

## **Family business after divorce**

There are considerable pressures on family businesses, thanks to the weak state of the economy. As a result, most family business owners would say they currently need to devote all their time and energy to ensuring their company remains competitive and successful.

But sometimes additional problems become major hurdles, one of which can be a divorce or separation between two business owners or key team members.

Any personal friction between those running the company or an inability to concentrate on the business needs can spell disaster.

But if a divorce or separation is inevitable for a business owner, then there are ways to ensure this is handled to give the business the best opportunity of functioning normally and ensuring its survival following the split.

The main aim should be to reduce acrimony and hostility and preserve working, if not personal, relationships.

Consideration should be given to resolving matters through mediation, or a new way of resolving these matters, called collaborative family practice.

This means both parties work together with their lawyers to find the best way of running the business while sorting out the financial consequence of a relationship breakdown.

The process involves the couple and their lawyers working together on problems face-to-face, with additional professional advisors as necessary, but with the safeguards of the usual financial disclosure.

This has several advantages over the traditional court-based method.

First, unlike court proceedings, there is no timetable imposed, so if matters need to be resolved very quickly then there can be an intensive series of meetings over a short period of time and, provided all the supporting information can be obtained from both sides, there could be an early resolution enabling focus to once again be put on the business.

But the opposite can also be true.

If there is a particularly challenging time for the business, such as a big contract to deliver, then the process can be slowed down to enable one or both of the parties to deal with it accordingly.

How it is dealt with could be an issue discussed in the collaborative process.

Once a court timetable has started, it is incredibly difficult to halt and, indeed, the court ethos is for the court system to take priority over all other matters.

In a traditional divorce, the judge and lawyers have to work within the narrow court regime on issues the courts consider important.

In collaborative practice, couples are free to set their own priorities, by agreement, and deal with the problems most important to them.

This leads to everyone trying to find creative solutions that may be outside those imposed by the court.

Couples can come up with tailor-made solutions to their specific problems. At the outset, people have an opportunity to talk about what is important for them, which might be something a court might not take into account but which, if ignored, can cause great difficulties for the family involved.

Inter-generational loans often come into this category as the court tends to treat them as 'soft loans' which are unlikely to be called in, whereas the person to whom the money has been loaned feels quite strongly that they would wish, or need, to pay that money back.

This can be essential in a family business, given the complex inter-relationship as other family members can contribute to the problem-solving, rather than taking sides.

This should enable the couple to move forward without the hostility and acrimony often found in a traditional divorce, and this is essential if they wish to continue a business relationship.

But if it is not desirable or possible to continue the business relationship then, if the business is to be preserved, discussions about its future and who is to run it need to take place in a calm and supportive environment.

This should enable the family business to be preserved, rather than having to sell it as a consequence of the divorce/separation, which might be imposed by a court deciding the case.

Essentially, resolving issues by collaborative practice means preserving people's dignities by recognising what is important to them and seeking an outcome that recognises those values and contribution.

Significantly, collaborative practice can also be used for resolving business disputes and not just for divorces.

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