

Breaking Up Is Hard (For Business Owners) To Do

Building a business can be similar to having a child. You give birth to a new business; nurture its growth; manage risk and delight in its achievements. Therefore, when it comes to divorce, the division of a business and its assets can lead to bitter contention.

The first step? Contact a family lawyer. Even if you and your spouse are communicating, it is crucial to have independent legal advice. Decisions you make regarding the division of your business and personal assets will affect your financial future for many years. An experienced family lawyer can provide constructive, pragmatic advice. A good family lawyer supports couples in working out their financial settlement, in the hope of not resorting to court proceedings.

How Business Assets are Treated Upon Divorce

Generally, the starting point for a financial settlement is a 50/50 split. The law says that various factors (under s. 25 of the Matrimonial Causes Act 1973) apply when considering a fair outcome. These include the income and earning capacity of each party; the needs of the children, and the standard of living enjoyed by the parties during the marriage [1].

To begin this process, the business and/or its assets will need to be valued. For some businesses, the value of the business is not in the assets but in the invoices and goodwill.

If one spouse has little involvement in the day to day running of the business, a division might be achieved amicably by awarding the business and its assets to the spouse who created and operates it, whilst giving the other spouse a larger share of the personal assets, such as the family home, cars, and pensions.

It can be a huge challenge for a couple to resolve matters in a calm, open manner. A collaborative process and mediation can be of great benefit here. Lawyers and trained mediators are committed to achieving a win-win result for the couple.

Coping if Things get Tricky

You may come to a deadlock situation just when a decision needs to be made about the business, e.g. extending a commercial lease. This could result in winding up the business, thus affecting your lives and any employees also. Your lawyer can work to negotiate agreements to ensure such a situation doesn't arise.

Do give consideration to the alternative dispute resolution paths: mediation, collaborative law and/or arbitration. However, if approaching the court seems inevitable, you will need to attend a Mediation Information and Assessment Meeting (MIAM) prior to being permitted to file for court proceedings. The main exceptions to this rule are cases where domestic abuse has occurred.

Protecting your Business in case of Divorce

If you believe your marriage is in trouble, or you simply want to ensure the organisation you have put your blood, sweat, and tears into is not destroyed should your relationship not survive, consider taking the following actions to protect your enterprise:

- Keep clear financial records, including as to loans and repayments and ensure that all of your commercial contracts are well-drafted and robust.
- Have a pre or post-nuptial agreement drawn up, detailing how the business will be treated if you and your spouse separate, including restrictive covenants to prevent your spouse from stealing clients, trade-secrets, and/or setting up in direct competition.
- Draw up a founders', shareholders', or partnership agreement, stating the duties and responsibilities of all parties to the agreement and how disputes should be managed.
- Make sure your Intellectual Property is protected and sign it over to the company rather than hold it in your name.
- Make appropriate provisions in your Will and keep it revised and updated to reflect any changes.

A business can be a considerable asset in a divorce settlement. Make sure your interests and the future interests of your company are protected by seeking expert legal and accountancy advice.

Bennett Griffin now offer a fixed fee divorce package starting at £400* plus VAT for a Respondent divorce (plus court fees). Contact one of our specialist family team to find out more on 01903 229999.

*T&Cs apply

N.B. The reference throughout this article to divorce or marriage breakdown is intended to include the breakdown/dissolution of a Civil Partnership and the reference to spouse is intended to include civil partner.

[1] <https://www.legislation.gov.uk/ukpga/1973/18/section/25>

The information contained in this article is for general guidance only and is not intended to be legal advice. Professional advice should always be taken on the application of the law in any particular situation.