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Protecting Business Assets with a Prenuptial or Marital Agreement

Recently, while sitting down with two business people who were embarking on an exciting new venture, the discussion came up regarding what they wanted to happen to the business in the event one or the other got a divorce. It surprised them to realize that the business they were forming with each other and investing their money, time, and contacts in, could be considered a marital asset and become an issue in a divorce.

A business as a component of marital property makes sense when you consider that assets acquired during the marriage, with limited exceptions, are marital property subject to division in a divorce. Even when only one spouse may be an “owner” of the business and involved in its operation, that spouse’s ownership interest is still likely to be regarded under the law as marital property. Even if the business was one spouse’s separate property prior to the marriage, the other spouse may still be entitled to a portion of the business’s appreciated value upon divorce.

Since it’s hard to foresee the future of a marriage, or a business, early on in the process, it’s hard to plan for an unexpected outcome such as divorce. However, if you’re talking to a business attorney early in the business startup process, you’ll probably discuss what would happen in the event of a number of different unexpected events, including death and bankruptcy. Your attorney may suggest protecting your partner, your employees, and your business assets using a prenuptial or marital agreement.

Signing a Prenuptial or Marital Agreement

Prenuptial and marital partnerships, like business partnerships, are made on the hope of success, but just as you plan for the possibility of life changes leading to a business change, business owners should also plan for one of those life changes to be a possible marital status change. Handling these matters up front can be difficult but may be easier than arguing them in front of a divorce court.

Another important consideration is debt. After a marriage, spouses share debt. So, if your spouse has, or gets into, significant debt, you may find that your business becomes a target of collectors. Again, having an agreement that clearly states that the spouse has no interest in a business protects the business from facing unexpected situations. The agreement should also address debt that was incurred both before and during the marriage.

Before business owners get married, it is good practice to sign a prenuptial or marital agreement. When drafting this agreement, each party should have their own lawyer negotiating on their behalf and taking into consideration many different future scenarios such as business growth, debt issues, and even future children. The agreement should contemplate not only the business, but any other individual assets you may bring to the table including business real estate and personal holdings. Sometimes, a prenuptial or marital agreement is limited by choice to just the protection of the owner’s interest in the business.

Once the agreement is drafted and signed, it is still important for business owners to pay particularly close attention to certain business formalities to ensure the agreement remains valid. Contributions of time and use of marital finances towards the enterprise weaken the original agreement.

Considering Your Options

While a prenuptial or marital agreement makes sense in some circumstances, there are other ways to handle uncertainty and give your business partners the security they need. These include a buy-sell agreement, trust accounts, insurance, operating agreement limitations or requirements for future prenuptial or marital agreements, and other types of contracts.

Regardless of which option makes the most sense for you and your business, accurate recordkeeping will be key to maintaining the validity of any agreement. These records may be used to demonstrate what property is owned by the business versus the marriage, that one spouse was compensated for time contributed to the business, or that debts were taken on to improve the business and not the marriage. Your business records should show that business assets were kept separate from marital assets at all times.

Setting up a business is a serious process and so is making the decision to get married. In each of these cases, you have a duty to others to move towards common future goals. Preparing for future life changes -- both the positive as well as the unexpected -- is one way to protect all the important parties in your life. Your spouse, partner, employees, customers, and children may appreciate your foresight and preparation.

Having an experienced business attorney on hand to help you through these decisions will ensure you get the strongest agreement possible. Experienced Colorado trial attorney Jersey Green focuses on handling the issues that arise in divorce and business law. The “business owner's attorney for divorce and business-related litigation®” can be reached by calling 303-296-4440 or at **Jersey@preeosilv.com** and is ready to help you determine if a marital agreement is right for your situation.

Contact Us Today!

Attorney Spotlight

The business owner's attorney for divorce and business-related litigation.®

Trial lawyer Jersey Green has practiced in Colorado for more than three decades and is also admitted to practice in Wyoming. **Learn More**

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