If You Get a Divorce, Will You Still Control Your Business?

By Paul Nelson, Esq.

"If you fail to plan, you are planning to fail." Benjamin Franklin said this a couple hundred years ago, but its wisdom remains just as potent today. Any successful businessowner knows thaat to survive in a competitive environment, let alone prosper, careful planning is essential. One must weigh likely future demand for one's products or services against the predicted cost and myriad other factors.

It's also not only critical to prepare for likely events, but unlikely ones as well. Which is why a well-run company will have insurance against fire, theft, the loss of key personnel, and even lawsuits.

Risky Business
But how many business owners also plan how to maintain control of their company in the event of divorce? It's a contingency few consider a threat. If you believe you're in a happy, stable marriage, making plans to prevail in the event of marital dissolution feels like undercutting the trust upon which your union is built.

This mindset can be highly risky. Ignoring the dangers a divorce poses to your business you spent a lifetime building is tantamount to going without health insurance or driving without a seatbelt. It's professionally irresponsible. Why? What can happen to a privately held business in the event of divorce can be devastating — especially where we live.

Half of Your Company?
California happens to be a community property state. This means, in the event of divorce, a couple's assets are divided equally between them. Such property not only includes homes, vehicles, cash, jewelry, and other personal items, but also business assets that may be owned individually or jointly by the spouses.

As a result of this reality, the person who owns a small business/sole proprietorship, is a partner in a firm, or owns stock in a corporation, may have to surrender half the value of such interests to their spouse in a divorce. This can force a divorced individual to buy out his/her "ex" to regain control of the business, a potentially expensive and not always doable proposition.

Fortunately, there are ways to plan for such a contingency. One strategy involves reducing the perceived value of the asset so when it comes time to split it in half, the loss is minimized. A skilled forensic accountant can employ numerous strategies to accomplish this goal, including:

- Reducing owner's draws
- Separating the value of the business built before a marriage from its value achieved after nuptials
- Determining what value, if any, the spouse has in the business
- Minimizing the business' total value for community property purposes

Having an experienced, knowledgeable divorce attorney steeped in California community property law is also critical to this process. Such an attorney can help you with the considerable planning that goes into maximizing one's return while minimizing what you pay for it.

Ultimately, even if you consider your marriage to be as solid as Gibraltar, divorce planning should be just as important to you as business planning, financial planning, and estate planning. As another adage so eloquently reminds us, "It's better to have it and not need it than to need it and not have it." Truer words were never spoken.

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