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Separating a Business in Divorce: Prenuptial and Postnuptial Agreement Protection

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Divorce can be painful, time-consuming, and costly. But the work required to protect your assets is even harder when there is a business involved.

Business assets may be subject to separation in a divorce. So both parties need to understand the different ways in which they can avoid the pitfalls that result in financial losses.

The following will help you determine if a prenuptial or postnuptial agreement is the best option for you. Knowing their benefits and limitations makes it easier to protect your business during and after your divorce.

Business Risks in Divorce

Equitable distribution is the process by which assets are divided between both parties. The courts must determine the value of assets while identifying those that are classified as “separate” or “marital”.

Separate property includes assets that were acquired by each party prior to the marriage and is generally not at risk of division in a divorce.

Marital property includes the assets that were acquired during the marriage period. Real estate purchased by both parties, financial resources contributed towards the marriage, and other assets can fall under this category.

Marital property is typically subject to equitable distribution along with separate assets that have been commingled.

Your business may be viewed as marital property. As a result, courts must determine its fair market value when deciding how a business will be divided in a divorce case.

A Prenuptial Agreement Can Protect Your Business Assets

Prenuptial agreements are the most common way that couples protect themselves from divorce. They’re created before the marriage and outline the ways in which assets will be divided should a divorce occur down the line.

In community property states, prenuptial agreements have the legal power to override existing laws related to the division of property. As a result, a prenuptial agreement is a powerful way to protect your business.

But the terms of a prenuptial agreement may not protect business assets that were contributed by a spouse during the marriage period.

Each party should consult with their attorneys when drafting a prenuptial agreement. Assets that were acquired before the marriage should also be addressed in the terms of the agreement.

How Postnuptial Agreements Prevent Business Losses

A postnuptial agreement can also protect business assets in a divorce.

It's created after a marriage has been established, and it defines how financial interests will be handled in the case of a divorce or death.

In order to draft a postnuptial agreement, each party must provide all information related to their finances and obtain representation from an attorney. Both spouses should review the terms before entering into an agreement.

The earlier in the marriage that a postnuptial agreement is established, the more likely it is to provide the protection you need for your business. The agreement can be used to classify a business as separate property, which secures its assets in a divorce.

Postnuptial agreements can include terms related to alimony, making it an important tool in protecting the financial well being of both parties.

In order for an agreement to be valid, it must be submitted in written form, and both parties must voluntarily agree to its terms. Entering into a postnuptial agreement under coercion invalidates it and can lead to more costly issues.

The terms of a postnuptial agreement must also be deemed fair. The courts won't typically enforce any agreement that is biased towards one party.

Like a prenuptial agreement, a postnuptial agreement can reduce the challenges that spouses face when dividing assets related to a business.

Working with a legal professional who understands how to use these and other strategies to protect your business is the first step to minimizing potential losses.

You'll need to maintain accurate records over time and present the evidence needed to ensure that your assets are fully protected under Georgia state laws.