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## Keeping a Business Alive During a Divorce

You can make bad decisions under emotional stress. You might even lose the business entirely. Here are savvy tips from attorney Lisa Hughes

By Karen E. Klein



Maneuvering a small business through rough economic seas is tough enough. But doing it amid a divorce at the same time—well, the stakes are pretty high. Lisa Hughes, an accountant and family law attorney, is managing partner at Hughes & Sullivan, a family law practice in Tustin, Calif., a suburb of Santa Ana in Orange County. She spoke recently to Smart Answers columnist Karen E. Klein about how small business owners can get through a divorce without losing their business. Edited excerpts of their conversation follow.

### How do you advise small business owners when they come to you and say they are considering divorce?

I tell them to try marriage counseling. And spend at least one hour at it for every year of your marriage. Divorce is the last road you want to take—seriously.

**You've been practicing for 33 years. You must have witnessed lots of mistakes that people make in their businesses and their lives because they are going through the highly emotional stress of splitting up from their spouses.**

A lot of misguided decisions are made during divorces that can cripple or destroy the businesses people have built up through years and years of hard work. And the sad thing is, that kind of business collapse can be avoided.

### How can entrepreneurs continue making wise decisions that keep their businesses alive and thriving?

It's important to recognize this is not a time of business as usual. It's also important to hire a savvy forensic accountant who can provide in-depth understanding of the applicable law and who has the expertise to testify in court.

It's also critical to understand the implications of upward or downward trends for the business, and whether the business began before or after the marriage. Many times, if one spouse is a business owner and the other is not involved in the business, the business owner thinks the business won't be considered in the divorce. But if the business arose or was acquired during the marriage, it is considered the property of both individuals.

### What are some business pitfalls to look out for during a divorce?

The truth is that during a divorce, your business and your net worth really have to be an open book. Don't try to hide anything. Here in California, we had a recent case decision in which a powerful business owner, Mr. Feldman, failed to expose all of his earnings and transactions during his divorce. That violated his disclosure duties, and when his wife discovered his hidden assets, the judge required Mr. Feldman to pay her \$250,000 in sanctions along with \$140,000 in attorney fees. So providing full disclosure is key to expediting a settlement without sanctions.

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Judges in family court have seen everything by the time they've been on the bench a week. Was your business making lots of money before the divorce, and then, all of a sudden, your profits dropped dramatically? That's suspicious. Same with putting your new girlfriend or boyfriend in as treasurer, or vice-president for operations. Don't change the leadership of your business during a divorce. It looks like you are not operating in good faith.

**What are some key things a business owner can do to get through a divorce and keep the business intact?**

Do the same things you're doing to navigate your family through this economy. You have to be conservative, and by that, I don't necessarily mean Republican. I mean operate cautiously. Always pay your taxes and keep your insurance payments current. If you try not to pay the government, they will come after you, and the penalties and interest they charge you will really add up. In times of stress, you really need life insurance and health insurance. I'm a big believer in not letting policies lapse, even if you're hurting financially.

**Do the divorce rates go down during a time of economic distress or uncertainty?**

Divorce rates were trending down the last time I looked, which was early this year. What I think is also happening, just anecdotally from what I see in our practice, is that people can't afford to separate. Real property values have dropped so dramatically, and so many people don't have equity in their homes now. We used to use the couples' house as a nest egg to pay off debts, pay the lawyers, and help the parties get on their feet and have a chance at a new start.

Now, with negative equity, plus declining business or job revenue, couples can't even finance the litigation. Not only can't they afford to start two households, there's so little liquidity in the lending market they can't even borrow on their homes.

**Can divorcing spouses continue to own a business together and work side by side?**

I haven't seen that be successful in the long term. They may start out being O.K. with both staying in the business, but eventually one or the other gets remarried. And when third parties get involved, they are the ones who object. It's usually best to buy one party out of the business or sell it to a third party. We hate to liquidate a business to fund a divorce, because that's the thing that provided the lifestyle and the house in the first place. So, try to keep the business going, but you may have to decide which spouse is going to bow out eventually.

*[Karen E. Klein](#) is a Los Angeles-based writer who covers entrepreneurship and small-business issues.*