Business Ownership and Divorce

Divorce Can Impact the Future of Your Business. What Should You Be Thinking About Now?

As a business owner, you've spent time and energy building a successful business. Along the way, you got married and, like anyone, expected the marriage to last a lifetime. But as with many things in life, it didn't work out as planned. Now you're asking yourself what impact your impending divorce may have on your business.

Will you be able to keep the business or be forced to sell it or split it with your spouse?

Were there any agreements or structures put in place early on that could help now?

How can you protect this most valuable of assets and move forward?

Unfortunately, your situation is not terribly uncommon. Recent statistics show that in the United States, about two in five marriages (39%) end in divorce†. Of particular concern to small business owners may be the dramatic increase in so-called "gray divorce," meaning couples that divorce at age 50+. Gray divorces have roughly doubled since the 1990s‡. By the time they've reached their 50s and beyond, couples are likely to have accumulated significantly more assets than they had when they were just starting out. They have much more to lose in a divorce, including possibly the business that they've worked so hard to build.

Regardless of your age or individual circumstances, any business owner considering divorce would be well-served to consult with their trusted advisors and carefully think through all their options and the potential financial consequences of each before taking action.

"No matter what the circumstances, going through a divorce is hard. We can't make it a completely painless process, but we can help mitigate the damage to your finances and provide guidance on steps you can take to protect your business. You don't have to navigate this difficult period on your own and, while it may seem hard to imagine in the moment, you will get through it.§"

— Dan Griffith, Senior Vice President and Director of Wealth Strategy, Huntington Private Bank®

START WITH UNDERSTANDING CONCEPTS AROUND THE DIVISION OF ASSETS

To know what could be at risk in a divorce, consider the difference between separate property and marital property. Property or other assets acquired prior to the marriage, such as a home, retirement account, or inheritance, for example, generally are considered separate property, while anything acquired afterwards is generally considered marital property. The same is true for a business. However, appreciating value of certain assets occurring after marriage may be generally considered marital property, owned by both you and your spouse. Or let's say you started a business prior to the wedding but then your spouse became involved with it and you co-mingled business funds with personal funds. In this case, a court could look upon the business as marital property.

In community property states, judges split assets down the middle, but the majority of states operate under equitable distribution rules. In those states, judges have more discretion to consider other factors, including fairness, a spouse's ability to support themselves independently, and the duration of the marriage.

REVIEW ASSET PROTECTION AGREEMENTS THAT MAY ALREADY BE IN PLACE

Your business structure or agreements put in place before the marriage may provide some protection for your business. For example, if the business is an LLC and was structured such that it forbids transfer of shares to any third-party without the approval of all the partners, the business may be out of reach in a divorce. The same holds true if a buy-sell agreement is in place. Another example is if the business was put into a domestic asset protection trust prior to the marriage. A DAPT enables the person who creates the trust to also be a beneficiary. This type of trust is irrevocable. Once you put an asset into it, you cannot go back and change your mind and take it out. On the upside, a DAPT protects the asset from being considered marital property.

DETERMINE THE CURRENT VALUE OF THE BUSINESS

Regardless of prior agreements, ideally your business valuation will be current. Regular business valuations done every year or two can make the inevitable negotiations that happen during divorce proceedings easier; since at least the value of the asset itself will be less subject to debate.

If you need to get a business valuation, there are several different approaches to consider, including asset, market-based, and income approaches. The asset approach takes into account the assets minus the liabilities and sets a value based on the expected proceeds from a liquidation. The market-based approach takes into account the value of other comparable businesses, while the income approach calculates value based on earnings. The best method to use depends on the type of business. An accountant or other business valuation professional can determine which makes the most sense.

IMAGINE YOUR IDEAL OUTCOME

What a couple wants to do about a business may depend on the state of their relationship at the time they decide to divorce. If a couple both have a financial interest in the business and their divorce is amicable, they may want to maintain joint ownership where both remain involved. However, they may prefer instead to part ways and not continue as co-owners.

If this is the case, one option may be to sell the business and split the proceeds. While that option may seem the simplest, it often may not be the most desirable. You may be forced to sell the business at a suboptimal time when its value is not the highest, or you may want to keep the business as an ongoing concern. If that is the case, it may be best to buy out your spouse, by offering them cash or some combination of assets that would be equal in value to their share of the businesses, such as a vacation home or securities in an investment account.

SECURE YOUR FUTURE

Conflicts inevitably arise in a divorce given the competing interests of each side, but there should be no competing interests among your advisors when it comes to your finances and your business. That's why having a team of trusted advisors who work well together is so important. Advisors who aren't closely aligned or who don't have a full picture of your situation may unintentionally end up working at cross-purposes. But a trusted advisor with a team of specialists who understand your needs and circumstances and are aligned around your goals will help keep you on the path to a secure financial future.

A divorce is stressful no matter how you look at it and having a business in jeopardy raises the stakes even more. A Huntington Private Bank® advisor can help you find ways to navigate the complexities and plan for the future.

AT HUNTINGTON PRIVATE BANK, WE'RE HERE TO HELP

We've helped many people with similar challenges start meaningful conversations. Our team of advisors has the depth and breadth of experience to offer customized solutions.

Visit **huntington.com/PrivateBank** to learn more.

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† *Luscombe, Belinda. The Divorce Rate Is Dropping. That May Not Actually Be Good News. Time. November 26, 2018.*

‡ *Stepler, Renee. Led by Baby Boomers, divorce rates climb for America's 50+ population. Pew Research Center. March 9, 2017.*

§ *Dan Griffith interview, July 26, 2021.*