

Headline: 7 things to know if your business partner is getting divorced

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1. Why is my business involved in my partner's divorce case?

The court can value, distribute and divide a spouse's interest in a business. This is the case, even where your partner holds a minority interest in your company, business, partnership, LLC or LLP. Your partner's income from the business may also be relevant to the case.

2. Will I need to turn over my business records?

Litigants in a divorce case are required to disclose assets and property to the other spouse, and are often asked to obtain and produce voluminous business records. You may be asked by your partner for access to the records. Your partnership or membership agreement may define his or her right to obtain those documents. The other spouse might serve a subpoena on you for certain records. The court can provide you with a protective order that restricts dissemination and access to sensitive, confidential or classified business information, but you must be proactive in seeking the court's protection. If you do not obey a subpoena or court order, you can be held in contempt of court.

3. Will I be part of their case?

You might be required to appear and provide testimony under oath at a deposition or in court. You could be voluntarily or involuntarily joined as a party to the divorce case, if such involvement is deemed necessary or helpful to determine the rights of the divorce litigants.

For the purpose of valuing your partner's interest in the business, you might be asked to provide information to a business appraiser.

4. Can this interfere with operation of the company?

Possibly. While the case is pending, the court can make temporary orders that may limit or restrict non-routine business activity or transactions. You also might be subject to a Notice of Lis Pendens, which puts third-party purchasers on notice that some other person claims an interest in the property.

5. Can his/her spouse become an owner of the business?

Theoretically this is possible, but in practice the court will recognize a business owner's desire to have non-hostile partners. A well-drafted partnership or membership agreement will preclude most involuntary transfers of a business interest.

6. Can the spouse seize or garnish income or property of the business?

This may depend on how the business is organized. A judgment creditor of your business partner may have rights that include execution against shares of stock, or issuance of a "charging order" against the membership or partnership interests. The charging order will require payment of the partner or member's interest to the creditor until the judgment is paid. Whether non-economic rights, such as voting rights or access to books and records, are transferred will depend on your type of business entity and the remedy sought by the judgment creditor.

7. How can I protect my own interests?

A well-drafted partnership or operating agreement can solve many problems before they arise. If you are served with documents that request or require the production of business documents you feel would disclose business secrets, or confidential or sensitive information, a lawyer can help limit the scope of such discovery requests, or restrict public access to the documents.