must make two separate appraisals, one that could be retrospective many years.

The appraiser must also determine the true earnings of the business. There are many expenses and deductions that are disallowed for purposes of business valuation. Of course some businesses also leave income unreported and/or over-report their expenses to reduce their reported profits. Thus the lawyer must assist the valuator, investigating the underlying facts.

Somewhat related, a business owner or operator may not withdraw all of the income earned. The lawyer and appraiser must determine not only the amount of income the spouse withdrew, but what income the spouse permitted to remain sheltered in the business and which may be withdrawn after the divorce is final.

You therefore need an experienced, skilled, and even superior lawyer. We will bring our experience, dedication, and commitment to your case!

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