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Divorce Can Hollow out a Family Business — But it Doesn't Have to

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With Bill and Melinda Gates' divorce making headlines across the globe, many are wondering how the split will affect their joint business dealings — especially the Gates Foundation, which they co-founded in 2000. Although some spouses are able to work together after a divorce and hold the family business together, for many a divorce threatens a family business's survival. The highly publicized, messy divorce of Robert Pritzker, which ultimately led to the breakup of that family empire, serves as a warning for family business owners. Many public examples of messy divorces of business-owning families often focus on the decay of family relationships, family business conflict and the fall of family empires. Further, the stress of the pandemic has appeared to increase divorce rates as a result of being locked in together and feelings of being trapped in a relationship; referred to as the "pressure cooker effect (https://www.bbc.com/worklife/article/20201203-why-the-pandemic-is-causing-spikes-in-break-ups-and-divorces) ." There has also been a rise (https://www.forbes.com/sites/margueritacheng/2019/02/26/grey-divorce-its-reasons-its-implications/?sh=6c2584c54acd) in "gray divorces," the splitting of older married couples. And with the median age(https://www.johnson.cornell.edu/smith-family-business-initiative-at-cornell/resources/family-business-facts/) of a family business owner being 51, gray divorce trends have the potential to disrupt a significant number of family businesses.

A family business is likely the most valuable asset a family owns and also the most illiquid asset, meaning it cannot be easily sold or exchanged for cash without substantial loss in value. It's surprising how many business-owning families fail to properly plan for divorce.

So we sought the advice of two experts – Doug Baumoel and Nora Yousif. Baumoel is a founding partner of Continuity LLC, a family business consulting firm, and an Editor at FamilyBusiness.org. Nora Yousif is a Financial Advisor and Certified Divorce Financial Analyst at the Empower Wealth Group with RBC Wealth Management, a financial planning and investment firm that advises many family businesses.

Both Baumoel and Yousif emphasized the importance of taking precautions in advance, which can make the difference between a bump in the road and a breakdown. For example, some well-prepared family businesses have policies in place that require all in-laws to sign prenuptial agreements (which are touched on in more detail below). This mandate makes the procedure more palatable and fair to family and nonfamily members alike. Many family businesses also forbid the transfer of shares to nonblood-related family members and use trusts to protect family assets from divorce. To keep tensions low, these safeguards should be enacted when the family is getting along and no weddings are approaching.

"When emotions are high, as they often are in divorce, it is natural for each spouse to want their 'pound of flesh,'" said Baumoel, "They seek out the most aggressive divorce attorney they can find — or can afford."

But this approach, as opposed to working together, can worsen matters quickly. "The process of a divorce can escalate tensions and conflict, polarize family members and cost a fortune in money, time and attention," Baumoel added.

Safeguarding your business

The danger divorce poses to a family business is real, but, as Baumoel and Yousif explained, family business owners can take several precautions, ideally before they even get married or start a business.

Baumoel advised that business owners should "look forward, not backward" and consider the potential financial and emotional impacts that divorce proceedings can have on everyone connected to a family business. Divorce, in the end, is expensive, and family members' relationships to the family business — and its owners — can bring immense grief.

Baumoel would know; before his own parents divorced, he was involved in leading their business — which was healthy and growing. But once the divorce proceedings started, "It was the fog of war — no time for tax planning, employees jumping ship, family conflict escalating." He added: "My hair turned grey in 6 months when the divorce started."

Yousif emphasized that the best way to prevent suffering is to preempt divorce in the first place. "Make sure you've tried couple's therapy and a vacation," she said. "After all, a trip is far cheaper than a divorce."

More granularly speaking, it's also wise, Yousif said, to establish prenuptial (https://www.forbes.com/sites/christinefletcher/2018/09/18/10-things-you-need-to-know-about-prenups/?sh=57acd16562ba) and postnuptial (https://www.investopedia.com/articles/personal-finance/062915/5-signs-you-need-postnup.asp) agreements — respectively made before and just after marriage. These documents can establish how a couple divides different individual and shared assets in the event of a divorce, preventing an agonizing court fight. Furthermore, they can ensure (https://docs.google.com/document/d/1U1ze85SaEx-p-aCPMyqYOlr5qBwsNIlctqdTck-Ivl8/edit) a family court judge does not have much say in how assets are divided.

In fact, a well-written prenuptial agreement could have (https://www.cnet.com/news/bill-gates-and-melinda-gates-divorce-everything-about-the-foundation-affair-and-billions-at-stake/) saved the Gates family from the courtroom brawl they're about to enter over the Bill & Melinda Gates Foundation. Since it is a shared asset, the foundation cannot be easily given to either spouse. Therefore, it is not clear if one will ultimately retain ownership or if ownership will be somehow divided — and with it, the foundation.

