



## Standards of Value

### Fair Value

Fair value is the standard of value that is used in cases primarily involving dissenting and oppressed stockholder actions.

The definition for fair value is determined by state law and varies from state to state. It is a legal term and not an appraisal term. However, if a state has adopted the Uniform Business Corporation Act, fair value is defined as “the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.”

Below is a side by side comparison of fair market value and fair value. This should help you in defining fair value as it applies in your situation and state.

<u>Fair Value</u>	<u>Fair Market Value</u>
Not always a willing buyer and seller	Considers a willing buyer and seller
Buyer not always compelled to buy	Buyer is not under compulsion to buy
Seller is under compulsion to sell	Seller is not under compulsion to sell
Considers only a seller	Assumes a hypothetical buyer and seller
Price that is fair to the seller	Price is fair to both buyer and seller
Equal knowledge is not assumed	Buyer & Seller has equal knowledge
Reasonable knowledge is not assumed	Buyer & Seller has reasonable knowledge
Applies to minority interests only	Applies to controlling or minority interests

As you may have gathered by now, to obtain a definition for fair value is somewhat elusive. To help you in defining what fair value is for you, keep in mind these facts; 1.) Fair value is primarily used in dissenting and oppressed stockholder actions, 2.) Fair value deals with minority interests, and 3.) Is a minority interest usually a “willing” party to events that caused the dissent? It is up to you and not the appraiser to define fair value.

Remember! Refer to state law to aid in defining what fair value means, and whether your state has adopted the Uniform Business Corporation Act. One last note, fair value is **NOT** synonymous with fair market value.

You may be asking, “Does divorce fall into the standard of fair value?” Not necessarily. Each divorce case can and does have its own standard of value. State law, in addition to many other factors, will determine which standard of value to use in divorce cases. We will not discuss divorce in these monthly educational pieces. If you would like more information, I invite you to contact me.

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