# Dealing with divorce and a family-owned business

## According to FastStats at www.cdc.gov, 53% of all marriages in the U.S. end in divorce.


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Donna Kline, MBA, CDFA™, combines experience as an investment broker and wealth manager, a proven approach to long-term financial planning and the unique skills of a Certified Divorce Financial Analyst™ (CDFA™) to help a divorcing client understand and address the associated financial issues and helping them in obtaining a fair and equitable divorce settlement. She directs the HBKS® CDFA™ practice out of the firm's Pittsburgh offices.

Ms. Kline is the author of Fundamentals of the Futures Market, published by McGraw-Hill in 2000, and has contributed numerous articles to various magazines, including Futures Magazine and Bloomberg BusinessWeek. She is a member of the Institute for Divorce Financial Analysts (www.institutedfa.com), International Academy of Collaborative Professionals (www.collaborativepractice.com) and The Collaborative Law Association of South Western PA (www.clasplaw.org). She holds a B.S. in Genetics from University of California at Davis, and an MBA from Santa Clara University.

The simplest way to avoid lengthy, expensive legal fees at the end of a marriage is to engage in a pre-nuptial agreement. In a pre-nuptial agreement, the designation of business assets versus personal assets can be defined prior to marriage, thus, avoiding misunderstandings in the event of divorce. If starting a business during the marriage, a post-nuptial agreement can also be drafted. It is essential that there is full and fair disclosure of all assets involved, all parties take the time to review the document, and that they seek consult from their own attorneys.

Unfortunately, pre- and post-nuptial agreements are quite rare. Nicole Kairys, an attorney with Bunde, Gillotti, Mulroy & Shultz, has worked on more than 1,100 divorce cases in her 17-year career and says that fewer than 5 percent of her cases involved a financial pre- or post-nuptial agreement.

For more information on pre- and post-nuptial agreements go to: www.institutedfa.com.

### What if there is not a pre- or post-nuptial agreement in place?

There are several questions that will need to be answered when and if the time comes to divide property due to divorce; for example, is the business considered a marital or non-marital asset? During divorce negotiations, it is important to determine what property was owned prior to marriage (pre-marital) and what property was accumulated during the marriage (marital.)

If the business formed during the marriage, then it is considered to be entirely marital. If the business was formed prior to marriage, the business itself is a pre-marital asset, but the growth of the business during the marriage is considered marital. The same rules apply to most other assets accumulated before and during a marriage.

### Selecting an agreed upon date of separation is an important first step.

The separation date will serve as a guideline for business valuations, but will not guarantee how it will be valued at the time of divorce. Dorothy Wolbert, co-chair of the family law practice at Burns White writes in The Legal Intelligencer that "one party may argue that the valuation date is the date of separation, and the other may argue that it is the date closest to the divorce trial date, or the date of distribution. This issue often arises when the business has increased in value since the date of separation. The Pennsylvania Supreme Court has stated a preference for the valuation to occur at or near the time of distribution. … However, the trial court is free to select the date that best serves to provide for economic justice between the parties."[1]

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### Hire a neutral professional to conduct accounting investigations and valuations

Select a neutral professional to value your business as this will avoid any conflicts of interest. Robert Zahner, CPA/ABV, CVA at HBK Valuation Group, says there are three primary approaches to valuing a business; (1) the income approach, where value is supported by the cash flow of the business, (2) the market approach, where market transactions are studied to calculate implied multiples of revenue or earnings for which to apply to the subject company, and (3) the asset approach, where the value of the business reflects the adjusted market value of its assets less its liabilities. There is also the discussion of goodwill, which is the amount of the business income generated that exceeds what would otherwise be considered a fair return on business assets. Personal goodwill, which reflects the value and reputation brought to the business by the business owner, is not included in an equitable distribution calculation. Professional goodwill, which is reputation attributed to the business itself is an asset that can be distributed. Every case will be different.

### Evaluating the true cash flow of a business.

According to the IRS, a business owner should document personal and business expenses separately. A business owner should also pay himself or herself a consistent, competitive salary that is reported and taxed as income each year. In some cases, the income stream and legitimate expenses of a business are not as clear. It is important to employ a professional that understands how to identify true disposable income and help clarify the best way to distribute business assets. While each situation is unique, there are several ways this can be done: (1) the business owner can "buy out" the ex-spouse by giving up a larger share of personal assets, (2) the business owner can pay a monthly amount from the business, not as alimony, but as an equitable distribution payment, and (3) the business owner can sell a stake of the business or take out a loan to buyout the ex-spouse's interest.

## Asset distributions may appear to be equal today, but differ dramatically in the years that follow.

Last but not least, the long term effects of certain asset distribution proposals must be evaluated. Oftentimes, the division of property may appear to be equitable but leave one or both parties in dire financial straits, one, five or even 10 years down the road. The use of a Certified Divorce Financial Analyst® (CDFA® ) as a part of your financial team can help alleviate these concerns. A CDFA® is trained to provide information on all financial issues related to a divorce such as tax consequences, division of pension plans and other retirement assets, new health care coverage, stock option elections, property settlements, and much more. A CDFA® works with the client early in the process to help prepare a financial proposal that is both equitable and sustainable for the long term. A CDFA® does not replace the role of an attorney but expedites and communicates the financial aspects of the case.

Read more about the role of a CDFA® here: https://www.institutedfa.com/why-hire-cdfa/☐

1- Source: http://www.thelegalintelligencer.com/id=1202731703344/How-to-Keep-a-Business-Through-a-Divorce#ixzz3tfhAHVbc