

The High Stakes of Divorce for Business Owners

By Kathleen M. Newman

Divorce can be traumatic for anyone, regardless of what they do professionally, the size of their income and assets, and whether or not there are children involved. For business owners who have spent years building a successful business, a marital separation and divorce can be fraught with additional concerns. Besides sorting through the often searing emotional pain of separating from your spouse and children, there are equally deep worries about protecting the value of what may be your largest asset – your business.

In this article, we will discuss a few considerations unique to high-asset business owners going through divorce and outline how the process will unfold over the next several months so that what now may seem alien or even frightening won't be completely overwhelming.

Kathleen M. Newman has experience in all aspects of marital dissolutions, and has represented individuals on complex matters involving business ownership, valuing professional practices and financial analysis. Kathy sets herself apart through her strong advocacy of custody, support and parenting agreements. A board-certified trial advocate in family law, a skilled mediator and a certified life coach, Kathy is also a fellow in the American Academy of Matrimonial Lawyers. Among her accolades, she has been consistently named a Top 40 Super Lawyer for family law and one of the Best Lawyers in America in family law. For more information, please visit www.kathynewmanlaw.com.



Temporary Orders

It is vital to reach a temporary agreement with your spouse as quickly as possible. As most couples separate their households upon the filing of a divorce, you will have to find a way to temporarily manage two households on the income that formerly supported one. A reasonable couple will realize that this is just a temporary arrangement until the divorce is finalized, and not spend an enormous amount of emotional and financial resources on issues that are only temporary in nature. A temporary stipulation is filed with the court and spells out things such as temporary child and spousal support, temporary custody and parenting time, home occupancy and management of a business until the divorce is final.

Dividing Assets

Minnesota is an equitable distribution state, meaning that, in most cases, absent a prenuptial agreement, marital assets are equally divided. This includes the value of the marital business. Even if a spouse is not involved in running the business, the value of the business will be divided as part of the overall asset division. Usually, the business is valued and the managing spouse is assigned that value on the marital balance sheet while the other spouse receives other assets of equal value, such as the home or retirement assets. Sometimes the spouse managing the business pays out one half the value of the business in a cash property settlement, sometimes paid in installments.

Valuing Your Business

I've had divorcing clients say to me, "I don't want my ex to be a partner in the business now that we're splitting up." Generally speaking, this isn't really a worry. What your spouse likely wants is their share of the value of the business, not to be a "silent partner" in it through the years. However, some businesses are difficult to value, or a synergistic sale is expected to

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happen sometime in the near future, and in those rare cases, the non-managing spouse may want to retain an interest in the business to reap their share of the profit when the business is sold.

Your attorney will help to select a qualified business appraiser who will work with you to establish the value of your business. An attorney will know who the qualified valuation experts are in the county where the divorce is filed and will help to choose one who is not only extremely competent to value the business, but, as important, one who also has the ability to persuasively testify to the judge regarding why the court should accept your value, as opposed to the value found by the opposing party's expert.

Often, the attorneys and parties will agree upon one expert to act as a neutral to value the business. This can save the parties a considerable amount of money and prevents a "battle of the experts" if the case is litigated.

Once an expert has been identified, you and your attorney will have an initial conference with the expert to establish that there are no conflicts, that the expert has sufficient experience in the particular area in which your business operates and to discuss the parameters of the engagement. A separate retainer letter and retainer will be required by the expert once he/she had been chosen.

After reviewing financial documents, the expert will examine the business premises and interview management, the business accountant and often the non-involved spouse. The expert will not, however, conduct depositions, subpoena bank records or prepare interrogatories and other discovery. This is where your divorce attorney steps in, making sure that the expert gets all of the information needed and providing him or her with any relevant information found in the discovery process.

Choose Your Attorney Carefully

It is not uncommon for some clients who own their own businesses to ask their company's attorney to represent them in a divorce. But few divorces end up as simple as they seem at the outset, even when the couple believe they've agreed on the details. Retaining a family law attorney who understands the unique issues that arise for individuals with significant assets and who own their own businesses will ensure that your agreement meets Minnesota's often complex divorce laws.

Managing Expectations

It is not uncommon for clients going through divorce to begin the process with unrealistic expectations about the ultimate outcome of their divorce, how long it will take and what it might cost. They may base their expectations on the experience of friends and colleagues, or on something they read on the Internet. At your initial meeting with your lawyer, expect to discuss the range of possible outcomes, how long things may take, and what your costs may be in addition to sorting through the unique intricacies that you are faced with as a business owner. Just as you are the expert in running your business on a day-to-day basis, a well-chosen attorney who is experienced in complex family law matters and high-asset divorce will help ensure the best possible outcome for you both personally and professionally.

Complex Problems. Solutions Delivered.

We focus first on your business problem — then we formulate a customized solution for you. Our **business-minded focus and depth of experience** allow us to out-think the other side, and puts us in a prime position to untangle the issues and solve your problem.



We are proud to have built our reputation on our successes in the courtroom.

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