

California Family Law

DOCUMENTS: WHAT WE NEED AND WHY WE NEED THEM



2021

Non-Authoritative

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The issue of document production has been a function in each and every family law case. Sometimes the production takes place on an informal cooperative collaboration between parties. Sometimes it is a contentious elaborate drawn out battle that never seems to be resolved to either party's satisfaction. Rarely will a trier of fact hear the words "your honor, we got everything we asked for."

Often times, an attorney asks the expert being hired to do a business valuation or cash flow analysis or any other financial analysis to prepare a list of documents the expert needs to perform their services. That list can be quite extensive. The attorney may request that the document request list be "pared down" because of costs or the size of the case. The expert may resist in the interest of consistency, but more importantly, because **THEY NEED THEM**. Getting an understanding as to why they are needed, will help. This happened in the Schnabel case. [In re Marriage of Schnabel (1994) 30 Cal. App. 4th 747 [36 Cal. Rptr. 2d 682]]. By enlightening the court as to why the documents were needed made a difference.

The list below is a starting point for many of the documents that are needed. There are many crossover documents that are useful in many of the tasks that could be charged to the forensic to do. The list below also demonstrates this reality.

The list below, once again, is a starting point. It does not portend to be all the documents or all the reasons why they are needed.



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Item	Can be used in the following areas					Purpose
	Income Available	Business Valuation	Tracing	Reimbursements	Other	
Articles of incorporation		✓	✓			Establish origin of company as to date and authority of the laws under which it operates. May establish if business was started prior to or during marriage.
By-laws		✓	✓			Gives corporation exact proper name; who the members are; board of directors; officers; conflicts of interest and meetings.
Stock certificate book		✓	✓			Establish stock ownership history and changes in ownership. May assist in valuation of shares by transfers of ownership.
Stockholder and director minutes	✓	✓	✓			Establish actions taken by the board of directors and authorization to conduct business. May disclose reasons for appropriation of retained earnings, expansion, debt incurrence, restrictions and authorization for Officer salaries, dividends. Alter ego argument, if appropriate.
Summary of stock ownership		✓	✓			Will summarize the current ownership of the company.
Organization chart	✓	✓	✓			Will establish the responsibility authority. May disclose efforts during the marriage.
Job descriptions of all officers, owners, key personnel and managers	✓	✓	✓			May establish foundation for compensation arguments for inadequate compensation (Van Camp), replacement compensation, etc.

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Item	Can be used in the following areas					Purpose
	Income Available	Business Valuation	Tracing	Reimbursements	Other	
Insurance policies	✓	✓			✓	Property insurance policies will disclose property covered by the policies. May uncover assets not on the books and records and discloses personal assets such as cars, boats, recreational vehicles, etc.
Life insurance policies	✓	✓				Life insurance policies may disclose marital assets and security for support, etc. Will assist in establishing benefits received by the owners as part of their overall compensation.
Pension and profit sharing agreements and reporting to government	✓	✓	✓	✓		Will assist in establishing benefits received by the owners as part of their overall compensation. May disclose marital assets and separate and community property portions.
Financial statements	✓	✓	✓	✓		Will assist in the calculation of value of the business based on assets and income. From a business valuation standpoint it will serve as a benchmark for comparison to industry information. Will provide the ability to compute business ratios for liquidity, profitability, leverage and others. Can establish separate property tracing requirement for periods prior to marriage.
Sales tax returns	✓	✓			✓	This document, which is state reporting requirement, contains the amount of sales of the business. This form is subject to audit by the state agencies. It should be reconciled to the sales reported by the company in its records supplied.

