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How to Protect an Inherited Business in a Divorce

By John Bovis May 28, 2018

There are many things to consider in a divorce, but protecting your assets and financial security should be a priority.

This is even more important when you have a business that's been passed down to you as an inheritance.

But this also adds to the complexity of a divorce case, and many people don't understand the different ways they can protect their inherited business assets.

Working with a family law attorney helps you protect your inherited business. You protect your financial wellbeing after your divorce and prevent common legal mistakes.

Business Assets and their Divorce Risks

The first step in protecting an inherited business is to determine whether it will be deemed "separate" or "marital" property by the courts.

Separate property consists of those assets that were acquired before the marriage. Marital property includes any property acquired during the marriage.

Separate property will typically be granted its sole owner while marital assets are subject to equitable division, which entitles both parties to a share of the assets.

Family court judges use their discretion to determine a fair division of assets. Providing the right evidence that supports your case is critical to getting the outcome you want.

Inherited Business Assets and Georgia Divorce Law

Assets that are inherited by either party during a marriage will remain separate under Georgia law. This means that a business that's been passed down to you is protected from equitable division.

But there are exceptions that you need to consider. For example, if the business assets appreciate in value during the marriage, then your spouse may be entitled a share of the increased value.

This typically occurs when the appreciation is the result of some contribution made by the spouse. So you and your attorney will need to consider any financial or non-financial contributions that may have impacted the value of your business.

Inherited assets can be at risk for equitable division if they were commingled with marital assets. Keeping separate accounts is one way to prevent this common issue from arising.

Joint accounts can present a risk to your business if they were used to manage any inherited assets. Gathering and presenting the right documents protects your business during your divorce.

Legal Protection Your Inherited Business

Having a prenuptial agreement in place prevents many issues related to divorce and the division of assets. A prenuptial agreement dictates the terms related to your marital assets and can reduce the cost and complexity of your divorce.

Prenuptial agreements may not be able to protect the assets that your spouse contributed towards your inherited business. So understanding the benefits and limitations of this agreement is critical to the process.

Postnuptial agreements are made after the marriage is established and may also protect your inherited business assets. Both parties must disclose all information related to their finances when creating a postnuptial agreement.

You should consult with your attorney before establishing any agreement so that you understand its terms and the potential impact to your business assets.

There are many legal strategies you can use to protect inherited business assets. You'll need to discuss your needs and circumstances with your attorney to determine the best option.

Keeping accurate records of your finances is the first step in protecting your business from the risk of equitable division.

Commingled assets may remain wholly or partially separated depending on the decision of the courts. You'll need to demonstrate that there was no intention for those funds to be shared. But this can be difficult without the right legal resources.

A skilled family law attorney with experience in protecting inherited business assets helps secure the financial wellbeing and future success of your business.