Divorce Victim: Family Business?

By Charles Schaefer

Divorce is the end of a marriage. But the divorce process and the divorce itself has fallout, including the family's business, the enterprise that provides the family's financial support.

Often the family's business is one of the largest marital assets. Generally, most of the family's wealth, net worth and support is tied to the family's business. At least one and often both of the partners in a marriage are owners, employees or participants in the family business.

When both spouses are working in the family's business, the personal and financial effect of divorce can be more severe than if only one spouse participates. If both partners are active in the family's business and working together, the divorce process itself can lead to many destructive forces invading the business from personal recriminations to financial feuding. Moreover, family businesses are not easily divided, so it is difficult for divorcing spouses to take a piece and "go their separate ways." Generally one partner gets to keep the business and pays the other for his or her share. Perhaps divorcing spouses' need for money and liquidity explains why, according to an October 31, 2005 *Business Week* article ("Good Divorce, Good Business" by Michelle Conlin), 10 percent of divorced spouses continue working together after the divorce.

Is it ever possible to prevent divorce from harming the family business? Perhaps not, but divorcing spouses can take certain steps to protect the business as much as possible so that it can continue to generate income for the newly separated family.

Prenuptial agreements can also protect a family's business in some instances. Children who are in line to receive stock in the family's business should be urged to have a prenuptial agreement before they marry. While enforceability may be challenged and the judge may compensate divorcing spouses in other ways, setting a valuation procedure and dealing with later acquired stock and appreciation in stock owned at the time of marriage, can help to minimize disruption of the business if a divorce occurs.

Even with a prenuptial agreement, a necessary objective is to find ways to divide the business's wealth without actually dividing the business. For example, when adult children are working in the business and are the designated successors, this division sometimes can be achieved by giving part or all of the family's business to the next generation. In this way, both spouses find some assurance that the family's business wealth (or at least much of it) will not end up benefiting a new spouse. Moreover, assuming there are enough other assets, the divorcing spouses feel they have "split" the business by giving it to their children yet leaving the business intact.

Agreements among business owners can provide for mandatory buyback of ownership in the event of a divorce using a discounted valuation and/or extended payment terms in order to preserve the business and protect its assets. While a buyout may not work with a majority shareholder involved in a divorce, because it would shift control, it can be effective to protect the business when minority shareholders are involved in the divorce and can protect against having to sell assets or borrow heavily to pay off one of the divorcing spouses.

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