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"It is a smart idea for married couples who own a business together to have a legal agreement." — Stacey Bender, owner, Bender Group Public Relations

Breaking up the business

The impact of divorce on a family-owned company can be devastating

BY DARIA MEOLI

Love might not cost a thing, but divorce is expensive and complicated.

Especially if you co-own a business with your spouse.

For business owners and executives, the implications of divorce go well beyond who gets the house and who keeps the dog.

Just ask **Stacy Bender**, who owns **Bender Group Public Relations** in Montclair.

At least she has since 2013, when she gained control of the company she co-founded with her husband.

It wasn't easy. Untangling the former Bender-Hammerling Group Public Relations agency proved to be as difficult as splitting up her marriage.

The experience taught her some truths about relationships, personal and business.

"All married people want to believe their husband or wife would never do anything to hurt their business or their family," Bender said. "But, it is a smart idea for married couples who own a business together to have a legal agreement."

It may sound cold, but Bender says it's not personal. It's just business. And as a business leader, it's just another way to protect yourself and your company.

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DIVORCE

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“It is very important to take away the personal feelings and just focus on the business,” she said. “Should anything go wrong, including irreconcilable business differences or one of the spouses decided to change careers, it’s smart to have an agreement in place.”

Right from the start.

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Bender and her ex-husband did not

have a formal partnership agreement or operating agreement.

Bari Weinberger, owner and managing partner of the Basking Ridge-based **Weinberger Law Group**, isn’t surprised

As the head of one of top family law firms in the state, Weinberger sees all kinds of cases.

And she says business documentation between spouses is rare.

“It’s striking, but even when spouses have a business together, more often than not, they have no legitimate paperwork with

the exception of the articles of incorporation needed to get a tax ID number,” she said.

“Aside from that, you don’t often see spouses in business together with partnership agreements or other foundational paperwork that you would hope would be in place.”

It gets worse.

In addition to the lack of a paper trail, experts say many entrepreneurial couples play vastly different roles within the organization and may not be aware of how the other is managing his or her side of the business.

It’s an arrangement no one would consider with a business partner — but when that partner is your spouse, experts say it is too often the norm.

Patricia M. Barbarito, family law expert and partner at **Einhorn Harris** in Denville, said she’s continually surprised to come upon such situations.

“It’s easy to say, ‘We’ll split it up,’ but that’s just not how it happens in the real world,” she said. “You need to devise a strategy because there are a million different ways to ‘split’ a business.”

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Dividing a business is far different than dividing stocks or a house, which can be simply sold and split.

With a business, you have to split the profits. From the past — and in the future.

Gary Botwinick, partner and trusts, estates and taxation attorney at Einhorn Harris, said he works closely with his colleagues on divorce cases involving high net worth clients, executives with complicated compensation packages and business owners.

“When we deal with a business owner, as opposed to a wage owner, business issues become very important to the divorce proceedings,” he said. “Businesses are subject to equitable distribution under New Jersey divorce laws. The question becomes: How does that spouse walk away with the cash or other assets from the business?”

“With a family business, there can be sophisticated estate planning that can further complicate a divorce. And, we have to understand the business income going forward and the how that income will be affected by taxes, and alimony.”

High net worth individuals and ex-

IRS issues

With couples’ finances put under a microscope as part and parcel of divorce proceedings, couples who have been creative with their cash management may end up paying unintended consequences.

So say **Gary Botwinick** and **Patricia M. Barbarito**, at **Einhorn Harris** in Denville.

“Businesses may have some element of tax exposure if certain facts come out in the record of a divorce,” Botwinick said. “That is why it’s our job to inform our clients about the potential risks and rewards of financial information becoming public.”

And vengeful spouses looking to expose an ex for hiding could be doing themselves more harm than good, Barbarito warns.

“If one spouse runs the business and is underreporting cash income, and the nonworking spouse signs the tax return, but knows they are living well above the means they are claiming, that spouse could be implicated by the IRS,” she said. “It’s a common and complex issue because, if the ship goes down, you might be going with it. It can be counterintuitive to a client, but we advise them to take a breath, step back and analyze exposure before reacting.”

executives with diverse compensation going through a divorce also face many caveats.

For example, if a C-level executive has been the primary wage earner during a marriage and has significant benefits, stock options, restricted shares and deferred compensation, those assets are not liquid and can't be easily transferred between spouses.

Attorneys may have to create trusts so the money received from benefits over the years can be distributed to the spouse without unfavorable tax implications.

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When Bender and her ex-husband founded the Bender-Hammerling Group Public Relations agency in 1995, their roles made sense.

She had a successful PR career and her husband had a career in finance.

She managed the clients and the creative. He oversaw cash flow and overhead.

But, after 10 years as business partners, it became clear that arrangement — as well as the marriage — would end.

They were fortunate, as it was clear to both parties that she would be the one to take over the business after the split.

"When I opened the company, my husband at the time was a financial planner," she said. "We felt it was appropriate then for him to help me oversee the business."

But even though Bender always had spearheaded the company and handled all the logistics, their separation at first left Bender slightly off balance.

"There was always a safety net knowing my then-husband was there, too, managing cash flow and billings and such," she said.

She eventually hired a CPA to handle the roles her husband previously oversaw. And she couldn't be happier.

"When it comes down to it, the person who is most passionate about the business — who has the talent, energy and drive — is the one who ends up thriving," she said. "I'm grateful for the business not only because it is still my sole financial source, but because it is also my salvation," she said.

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Discussing a divorce isn't always the end of a business. And sometimes, it doesn't prove to be the end of a marriage.

Barbarito and Botwinick say they've seen it all.

Because of it, both said their first job as lawyers is to be the voice of reason and help their clients take a step back.

"People getting divorced are emotional, and that is appropriate," Barbarito said. "But we have to look at the business implications pragmatically. We have to balance and respect the emotions that come with divorce, but we have to look out for the clients' financial well-being.

"It might be counterintuitive to not go after someone, but, ultimately, that may be the best thing for a client from a financial perspective."

And it's not uncommon, they said, for someone considering divorce to learn

about the rigors and the costs involved with breaking up a business and take a second look at the situation.

"Our consultation or strategy session can happen months if not years before a divorce actually takes place, because what they learn from that process may make them less inclined to want to end the marriage," Barbarito said.

"Some people come in to see us and at the end of the strategy session, they say, 'I need to make my marriage work.'"

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