

Divorce and the family business

Written by Australian Business

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Article provided by Baysinger Henson Reimer Shaddix PLLC Visit us at <http://www.bhrsllaw.com>

The divorce rate in the U.S. averages 3.6 of every 1,000 residents, per the Center for Disease Control and Prevention. In Oklahoma, the rate is even higher with 5.2 out of every 1,000 people getting divorced in 2011.

A divorce can be a devastating life event. When husbands and wives working together in a family business face a divorce, the possibility of professional upset as well as the personal turmoil only increases the difficulty experienced during such a time. It is important to understand Oklahoma's laws and how family businesses fit into a divorce and property distribution situation.

What is "equitable distribution?"

A business will need to be valued for a divorce proceeding whether it will be kept by both spouses, by only one spouse or will be sold or shut down completely. Often, people assume that if both spouses work for the business, its value would be split evenly but that is not necessarily the case.

Divorces in Oklahoma are subject to the concept of "equitable distribution." This means that asset division reflects what the court considers to be a fair distribution of all assets, not necessarily completely equal. This includes the family business.

Factors affecting business valuation and distribution

Just as with any other asset in a divorce, the courts will need to determine what portion of the business is a marital asset and what may be the separate property of only one spouse. Some factors to be reviewed include:-When the business was started.-What portion of profit is generated by each spouse.-Whether the business is "property" or "income."

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If the business was originally started by one spouse prior to the marriage and the other spouse joined after the marriage, some portion of the business' value will likely be considered the separate property of the original founding spouse.

If the business in question is a consulting company and one spouse is the subject matter expert who provides the consulting and the other spouse provides accounting and general business management functions, the consulting spouse may be credited with a higher percent of profit generation as it is his or her direct work that generates the income.

Smart planning can reduce the headache

One way that business owners can help reduce the challenges associated with valuing a business is to set up a shareholder's or operating agreement from the beginning. This will identify how the business should be valued in the event of a divorce or any situation where any partner, spouse or otherwise, wants to leave the business. This can often make the difference between saving the business and losing it.

Whether or not you have a shareholder's agreement in place, working with a legal professional that has experience in family businesses and divorce is paramount to ensuring that you receive a fair settlement.