MARRIAGE, A LIMITED LIABILITY PARTNERSHIP

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When "I do" becomes "I don't" married couples face agonizing emotional and financial quandaries. What do we do with the kids. the house, the dog, the boat, etc. How do we divide up our investments, retirenieiit accouiits. real estate, etc? But, what about the businessowner going through a divorce? What are the consequences to your business during this time? Your business inay be a professional practice (medical, legal, real estate) or retail (restaurant, store) either type may be negatively affected by the divorce if you do not take the necessary precautions.

Business owners going through the big " D are often blindsided to find out their business inay be at stake during divorce proceedings. This is true even ifyou owned the business prior to the marriage and your better-halfnever assisted you with or had any interest in your biisiness. If your business wascreated during the marriage the court will probably find that your spouse has some moiietary interest in the business whether or not he or she even knew what type of business you ran. The phrase "time is money" has iiever hit so hard seeing as while you are.married your time is considered a marital asset. If you used that time to work on your business, you are using a marital asset to run your busiiiess, and so the marriage may acquire an interest in the business.

Texas beingacommunity property state, entitles your spouse to one-half of the value of your busiiiess if started during the marriage. A business started duriiig marriage with joint funds, is community property in Texas. A business that was already running or was created with separate funds is more complex, since the community interest may involve joint funds used to expand the business and any appreciation attrihuted to that contribution. If both spouses played a role iii the operation, the contributionofeach person must be considered. Even if no joint funds are contributed. a marital interest may exist and shouid be reviewedby afamily law attorney. Thekey elements todetermine whether the property is community or separate are: the source of funds for the startup business, the date of marriage, the date of valuation due to divorce, and the contribution of each spouse to the business.

Furthec you may have a fiduciary duty to your soon-to- be-ex to run the business to the best of your ability and create the biggest profits that are reasonably expected. In otlier words, you cannot create losses in the year running up to your divorce. The best course ofaction is to have an accountant or financial planner evaluate your busiiiess to determine its fair market value and predicted value based on current market trends.

Valuing a busiiiess is a very complex task, requiring the assistanceofa professional business appraiser. Theappraiser niust be skilled in identifying the relevant information and applying the appropriate valuation methods. The relevant information will include both quantitative and qualitative information. The appraiser selects appropriate valuation methods based on factors such as characteristics of the subject business and the availability of relevant information. All valuation methods fa. within three categories: the market approach, the income approach, and the asset approach. The appraiser must have a thorough understanding of your business. In order to save money when employing an appraiser, organize your documents and provide a full set to your own lawyer and business appraiser, as well as to those of your spouse.

With all of this to consider, one cannot forget the silent partner in your business and marriage – Uncle Sam. There are many tax considerations. good and bad to be aware during a divorce. In cases where both spouses are shareholders or partners and one buys out the other through the divorce settlement, there are usually no income tax ramifications. Make sure your lawyer sees that no language in the agreement results in tax liability to the spouse who is selling hisor her interest in the business to theother spouse. Have your accountant or lawyer (handling your divorce) meet with your accountant who represents your business to structure the transition of business ownership, in order to assure no disruption of day-to-day operations while also protecting the interest ofboth spouses.

Business owners are well versed in the world of write-offs when it comes to paying taxes, favorably, Uncle Sam can be a welcome relative during the divorce as you may write off the cost of the proceedings. The portion of the cost of your divorce which relates to tax and financial advice is deductible on Schedule A of form 1040. To substantiate this deduction you should obtain a statement fmm your lawyer delineating the cost of legal services andtheamount attributable to tax and financial advice. Normally, the deductible portion of your divorce runs from one-third to one-half ofthe total cost. In order to deduct legal fees, you must be filing Schedule A (itemized deductions) and your deductible divorce fees must be greater than two percent of your income.

In theend, the issues that face a business owner going through a divorce may be insurmountable. Therefore,as a business owner contemplating divorce you should keep detailed records or hire someone to come in and get your records up to date, have a realistic valuation done on your business and resist making any major business investments or incur major expenses in an effort to limit your financial exposure. There are ways to limit the financial risk of your business, for example, by altering the structure of the business entity. You could change the structure of your business and re-file it as a limited liability corporation. Most importantly you shouid consult a competent accountant and divorce lawyer as soon as you see the writing on the waii. Ultimately, you may not save your marriage, but at least you can remain married to your work. ☐

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