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General ledgers and journals	✓	✓	✓	✓	✓	The general ledgers contain an enormous amount of information including the detail of the transactions which comprise the financial statements. If an electronic version is available, such as Quickbooks, it will significantly reduce the time and related cost of analyzing the information. Time period can be analyzed and payments and distributions to the owners and their benefits can be sorted more simply and more cost effective. If the general ledger is a manual set of books, the journals will contain the detail necessary to perform analysis.
Paid bills	✓	✓	✓	✓	✓	The substantiation for the expenses or payments by a business is contained in the paid bills of the company. It will assist in determining whether the expense, or asset purchase or debt payment, is for the business or for the shareholder/owner personally (perquisite).
Bank statements, brokerage statements	✓	✓				In testing the veracity of the books and records supplied, these documents can reconcile deposits and income and can contain descriptions of certain transactions as to their disposition (transfers to other bank accounts, etc).
Income tax assessments					✓	Federal and state audit agencies have many similar goals when examining the tax returns filed. Reviewing these audit requests and adjustments can often times save time and effort in the work to be done to establish the real earnings from the business.

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	Income Available	Business Valuation	Tracing	Reimbursements	Other	
Business tax returns of the business for five years	✓	✓	✓		✓	Five years of returns is necessary to capture business cycles, and is customary in the business valuation arena. Can be used to determine officers compensation and other items specifically required in the tax forms. Can serve as a check figure to compare the financial statements supplied to documents which were signed under penalty of perjury.
Accounts receivable subsidiary ledger accounts and aging schedules	✓	✓				Financial statements generally contain only a single number for accounts receivable. An aging can allow the proper analysis of the age and collectability of accounts maintained on the books. It also can uncover accounts which were removed by comparing monthly agings which may still be collectable. In cases such as the valuation of a Personal Injury lawyer practice additional work would be involved in valuation of contingent cases in progress by having access to client billing files.
Listing of accounts payable	✓	✓				The amount of accounts payable can directly affect the income of a business and its concomitant business value. Accounts payable can often be the place where items are overstated and can possibly contain debts to the owner. Further, business credit lines are sometimes used to pay-off personal credit card amounts and therefore overstating the debt and understating the value of a business. Cash flow is also affected.

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Access to invoices for purchases and sales, and any source document that supports any cash disbursement, cash receipt, or journal entry	✓	✓	✓			In the proper evaluation of the expenses of a business, it is necessary to analyze the documentation supporting the expenses, asset purchases and debt payments. Having access to the supporting documents will help determine if the expenses are personal or business, related to the operation or regarding a separate venture. A business is required by taxing authorities to maintain this information. A company who does not have these documents is unable to meet the burden of proof that payments are business in nature.
Buy sell agreements		✓	✓			May assist in the valuation process as an additional way to determine the value of a company. A company's history of utilization of agreements like these could influence an appraiser's conclusion of value.
History of the company		✓	✓			The history of the company will assist in the valuation of the company at the various dates. This will also highlight any major changes in the company's products or services during its history. Could establish separate property existence. Could also establish community property nature of the current value.
Company brochures of the products and or services offered		✓				A history of the products or services the company offers will be coordinated with the business valuation and demonstrate direction changes the company has made over time. Aids in the understanding of the business and it's operations for business valuation purposes.

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Item	Can be used in the following areas					Purpose
	Income Available	Business Valuation	Tracing	Reimbursements	Other	
List of all salary, bonuses and personal expenses (perquisites) paid by the business for all owners	✓	✓	✓	✓	✓	The history of all remuneration will deal with three issues. First it will help evaluate whether with community was adequately compensated during the marriage (Van Camp). Second it will assist in the valuation of the business (replacement compensation). Third, it will assist in determination of the income available for child and spousal support.
Curriculum Vitae of all officers and or owners of the business		✓	✓		✓	Will highlight the special education and qualifications of the individuals running the business. This is related to the business valuation (replacement compensation) issue and any separate versus community property carve outs (Van Camp).
All evidence constituting any gifts of stock of the company including gift tax returns, correspondence, stock certificates			✓	✓	✓	Will establish timing of transfers of ownership and intent. Will assist in the carve out of separate versus community property interests at dates of transfer of ownership.
List of equipment with their respective fair market values	✓	✓	✓		✓	Tax returns rarely have meaningful detail on the description of company assets. Having a list provided can be comparable to a site visit. In addition, separation of leased assets versus owned assets can be made. Business owners often have a good idea of the value of the assets used in a business. If a separate appraiser needs to be brought in to appraise the equipment, a list will provide a starting point.

