



Protecting Your Business in DIVORCE

Taking specialist legal advice as early as possible in a divorce is paramount but it's especially so if you are a business owner who also wants to protect business interests

The court will consider whether the business was set up before the marriage and by whom. For instance, if the business was started by you or your family before marriage it could be argued that it isn't a matrimonial asset. Other considerations will be whether or not your spouse has made a contribution to the business, even in the early days.

Planning ahead with pre-and post-nuptial agreements can be helpful in limiting claims against the business. Your spouse agreeing not to make damaging claims against the business should things go wrong, can also be very helpful.

Private wealth which is separate from your business is advisable, along with avoiding using the family home to secure business borrowing. Mixing business assets with private assets should be avoided if at all possible.

The courts deal with each case on an individual basis, deciding whether a business is capital rich and income poor as in, for example, a farming business, or capital poor and income rich, for example, in a consultancy. Courts do not want to impact upon the viability of the business but need to balance this against the needs of the family.

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They will also consider the liquidity of the business assets. Rather than withdraw capital to meet a lump sum order, the court may look to award a maintenance order to minimise the impact on the day to day running of the business. The court will also look to how the business is structured and future plans for the business – whether you plan to pass on the business to the next generation, intend to sell when you retire or whether it is a 'develop then sell' business.

Taking specialist legal advice as early as possible in a divorce is paramount. For more information about how Newtons can help call 0800 038 5500 or visit the Family Law pages of our website www.newtons.co.uk