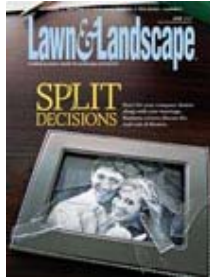


Headline News

6/4/2009

SPLIT DECISIONS

Don't let your company shatter along with your marriage. Business owners discuss the real cost of divorce.



No one goes into marriage with divorce in mind. If that were the case, a business owner's wedding vows might contain different language...for better, for worse, for richer, for poorer, for the love of God, don't touch my business – or something like that. Who walks down the aisle on the big day thinking about the end?

But times change, and life has a funny way of throwing a wrench into fairytale plans. Even starry-eyed couples who start a marriage on solid footing can lose ground after years or even decades of marriage.

Divorce is never Plan A for couples, and discussions of splitting assets 50/50 can put a high premium on the marital institution.

"You start thinking about losing your business, and losing everything – your credibility, your lifestyle, your home, everything," says Lou Wierichs, president, Pro-X Systems, Appleton, Wis. Wierichs was married 2 years before getting a divorce in 2004. "It's scary," he says simply.

This comes from an industry leader who admits his profits dipped \$80,000 the year he spent working through his divorce. "I had the worst year in business in 15 years," Wierichs says. The divorce arbitration lasted nine hours and his ex-wife's attorney scoured 10 years of credit card reports to support a far-fetched argument that Wierichs was making "beaucoup bucks."

"It cost \$20,000 in attorney fees on my end," he says. "I took a coffee mug from my lawyer every time, so I have 10 coffee mugs that are worth \$2,000 a piece. You have to find humor in the situation or you'll drive yourself batty."

Wierichs continued doing what he does best: plowing forward, adapting with the times and building his business. He made up for that lost profit after settling the divorce. "I was fortunate enough to be a good investor, so I had the cash on hand to make the settlement and save the business," he says. "But if I would have had to go out and borrow the money to pay off the settlement, that would have been a world of hurt."

The cost of divorce can cripple business owners, who pour personal savings and profit back into their companies.

"Not too many families are able to have a valuable business and valuable retirement accounts, valuable houses, cars and the sort of thing," says Barbara Ann Bartlett, a Tulsa, Okla.-based collaborative attorney who advocates mediation rather than litigation.

"Most business owners put all their resources into the business," Bartlett continues. "The value of the marital estate is in one asset, so how do you divide that up with an operational business?"

The answer, Bartlett says, is to approach divorce with a flexible, understanding attitude and a willingness to work with the soon-to-be ex spouse. Cooking the books to devalue your business won't get you anywhere, unless your plan is to crash the business before your spouse can drain cash from it.

And these days, who has extra cash – especially for a divorce?

FOR BETTER, FOR WORSE. Countering the notion that tough times can force a weak marriage into divorce court is surprising evidence of a declining national divorce rate, according to the American Academy of Matrimonial Lawyers. For better or worse couples are sticking it out because it's just too expensive to get out of a marriage, particularly in this economy. The family home's value is at an all-time low. Selling and splitting real estate doesn't seem worth it. And what value is a retirement account that is cashed out and split in this market?

Consequently, divorce rates dropped by 5 to 10 percent last year in New York and the Chicago and Miami metropolitan areas according to Bloomberg. Couples are holding off on serving their spouses with papers and separating instead; or they're giving attorneys rush orders to expedite the process without pomp, circumstance and exorbitant fees, reports the Washington Post.

But the cost of divorce is 90 percent emotional, according to Bartlett. That's why collaborative mediation involves a life coach and exercises such as creating a "press release" about the couple's decision to part ways. This isn't a literal media announcement, Bartlett explains. "It's a common message that both spouses will use as an explanation to keep everyone calm and to avoid derogatory remarks," she says.

Business owners hope their press release says: happily departed, business as usual.

The best case scenario in a business divorce – or better case, at least – could resemble that of Ed Peebles, owner of Peebles Outdoor Maintenance in Medina, Ohio. "I'm not one to stir the pot," he says of his decision to green-light his ex-wife's request. "I hear horror stories about couples arguing over this nightstand or that couch."

