

Divorce and its Impact on the Family Business – I

Business owners faced with an impending divorce have many considerations. For instance, what will this divorce do to the family's business? And will the court's division of property and liabilities affect the management of the business?

When dividing property Washington courts are guided by community property law that requires a court to divide property and liabilities in a "just and equitable manner", without considering marital misconduct. The factors a court inquires into include the nature and extent of the community property; the nature and extent of the separate property; the duration of the marriage; and the economic circumstances of each spouse at the time the division of property is to become effective. The decision may include the award of the family home or the right to live there.

A business started during the marriage and funded with community contributions will be considered community property. The fact that only one spouse runs the business or contributes to its success does not change its community character.

A court will be concerned with a party's continued ability to operate the business on a day-to-day basis. Courts try to avoid a sudden shift in control, especially where one spouse ran the business and the other was inactive. While a divorce is pending, the court will have control over business decisions and will be guided by whether proposed actions will be prudent and made in the ordinary course of business.