Prenuptial agreements can also play a very positive role by getting issues of wealth and wealth disparity between soon-to-be-married couples out in the open. It offers couples the opportunity to discuss how decisions regarding money will be handled in their marriage, and, because disclosure is required, it removes secrecy about wealth. Far from planning a divorce, a well-crafted prenup *process* can help avoid money issues being a source of conflict in the marriage.

Because prenuptial and postnuptial agreements can create a sense of distrust between partners, it is important to encourage open, mutual communication. As mentioned above, making the signing of prenuptial agreements a policy and norm in a business-owning family can help put people at ease. However, laws governing how to write and certify these agreements vary (https://docs.google.com/document/d/1U1ze85SaEx-p-aCPMyqYOlr5qBwsNIlctqdTck-Ivl8/edit) state-to-state, so it is wise to seek legal help for guidance.

Family business owners should also consider whether either of them would even want to run the business on their own — and, in this vein, discuss options for selling the business. "If you sell the business, that's great. You and your spouse can negotiate an equitable distribution of the net proceeds and move on," contributors to Lawrence Financial Planning wrote for the company. "However, if one of you holds on to the business, then it gets a little tougher."

Protecting your family

It's almost impossible to separate the vitality of a family business from the health of its family. Therefore, it's imperative that family business owners make all important legal considerations well ahead of time. "In addition to being a major financial and legal headache, divorce can also leave spouses shaken after the fact, compounding economic woes," Baumoel said, adding, "Divorced spouses can be well served to take some time to rebuild their new sense of self, sense of purpose and life plan...Some divorced spouses may find that their new-found independence and liquidity are more challenging than they anticipated."

Family members should be strongly encouraged to avoid taking sides in the event of a divorce. The goal, after all, should be the creation and maintenance of a cordial relationship — because the family will likely continue to see the divorced in-law in the future,

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especially if children are involved. Additionally, when an in-law continues to work at a family business, professional conduct on all sides should be ensured. In these scenarios, it helps to find common ground, for example, by emphasizing the importance of the family business in the community it serves and to the divorced couple's children.

Some experts even go so far as recommending a "no in-laws" policy be adopted by family businesses. According to a Harvard Business Review (https://hbr.org/2020/02/should-your-family-business-have-a-no-in-laws-policy) article, "A policy against in-laws working in the family business...mitigates the risks if a divorce happens...It's an important consideration, as divorce in a family business can have serious consequences that can affect ownership rights, employment rights, reputations, and can be a huge distraction for the business." The article added that policies preventing in-laws or others from attaining special privileges can lower the temperature — within a family and between family members and other employees. Of course, the downside of policies like this, as Baumoel points out, is that in-laws might feel marginalized, adding to potential conflict, and excluding in-laws may rob the business of some potentially exceptional leaders. There have been many successful companies led by in-laws.

What documents should I have ready?

Yousif explained that owning a family business can complicate divorce, as there are so many potential assets in a business that "It leaves more areas to attempt to hide assets or income." She added: "You also can't cleanly divide a business in half while cutting ties." Therefore, divorcing spouses should figure out, often with the help of each individual's lawyer or financial adviser, what assets they share and which they own individually. For those who started their business before getting married, an appraisal of the business's worth before the "big day" is recommended. Again, strong prenuptial and postnuptial agreements can be immensely helpful here.

Although it is difficult to imagine divorce if a relationship feels healthy in the present, Yousif suggests that a family business owner organize and maintain some resources on their own — that is, separate from their spouse. These include:

- A checking account in their own name,
- Their own P.O. box,
- Copies of all financial and legal statements
- And carbon copies, or CCs, of any documents that might be important.

Where can I get help?

Financial advisors, especially those who are Certified Divorce Financial Analysts (https://institutedfa.com/about-cdfa-course/) , or CDFA-certified, and divorce lawyers are indispensable contacts if divorce strikes a family business. But Baumoel recommends a special type of legal professional: A collaborative law practitioner, or a kind of counsel who tries to help their clients settle out of court. Collaborative law (https://www.americanbar.org/news/abanews/publications/youraba/2018/july-2018/neither-mediators-nor-negotiators--collaborative-lawyers-emphasi/) is a new and emerging field, but the basic idea is that, unlike with arbitration, the main goal of an out-of-court divorce settling should be aligning spouses' interests. This is a much different approach from that of many other lawyers, who, as Baumoel says, are hired to win unilaterally, and not find common ground.

Beyond seeking assistance from finance or legal professionals, family businesses should also consider the role of therapists. Even if emotional counselling cannot prevent the anguish of a divorce (although it sometimes can), it can still ease the pain for everyone involved. "If couples can sit on the same side of the table facing the problem," Baumoel said, "They may be better served than facing the problem as adversaries."

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