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Leases	✓	✓			✓	These documents would give clarification of obligations, short and long term. Further, they would give an idea of the ability of the company to remain at their current location. If there are related party lessors it can help determine if an adjustment needs to be made to a business valuation in the income of the business. Can assist in the determination of personal expenses included in the business expenses (perquisites).
Partnership agreements, joint venture agreements	✓	✓	✓		✓	Will establish investments, which may have been made by the company being analyzed, for money that may have been put into other companies or investments. Documents requested would give insight into the cash or income restrictions associated with the investment, etc. Will assist in determining if the investments are operating or non-operating assets of the business analyzed.
Employment and bonus agreements	✓	✓				Will establish contractual obligations of the company for compensation to employees and owners.
Escrows, deeds, etc.	✓	✓	✓	✓	✓	Will establish terms and title to any real property purchases. Also will establish any restrictions on the use of the property and the salability of the property. Will assist in determining if assets acquired are operational assets of the company. May disclose assets previously unknown due to ease of acquisitions made without spouse knowing.

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	Income Available	Business Valuation	Tracing	Reimbursements	Other	
Loan agreements, etc.	✓	✓				Will establish contractual obligations of the company for requirements of the lender for maintaining certain ratios and restriction on salaries of owners, etc. Will affect the computation of value in the business.
Schedule of officer loans, distributions, salary and draws	✓	✓	✓	✓		Will establish the owner's potential to remove money from the business.
Any and all financial budgets and projections	✓	✓				Projections will disclose working and capital requirements. These will directly affect earnings and valuation calculations.
Schedule listing the top five (5) customers/clients in terms of revenue by year for each of the last five years prior to the valuation date and the revenues earned from each of these customers by year	✓	✓				The amount of risk a business has can often depend on the concentration it has in the number of customers. It will help answer the question as to whether a business has a large number of customers with small amounts of sales each or a small number of customers with large sale amounts. The risk assessment by the appraiser could be different for each. Therefore the capitalization rate would most likely be different for each.
A list of order backlog and monthly backlogs for the last three years	✓	✓				Many times a business, after the date of separation, slows down. Analysis of order backlogs can demonstrate if customer sales are suddenly being held back or whether backlogs are normal. This can affect profitability and valuation.

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A list of major competitors and their locations	✓	✓				The amount of competition is a factor every business faces every day. The appraiser should be made aware of factors such as these in their assessment of risk of the business. Is this a business that is highly competitive with a low cost of entry for new competition or is there a little competition with a high cost of entry as a barrier?
List of trade associations the business is aware of related to the businesses products or service	✓					Trade associations often deal with the issues related to a particular industry. In the process of assigning the risk of a particular business, insight as to the current issues currently affecting the industry is discussed.
List of any issues the business operator feels would affect the valuation of the business		✓				It is important that if the owner knows of something that would affect the business and the valuation of such that the appraiser is not surprised at a later date by something that was not disclosed.
Financial forecasts	✓	✓				Will establish the direction the company is heading including expectations of the current management. Will also assist in the valuation of the company.
Work in process reports	✓	✓				The proper evaluation of the profitability and value of a business includes work which is billable that has not yet been billed. This can uncover assets heretofore undisclosed. Analysis of the specific make-up of the work in process will allow the proper valuation of the amounts shown.

