

SUCCESSFUL MARITAL BUSINESS DIVORCE: RESOLVING BUSINESS OWNERSHIP ISSUES



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Today's Presenter from Winstead PC: Business Divorce



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The Liquidity Buyout Problem – High Value But Insufficient Cash

- Timing of Ownership Transfer
- Security/Collateral Upon Default in Payment
- Business Sold During Buyout – Payment Due
- Further Payment if Sale Price \geq Buyout Amount



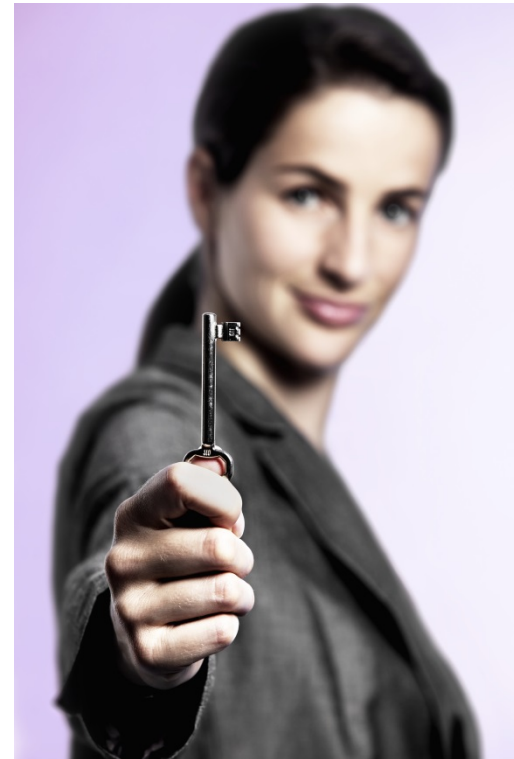
Kick Can Down The Road Strategy – Shared Ownership Post-Divorce

- Negative Covenants – compensation, debt limit, transfer, sale, taxes, dilution
- Transparency assured
- Put/call rights – right to sell and right to buy
- Valuation – no discounts for minority interest



Traps in Transferring Business Ownership Between Spouses

- Broad release from spouse AND company
- Secure indemnity protection for departing spouse
- Obtain non-compete restriction from spouse
- Retain audit rights for any carried interest
- No distributions until buyout completed
- Agreement incident to divorce lasts 7 years to avoid tax



Valuation Battles: Winning the War

- What interests are valued & when – value date is key
- No minority discounts apply to valuation of spousal interest
- Consolidated statements – gimmicky accounting
- Restating financials to add back improper deductions
- Personal goodwill – a wolf in sheep's clothing



Spousal Consents to Company Agreements – Enforceable or Not

- Spouses owe fiduciary duty to fully disclose all material information
- Was spouse shown full agreement – did he/she receive full, fair disclosure
- Were material terms reviewed with spouse
- Did signing spouse have legal counsel or receive business advice



Strategies for Negotiating Successful Business Divorce

- Seek award of business for spouse at trial – if spouse has knowledge of business
- Present buy-sell offer to spouse for his/her interest in business
- Solicit offer to buy company from third party – sets value for business
- Seek appointment of receiver over business



Optimizing the Business Divorce in Family Law Matters

- Maintain value of business or interest
- Spouses sell/buy high, not for fire sale value
- Maximize tax benefits
 - beware of tax basis
- Look for the win–win to avoid later disputes



Questions?