



It Can Be Complicated

Family businesses are everywhere in Central Florida. Many of these family-operated ventures were forged out of the blood, sweat and tears of tenacious couples who shared a common dream. Other enterprises existed well before marriage, but have garnered success in large part through the love and encouragement of a supportive spouse. In most cases, the family business is the largest and most complicated asset that both spouses hold. However, with 50 percent of first marriages, 67 percent of second marriages, and 73 percent of third marriages ending in divorce, what happens to this asset when a marriage heads south? And what can a spouse do to protect their interest in the family business? Consider the following three ways a family business complicates a Florida divorce:

Your Business Must be Valuated

In order to obtain a divorce in Florida, both spouses must fully disclose their individual financial positions, including all income, assets and liabilities. The court then uses each spouse's financial disclosure to determine alimony, child support, and the equitable distribution of marital assets and liabilities. When a family business is involved, part of this financial disclosure process includes the valuation of that business.

Anyone remotely familiar with corporate mergers, purchasing, selling or liquidating a business can testify that accurately valuating a growing company can be overwhelming. Between asset-based valuations, liquidation values, income capitalization, and hiring a forensic accountant, valuating a family business will also involve emotional ties with the enterprise. In a contested divorce, each spouse will have their own goals and own valuations of what the business is worth in order to achieve those goals. Therefore, it is crucial to have an experienced team of attorneys, accountants and business experts on your side to achieve the most beneficial valuation of your family business for you.

Your Business is Subject to Equitable Distribution

In determining how to equitably distribute assets and liabilities, the presumption is that the court will divide marital assets and liabilities as fairly as possible among both spouses. Because a family business is likely the largest marital asset both spouses hold, decisions must be made as to how the venture will be divided. Absent a valid prenuptial agreement to the contrary, both spouses can claim an equal interest in the assets and liabilities of the business.

Where spouses cannot agree on what to do with a family business, a spouse may request and the courts have the option to order the liquidation of the enterprise. Each spouse may then receive their share of the proceeds from the sale of any assets, assume responsibility for their share of the liabilities, and the family business could end as a growing company. Accordingly, negotiations between the spouses may prove essential to the livelihood of the business for which they have worked so hard. A team of attorneys experienced in divorce negotiations and mediation can ensure that the family business continues to thrive.

Your Business Must Continue to Function through Divorce

Your business does not pause just because you or your spouse files for divorce. Employees and debts must be paid, income must be generated, and operations must continue as normal. While this obviously makes sense from an entrepreneurial perspective, it is also crucial to the success of your divorce case. Marital waste occurs when a spouse sells or contributes to the diminution in value of a marital asset. A court could deduct any wasted amounts from the wasteful spouse's equitable distribution or alimony.

In terms of your family business, this means that you must take care to conduct your business in a responsible and prudent manner. Mere accusations of marital waste regarding your family business can tie up an otherwise straightforward divorce, increasing legal costs, time, and aggravation for everyone involved. An experienced attorney will know how to protect you and your business and can advise you on how to maintain operations through the use of injunctions, liens, special masters and other tools.

Owning or working for a family business only magnifies the complexities and stress of divorce. If maintaining your family business after a divorce is important to you, it is essential to have a team of business-savvy family attorneys on your side who have the tools and knowledge to help you achieve your goals.



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