PREMISE OF VALUE - LIQUIDATION and GOING CONCERN

Typically, a business entity is valued on either a Liquidation basis or as a Going Concern. Liquidation value is predicated upon determining the value of the assets and liabilities of the entity, as if the entity were to go out of business. In general, an orderly liquidation will result in a higher value than a forced liquidation. This is because in an orderly liquidation there is more time to dispose of the assets, than if they must be sold within a short period of time. Going Concern value is predicated upon the premise that an entity will continue in business as an ongoing entity. This value differs from the value of a liquidated company's assets because an ongoing entity continues to earn profits (or incur losses), whereas a liquidated company does not. Typically, the value of an entity is considered to be the greater of its Liquidation value or its Going Concern value. The reason for this is that if the entity is not worth more under the assumption it will continue in business, then consideration should be given to liquidating the entity.

STANDARD OF VALUE - FAIR MARKET VALUE

The appropriate standard of value in Florida for valuing a business for matrimonial purposes is Fair Market Value. That is also the appropriate standard of value for valuing a business for Estate tax purposes. IRS Revenue Ruling 59-60 defines Fair Market Value as:

> "the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts."

The Revenue Ruling also indicates that Court decisions frequently state that the hypothetical buyer and seller are assumed to be able, as well as willing, to enter into the transaction. In addition, they are both assumed to be well informed about the subject being valued and the related market for it. A determination of Fair Market Value depends upon the circumstances of each case. Although a valuation should be based upon the relevant facts, the valuation process also entails the application of common sense, informed judgment and reasonableness. These elements are important when weighing and determining the significance of the relevant facts. The Revenue Ruling lists the following factors that should be considered:

(a) The nature and history of the enterprise from its inception

(b) The economic outlook in general and the condition and outlook of the specific industry in particular

(c) The book value of the stock and the financial condition of the business

(d) The earning capacity of the company

(e) The dividend-paying capacity

(f) Whether or not the enterprise has goodwill or other intangible value

(g) Sales of the stock and the size of the block of stock to be valued

(h) The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter

Depending upon the circumstances in each case, certain of the above factors may carry significantly more weight than others. The applicable factors should be considered on a judgmental basis, but typically should not receive mathematical weights.