

Separating a Business in Divorce: How Buy-Sell Agreements and Other Strategies Can Protect Partners and Shareholders

By John Bovis March 26, 2018

Like all assets, businesses may need to be divided in a divorce case. This presents unique challenges for spouses looking to protect their financial interests and prevent losses or disruptions in their business operations.

Some companies must consider multiple partners and shareholders who may also be impacted by a divorce.

Consulting with a family law attorney gives you the legal strategies you need to protect your business assets and the wellbeing of everyone involved.

Business Assets in Divorce

The assets of your business can be deemed “marital property” if you and your spouse created the business during the marriage period.

But most business owners overlook the key steps that can prevent many of the issues related to businesses in divorce.

Buy-sell agreements allow partners to prevent losses related to divorce, death, retirement, or bankruptcy. This agreement includes terms that dictate how business assets will be handled when a partner leaves the business.

This allows partners to dictate who can take over the share of the business left behind by a divorcing partner and at what price that interest can be sold.

Buy-sell agreements allow spouses and other business partners to make important decisions before they face significant changes. This makes it easy to transition partners out of the business during a divorce.

What's Your Business Worth in Divorce?

Separating a business also requires that you determine the value of your business and ownership. Expert witnesses may be called in to evaluate a business, its financial records, and other measures of its value.

Appreciation of value and other changes that occurred during the marriage must also be considered. There

are many ways in which businesses are valued including the market approach, income or capitalized earnings, and cost approach methods.

Family law courts determine what method is used in valuating your business. In cases where one spouse will retain all or a majority of shares, the courts may grant “business alimony” to the spouse who has no interests in the business.

This is one way to offset the business shares awarded to the other party and ensures that non-owners achieve the financial resources they need in divorce.

The process of valuating a business can lead to additional expenses related to the gathering of financial records and other information. In addition, a business entity may challenge requests to obtain financial records, further complicating your divorce.

Expert witnesses can be costly. Spouses may choose to use one business evaluator if there are no disagreements. Otherwise, they may choose to hire their own.

Separating and Protecting Business Assets

Your family law attorney can help you determine what assets are subject to division in your divorce. Assets must be classified as “marital” or “separate” depending on the timing and manner in which they were acquired.

Existing pre- or post-nuptial agreements must be included in the process. These agreements can eliminate the need for the courts to decide on how business assets will be divided.

Business assets that were acquired before the marriage are generally not subject to equitable division. However, these separate assets are often commingled in a business owned by both parties.

This may cause them to be viewed as marital property and divided along with other business assets.

It’s important to have a detailed list of all assets so that you can determine which ones will be viewed as marital property by the courts. Assets may be equitably divided. But this doesn’t mean an equal split in all cases.

Your family law attorney will give you the information you need to protect your business in a divorce.

Buy-sell agreements can be used to protect partners and shareholders from the impact of a divorce and other changes.

Understanding how business assets are divided in Georgia family law courts helps you protect your business and secure your financial wellbeing for the future.