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Agreements regarding barter and their historical use in the business	✓	✓	✓		✓	Will help establish transactions which may not be reflected on the books and records. May include benefits enjoyed by the operator of the business which would normally be included in their income.
Reports of any consultants or appraisers performed within the past five years	✓	✓				Prior appraisals prepared for any purpose (buy-out, loan application, employee stock option plan, etc.) can assist in the proper evaluation of the value of the business. Reports may contain assumptions regarding perquisites, rents, etc., similar to those necessary at the time of the engagement valuation date.
All agreements with any customers or vendors accounting for greater than 10 percent of revenues or purchases		✓				The concentration of suppliers or customers is a valuation issue an appraiser needs to analyze in order to determine the appropriate level of risk of the business. This risk translates into a capitalization rate or multiple.
Certified Public Accountants workpapers	✓	✓	✓		✓	Often times the books and records are given to their accountant to make adjustments as they see fit in order to produce financial statements and tax returns. Having their workpapers will provide the “link” between what the business has and what the accountant documents show. Will help establish reasons for adjustment to the books and records of the company for various purposes, including tax adjustments. Further, the CPA may maintain records of the company which the company does maintain itself.

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Item	Can be used in the following areas					Purpose
	Income Available	Business Valuation	Tracing	Reimbursements	Other	
Detailed inventory listing at valuation date	✓	✓	✓		✓	The amount of merchandise inventory is a critical element in the determination in the profitability in an income statement and the value of the asset as of the date of valuation. The income statement and the balance sheet can directly be effected by merely using a different number for inventory than actually exists. For every dollar the inventory is understated the profit is understated one dollar and the balance sheet is understated one dollar. Having detailed inventory figures allows the ability to further analyze information such as inventory turnover.
Computer records-business	✓	✓	✓	✓	✓	This information will assist in the analysis of the detailed information contained in the books and records of the company. It will allow for efficient analysis of payments of all types, including personal and business. Having access to the computer program without restriction as to passwords and other restrictive codes will enable an even playfield for both parties, not just one.
Personal Computer records	✓	✓	✓	✓	✓	This information will assist in the analysis of the detailed information contained in the books and records of the individual. It will allow for efficient analysis of payments of all types, including personal and business. Having access to the computer program without restriction as to passwords and other restrictive codes will enable an even playfield for both parties, not just one.

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	Income Available	Business Valuation	Tracing	Reimbursements	Other	
Personal Judgments and legal filings for lawsuits	✓		✓		✓	These documents can contain information on assets and liabilities of the community.
All personal insurance policies including medical, disability, equipment, auto, umbrella policies etc.	✓	✓		✓	✓	Having access to documents of this type will disclose who is covered under health insurance, whether disability insurance is or is not available in the event of an occurrence, who pays the premiums for the policies (possible prerequisite if paid by a business) life insurance policies may serve as a source of funds for litigation costs and security for the payment of child support, spousal and unpaid equalization payments.
Personal Pension plan and profit sharing individual participant account statements and the federal tax return Form 5500	✓	✓	✓	✓		Will assist in establishing benefits received by the owners as part of their overall compensation. May disclose marital assets and separate and community property portions.
Personal Access to stockbroker transaction and settlement statements	✓	✓	✓	✓	✓	Having access to these documents will assist in the tracing of co-mingled accounts. This would include the transfer between accounts. May determine source of funds used for claimed reimbursements or support payments as a source of separate and community property. Can also establish accounts unknown to the spouse not in control.

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Item	Can be used in the following areas					Purpose
	Income Available	Business Valuation	Tracing	Reimbursements	Other	
Personal Access to savings account and money market passbooks or statements and certificates of deposit	✓	✓	✓	✓	✓	Having access to these documents will assist in the tracing of co-mingled accounts. This would include the transfer between accounts. May determine source of funds used for claimed reimbursements or support payments as a source of separate and community property. Can also establish accounts unknown to the spouse not in control. There are times, when a spouse wants to hide income from the IRS and deposit the money in a non-business account. A cash flow analysis can uncover this instance if the records are available. Will also be relevant to a lifestyle analysis.
Monthly credit card statements with debit and credit slips, registers, and reconciliations	✓	✓			✓	Will assist in a lifestyle analysis for permanent support baseline. The source of payments on these cards can establish sources of additional income if paid by a source other than personal origins.

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