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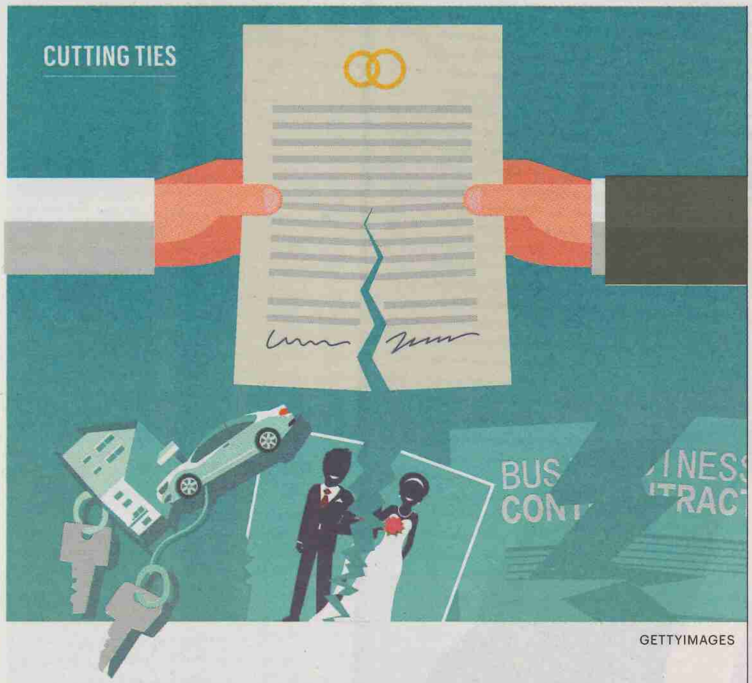

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HOW TO DIVORCE AND VALUE A BUSINESS AMID A PANDEMIC

BY
SUSAN MYRES,
Guest contributor

There is never a good time to divorce, but divorcing amid a pandemic and trying to value a closely held business seems particularly challenging. In high-dollar divorces, correct evaluation of a business or businesses is often the critical issue in terms of how property is to be divided between the two spouses in a community property state like Texas.

Some businesses succeeded beyond all forecasts during the pandemic, but the pandemic has been an unmitigated catastrophe for others. The one thing both kinds of businesses have in common is that the current situation, for better or worse, is not permanent and remains fluid even now. An increase in business may be temporary – a one-time phenomenon. A decrease may get worse and eventually be fatal, or there might be a substantial comeback when, for instance, pent-up demand causes people who have been locked down for a long time to flock to restaurants, stores, movies and vacation spots.

Generally speaking, in these kinds of divorces, a professional business evaluator will be hired – someone who can quantify economic blips and make long-term forecasts beyond temporary setbacks, even in "unprecedented times."

There are three primary ways of evaluating businesses: market valuation, the income approach, and the asset valuation approach. All three methods are relevant. An expert should be able to determine which approaches are most appropriate in each case.

The spouse who is the larger earner in a divorce situation might be motivated to conclude the divorce under present conditions because she assumes that her business will be valued at a lower amount than during normal times. Therefore she will be required to pay much less to her departing spouse than she might otherwise. The lower-earning spouse may believe this is the wrong time to divorce for this very reason.

On the other hand, it may be important for the lower-earning spouse to at least file for divorce now, to generate temporary orders that will, among other functions, require that neither spouse destroy or conceal any relevant documents or records. Another consideration might be, how long do the parties want to wait? No one knows when we will get back to normal or if the new normal will resemble the old normal. The value of the business could continue to depreciate or even fade away altogether.

Notwithstanding these considerations, there are ways to proceed without additional harm to the parties or business despite the pandemic. For example, if there is a trusted manager for a company, the two parties might remain joint owners for a while after the divorce until there is a more appropriate time to sell. As an alternative, they could proceed with a provision that the party who is not actually running the business, day to day, has a right to see all financial records in a timely fashion.

The divorce decree might also include "clawback" or other provisions to allow for the possibility that the business may ultimately be worth more or less than can be predicted now and provide for a future adjustment.

Divorce now or wait? It depends entirely on the individual circumstances of the couple involved. In a high-dollar situation particularly, consulting with experts in family law and business valuation is essential before any action is taken.

Susan Myres is a family law attorney and managing partner at Myres & Associates PLLC, a divorce and family law firm based in Houston.