Peebles and his wife hired the same lawyer and he describes their divorce as a result of two individuals who simply could not continue happily along the same path. "We were looking for two different things in life, and neither of us was willing to change that much," he says simply.

The business had always been a part of the Peebles' married life. Peebles started his landscape company literally after the honeymoon was over. "I put in my two weeks at Chrysler where I was working, we got married and went on a honeymoon, the day I got back was the first official day of the business," he shares.

That was 13 years ago. His wife went back to school and became a stay-at-home mom for their two children, now ages 7 and 9. "The business was pretty much in my lap to deal with," Peebles says, adding that his wife was extremely supportive of the

financial decisions that were made as a family to support the business over the years.

"An awful lot of time goes into running a business, and I'm the first one to admit that you can take that too far," he says. "There is no doubt that the business consumed me for some time.

"She was 100 percent behind the business," he continues. "I give her a lot of credit in that way."

But things weren't going to work, and Peebles acknowledged this three years ago. At the same time, the company took a nosedive after sales with a homebuilder client that represented a good 40 percent of Peebles' dried up.

"There was not much value to the business at that point," Peebles says, relating that he and his wife had tried counseling and were in the throes of divorce while he was trying to reinvent his business. "She didn't want to split what I had left on my plate."

Peebles' faced two stresses: save the company and find time to manage his personal life, which included doing everything possible to ensure divorce arrangements were fair to the children.

Peebles confided in his production manager, a friend. His employees knew what was going on because he needed to delegate more so he could take time off for personal matters.

Peebles' business is in better shape today than ever; he paid down debt and retooled his customer mix so he is not dependent on the volatile homebuilder market. "There is not a stack of payment books on my desk anymore; those pressures are gone, he reports. That came after he got rid of equipment, reduced insurance costs, laid off some employees and signed a couple of large accounts to replace lost business.

Peebles acknowledges tough times at work can make for stressful marriages. "When the money dries up and things get tough people start looking at each other and it's not a happy situation," he says. "If a marriage is on rocky ground and you take money out of the equation, or the business that was supporting a relationship, the relationship can be more of a struggle."

As they say, the controversial issues that can break any marriage are money, family, religion and sex (in no particular order). Business isn't in the list, but it is often the "child" that gets more attention than anyone else in the family, says Paul Sessions, a family business adviser and director for the Center for Family Business at the University of New Haven, Conn.

"You have to work on the relationship from day one," he says of a couple's marriage. Most entrepreneurs don't need this advice for their businesses – that's natural instinct.

"We make choices," Sessions continues. He poses a question he admits sounds a little cheesy, but try asking yourself this in situations where business-family balance is off kilter: "What would love do?"

HIRING HELP. Love would get a mediator, not an attorney, to file a divorce.

No – love would get counseling first. And that is what Shayne Newman, president of Yard Apes in New Milford, Conn., did. "I don't know if you can ever blame the business for a failed marriage – there are bigger issues than your business, but I did work a lot and as the business grew, I realized I couldn't do it all myself," Newman says.

He began to develop systems, but freeing up time to spend at home couldn't happen overnight. "It took a couple years to get that figured out," he says.

"At the same point, we were going to counseling, going through a divorce, it was all happening at once," Newman continues. He and his wife decided on a mediator after hearing about daunting attorney fees. They would work their way out of the marriage peacefully.

At one point, the business was put on the table and examined as an asset to split. "But the mediator's take on it was, if you take away the business, you'll take away the father's ability to pay child support and the bills, and that is not in the best interest of the children," Newman shares.

He was relieved. They split everything, save the business. "At that time, I don't think the business was worth a huge chunk of money," he says. Discussion of business worth never entered the discussion, which is not the norm.

And in most states, the marriage is considered an "industry," and the business, children, etc., are all part of the bundle, Bartlett says. "If it's a longer-term marriage and the business started during the marriage, the court will consider it a marital asset," she says.

And if the business started before the marriage and grew? "That's where it gets tricky," Bartlett says. "The court looks at how much business increased during the marriage and why? Because of the economy? Because the owner worked every day? If it is the business a joint industry product? The court would think it is joint sweat that grew that business, at least in Oklahoma," Bartlett says.

