Business and Divorce a Word to the Wise: Plan Ahead

It is common knowledge that over 50% of current marriages end in divorce. For those individuals involved in a family or closely held business, not only does a divorce involve the division of property owned between two individuals, but a divorce often involves non-parties to a divorce, such as business owners, members, shareholders and partners.

Careful and thoughtful planning developed ahead of time may be of great assistance to the parties, as well as the business, and may successfully mitigate disruption to the business in the event of a divorce.

The following issues are worthy of discussion:

1. For those who are planning to marry, a prenuptial agreement which clearly identifies the business interests of the spouse about to be married and defines that party's interest in the business as separate property in the event of divorce may save that spouse a substantial amount of time, expense and uncertainty later on. Issues to be considered as part of the preparation of the prenuptial agreement include whether the business interests of the spouse(s) to be married were gifted or inherited and whether those business interests were obtained prior to the marriage or are anticipated after the marriage. If the parties are already married, a postnuptial agreement may accomplish a similar outcome as a prenuptial agreement but there are some very significant differences and nuances between the two types of agreements.
2. Buy-sell agreements that consider the issue of divorce and spell out various rights and limitations of the non-business spouse with respect to the business.
3. Valuations of a business, either made on a periodic basis by the owners of the business, or by retaining a certified valuation specialist, assist in the determination of the fair market value of the business and that of the interests of the owners.
4. The financial impact of stock ownership, partnership and/or membership interests in the business obtained by gifting and/or inheritance.

5. Whenever possible, succession planning, updating estate plans and amending or revising business organizational documents should be considered well in advance of a divorce. Timing is critical as these protections must be in place sufficiently before the thought of divorce even becomes an issue. Otherwise, these protections may be viewed later by a court as fraudulent conveyances and potentially voided.
6. The negotiation of a buyout plan or a plan to pay off the interest of the spouse not involved in the business, which includes consideration of value, current and anticipated appreciation, and inclusion of reasonable and favorable buyout terms. A buyout plan benefits both parties involved in a divorce proceeding. In addition, the consideration and inclusion of entity benefits, voting and control can greatly mitigate the effect of a divorce on the operations of the business and the parties impacted by divorce if resolved prior to the filing of a divorce than as an ongoing part of the divorce proceedings.

If nothing else, a well-constructed and thoughtful plan that encompasses the resolution of these issues will spare the parties and the business significant time, emotion, disruption and expense. And those associated with the business will be able to concentrate on running the business and maximizing its potential for success.

Our firm has experience in utilizing a number of proven and creative strategies that can reduce the stress of divorce and its impact on the business with the goal of benefiting both the parties involved in the divorce as well as interested third parties.

If these issues are of interest, let’s have a conversation.

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