

What happens to your family business when you get divorced?



It stands to reason that, in the majority of cases, getting divorced or facing any form of relationship breakdown is likely to have an impact on a family business. Whilst it may be possible to keep things as they are, this may not be a practical option for others, either for personal or financial reasons.

Any business in which either party has an interest in, for example a sole trader, partnership, shareholder or director can be relevant to your finances on divorce.

Full and frank disclosure

In a divorce both parties have a duty to make full and frank financial disclosure about their finances. This includes their home, savings, investments, pensions and income. This obligation to disclose financial information also applies to business interests.

What financial information is required will depend on several factors, the type of business, whether it is a company, its size, turnover and the involvement of third parties. It is likely that you will need to provide as a minimum, copies of the business accounts for the last two years.

Why is my business relevant?

Businesses can be relevant for a number of reasons including being the income source for one or both of the parties; the business may own realisable assets which could be a source of capital and it may be possible to raise money within the business to meet family needs. The business itself may also have a value.

Many businesses are small concerns whose importance is primarily the income stream they produce. Whilst a business may be relevant it does not follow either that the business or its income or assets will be directly affected in a divorce. There are many ways in which account can be taken of the business so that it continues to operate after a financial settlement.

Valuation

It is not always necessary to have a valuation of a business but if it is needed, a valuation should be carried out by a suitably qualified expert. This is often an expert both parties agree and jointly instruct sharing the fees of the expert. The valuation of the business is a complex process and the valuer will consider projected income, the nature of the business, turnover, depreciation, assets, liabilities and goodwill.

You may wish to think about:

- Your plans for the business and how the relationship breakdown affects this
- Whether your children are involved or you were planning to leave the business to them
- The history of the business in terms of who set it up and benefits from it
- A realistic viewpoint on each of your contributions to the business both historically, presently and in the future
- Any other stakeholders that might be affected by business changes
- What is the position with regard to the sale or transfer of shares
- What is the financial set-up and situation of the business
- What are the strengths and weaknesses of the business and how is it performing in today's market
- How about the future, how well do you think it will do, is the business in difficulties
- What is the business strategy and related plans and what were they before the relationship ended

How can we help

Our specialist family lawyers can discuss with you and advise on all aspects of financial matters following a relationship breakdown, including any business interest and if and how they will be taken into account. What happens to a business can also involve taxation and employment issues. How your business is set-up and compliance with other laws and regulations may need to be considered. At Wards, we have on hand lawyers who specialise in commercial and business matters if we need their specialist input in your divorce.

Should you go to Court

It is always preferable to keep these negotiations out of Court if you can. This is a highly specialised area of family and divorce law and it is important that you seek professional qualified legal advice. You may feel you are doing the best thing in trying to talk informally with your spouse but a specialist solicitor will be able to ensure that every important area is covered and the right documentation is put in place.

The majority of divorces and financial settlements are achieved without any attendance at Court. A collaborative process may be suitable for you. This involves a series of meetings between all parties where you discuss the key matters and try to reach a solution. This can then be turned into a formal agreement or agreed Court Order. Only solicitors trained in collaborative law can practice this. Please see our collaborative family law factsheet for further information.

In a minority of divorces, it is not possible to reach agreement and financial matters have to be considered by the Court. If this is necessary, we will be able to advise you and suggest the best way to structure your case and represent you throughout the Court process.

Further guidance

For more information about divorce and financial matters please take a look at our factsheets Understanding your divorce proceedings and Financial claims.

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