In other words, if he is growing the business and she is caring for the children and household, these roles are combined into the "business of marriage." And that business is split. Of course, that's barring prenuptial agreements or other business arrangements (see Cover Your Assets on page 40).

For the Newmans, the nine-month mediation process cost each of them upwards of \$2,000, and his wife would continue living close by for the benefit of the children. That didn't last. She moved to Boston with the children, now 10 and 12. Then both Newmans hired lawyers. "In the end, I got a taste of what happens when you hire an attorney – fees add up quickly," he says. "And it really brings out the worst in people. The attorneys get each partner pumped up."

Newman divorced in 2002 and has since remarried – to a woman he knew as a teenager. He cared for her parents' lawns while he was in high school. They met to catch up on old times, and the rest is history. But this time, Newman requested a prenup agreement. "She understood, but it wasn't easy," he says. "It puts a lot of strain on you.

"A prenuptial has nothing to do with how you feel about a person," he adds. "You have to explain that it's separate. But after

going through a divorce with my ex-wife – at one point, we were in love, and at the end it was the opposite and I understand how that can change. If you don't have a prenup in place, you never know what will happen down the road."

But don't assume that a prenup protects the business completely, says Henry C. Krasnow, author of *Your Lawyer: An Owner Manual*. "Prenuptial agreements are exceedingly hard to enforce in every state," he says. That's because of this clause: "A prenup is not affective unless there is full disclosure," Krasnow explains. Translation: "That means disclosing the full value of the business," he says.

Not all business owners want to spill the beans. An estimate of a company's worth isn't good enough. And if the prenuptial agreement is delivered close to the wedding day, the spouse is stressed out and signs it, there is the issue of "duress." A prenup signed under duress may not hold up in court. A spouse can claim not having enough time to review it.

The emotional cost can be even worse. "The question becomes, can you accomplish the same thing that a prenup does by other means?"

THE EMOTIONAL COST. Divorce can take a toll on business in ways that cannot necessarily be monetized. "To stay fundamentally strong, you have to keep your eye on the big picture," Wierichs says, crediting his late father's strong morale inspiration during tough times. "I'm not a tent-folder. I pick up the pieces and move on," he says.

Today, Wierichs pays the State of Wisconsin's required \$475 per month to his wife, and he maintains her lawn (at his former residence). Meanwhile, his wife gave him full power of attorney over her stock portfolios. "It's a very weird situation," he admits. "You rarely hear of cases like this." He turned over most of the fund management to a professional so he doesn't have to deal with it.

He never had a formal discussion with his employees about the divorce. "They knew when I had two or three of them carrying boxes when we were cleaning out my closets," he says, half joking. "Employees don't need to know every detail, but they need to know what's going on so if you are acting strange they can justify it by saying, 'Maybe that's the effect of what he's going through.'"

Newman bottled up his feelings for the most part, but he let his colleagues know what was going on. "To be a successful leader, people have to know that you are human," he says. He says it's important to acknowledge times when you may let your employees down because of your personal life interfering. "You have to own up to your mistakes."

Sessions warns against mixing business and personal affairs too much. While the dark ages days of keeping a divorce completely secret are over – the divorce rate is 45.8 percent, after all – there are limits to how much an owner should share

"I tell my family business clients, if you are not careful, you will become the best soap opera, and you pay people to come to work and watch," he says. Make a habit of separating your business and personal affairs, he advises.

"People will find out about your divorce, but they don't have to know every dirty detail," Sessions says.

If owners aren't careful, too much detail can drive away valuable employees. "Talented people know they can work somewhere else, and if they see a fire going on over a divorce, they might bail," he points out.

Business owners should communicate clearly on all fronts: in the business and at home. Of course, this is easier said than done. "We are complex humans," Sessions acknowledges. And there's no prescription for getting through a divorce without getting hurt.

But life goes on – and so does business. "It does get better," Newman says. Someone told him that it takes one month for every year married to get over a spouse.

"Don't worry about the stuff you can't change," Wierichs adds. "I always believe that things happen for a reason – you have to stay positive."