

## Divorce and The Family Business: “Executing the goose that lays golden eggs”

A business associate revealed that divorces are increasing as a result of the economic slowdown. Divorces always sadden me; particularly because of the effect broken relationships have on family members.

Over the past 30 years I have witnessed the effects of these broken relationships on family businesses. I’m sure that if I quantified the losses they would add to the tens of millions...and I’m just a local accountant practicing in a relatively small market.

When clients inform me that this is happening I always suggest that they try to work things out first. It is usually a mistake to run right out and hire a family law attorney. Family law attorneys are trained to get all they can for their client. A big part of their job is to get their client to think like a person who is getting a divorce often demonizing the former spouse and creating an atmosphere of mistrust. Once that thought process begins, it is hard to reverse.

When there is a family business involved, I often feel like the one who has to speak up for the business. Very few family law attorneys understand the working capital needs of a business; they just see cash. Some, not all, feel that the best place for the company’s working capital is in the attorney’s client trust account. This often begins the gradual destruction of the business.

I know that often there is a great deal of mistrust and with good reason, but often destruction of a family business makes both parties poor and bitter.

In my opinion, the best way for a couple who own a family business to go through a divorce is, to the extent possible, cooperate. Treat the business like the asset that it is. Very likely it has been the source of much, if not all of the family’s wealth. Though not a person, its interests must be considered if both parties to the divorce are to receive maximum value from the business.

Here are some needs of the business that are often ignored:

1. The business needs active, involved leadership and the leader needs to keep his/her head in the game. This is very hard to do if that leader is constantly interrupted by litigation activities.
2. Early on, determine if the business will survive the divorce. If it cannot, consider a sale; it is much easier to divide cash than to divide a business.
3. For a fair and impartial valuation, a certified business appraiser should be hired.

4. If there is a lack of trust between the parties, an audit of the company followed by a valuation might be a good idea. The company should be easier to sell if the company has audited financial statements.
  
5. The company needs both capital and working capital to survive. Especially in these challenging economic times respect that need when dealing with the business.
6. Remember that family law operates under completely different principles than normal business practice and business law. Do not expect a family law attorney to provide sound advice regarding the family business. If possible, consult with a business or transactional attorney and an accountant. Understand the impact of taxes, etc. on the business and make certain that adequate support for loan covenants, etc. will be available once the property settlement is worked out.

If the business is the elephant in the closet that is destroying the marriage, face that fact and deal with it appropriately. Remember, you can't take it with you and if it has taken over one or more of your lives, have the good sense to sell it or liquidate it.