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Own a business and getting divorced? Beware of common mistakes

Splitting up a couple's property in a divorce can be tricky and contentious. But when either or both spouses own a business, it can take things to another level, making the process of untangling debts and assets even more complicated.

There are also a lot of mistakes that business owners tend to make when going through a divorce, which can only make matters worse. Here's a primer on some of the most common ones to avoid:

• Not having a prenuptial agreement

Nobody goes into a marriage thinking it's going to fail. So the idea of entering into a prenuptial agreement is anathema to many people.

But that's the wrong way to think about it. A prenup is a smart way to give yourself security and predictability just in case things don't work out.

Most states will allow you to designate your business as "separate property" not subject to division in a divorce. In some instances, you may even be able to designate a future business that hasn't gotten off the ground as "separate property." You can even include instructions for how the business will be appraised.

And if you didn't enter a prenup, it's not necessarily too late. If your spouse is willing to consider it at this point, you can put the same provisions into a postnuptial agreement.

• Improperly valuing the business

Even before a divorce appears on the horizon, you should know what your business is worth. To do this, you need a proper business valuation conducted by a professional business appraiser.

It's important to note that appraisers can use a variety of formulas to value a business. They might focus on income, they might focus on fair market value, or they might focus on assets. It's a good idea to check in with a family lawyer to discuss which approach is best, but you do want to make sure that however the business is valued, you're taking into account the business's future outlook and not just its current worth. This reduces the risk of you receiving too little in the settlement.

• Poor financial recordkeeping

You simply can't have your business valued properly if you don't have accurate and up-to-date financial records. And a divorce judge will have a tough time entering orders that protect your business if your

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Hasselberg, Rock, Bell & Kuppler LLP
Attorneys & Counselors
4600 N. Brandywine Drive, Suite 200
Peoria, IL 61614
Phone: (309) 688-9400 • Fax: (309) 688-9430
www.hrbklaw.com

Julie L. Galassi • Marci M. Shoff • Michael S. McKinley • Peter J. Lynch
Colt W. Johnson • Melinda L. Mannlein • Siobhan L. Smith • Bryant S. Lowe

Hurt by a drunk driver? Others may be accountable, too

If you or a loved one gets hurt in a car accident caused by a drunk driver who may not have sufficient insurance or assets to cover your harm, it's important to talk to an attorney who can investigate further.

Depending on the facts of your case, you may be able to hold others responsible for your harm as well. This is what is known as "third party liability," and it's quite common in drunk-driving cases.

For example, state or local authorities potentially could have played a part in the accident by maintaining unreasonably dangerous road conditions or by designing intersections in an unreasonably dangerous manner. Similarly, the actions of road maintenance crews can sometimes contribute to an accident, as can construction contractors and crews.

And if the at-fault driver was using an employer's vehicle and/or was driving in the scope of his or her duties, it's possible that the employer can also be held responsible.

Additionally, if the at-fault driver consumed alcohol at a bar or restaurant before getting behind the wheel, and the establishment overserved the driver when it knew or should have known he or she was intoxicated, you may have a claim against the establishment, too. That's known as a "dram shop" case.

Meanwhile, if the driver borrowed the car from a friend or family member who had reason to suspect the driver might get behind the wheel while intoxicated, that person can be held liable for "negligent entrustment."

A recent case out of New Mexico further suggests that, in certain situations, you may even be able to hold responsible the gas station where the drunk driver stopped for fuel.

In that case, motorist Andy Denny was drunk when he ran out of gas sometime after midnight. He walked to a service station where the clerk initially refused to sell him gas because he appeared intoxicated, but then decided to sell him a gallon's worth. After Denny and a friend brought the gas back to his car, they returned and purchased another nine gallons.

Denny then dropped off his passenger, got on the highway, crossed the median, and caused a fatal head-on collision.

The victim's family sued the gas station, arguing that selling Denny gas amounted to negligent entrustment, just the same as if it had loaned him a vehicle.

The New Mexico Supreme Court agreed, ruling that the lawsuit should be able to proceed.

Of course, the workings of third-party liability can differ from state to state, so if you want to learn more, call an attorney where you live.

We welcome your referrals. We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

IRS makes inflation changes

A new year means new tax brackets and new standard deductions go into effect. That could lower income tax for many Americans, including those in retirement. Additionally, the changes give high-net-worth families additional opportunities to make tax-free gifts.

Increases in gift tax exemption

Along with inflation comes significant increases in the lifetime gift tax exemption for 2023 — jumping $860,000 to $12,920,000. An individual who had previously given away their full lifetime exemption of $12,060,000 can now make an additional gift of $860,000. Married couples will be able to give away double that.

New tax brackets

The IRS adjusts tax brackets every year. This is an effort to stop "bracket creep," which is when inflation pushes taxpayers into a higher income tax bracket even though they didn't get a real increase in spending power.

Income limits have shifted. For example, if your taxable income was $90,000 in 2022, your tax rate was 24 percent. In 2023, it drops to 22 percent.

Other changes

- Contribution limits for 401(k) and related retirement plans increased to $22,500, up $2,000 over 2022.
- The 2023 standard deduction for married couples filing jointly increased to $27,700 — an $1,800 increase over last year.
- Contribution limits for flexible spending accounts increased $200.
- Mileage rates increased by 3 cents.

Employer's shifting reasons for firing result in retaliation claim

The federal Rehabilitation Act prohibits federal employers and government contractors from discriminating against otherwise qualified workers or job candidates with disabilities.

That means it's illegal for a federal agency or contractor to fire, demote or refuse to hire someone based on their disability. It also means such employers must provide reasonable accommodations that can enable a disabled person to do the job. Employers who retaliate against employees for requesting an accommodation for their disability may face consequences as well, as happened recently in Virginia.

That case arose several months after disabled veteran Anthon Calix-Hestick started working for the U.S. Postal Service. His second-line supervisor had planned to fire him for a poor attendance record but held back upon learning in a meeting with him that his absences were due to medical appointments.

During that meeting, Calix-Hestick requested a standing mat to help with pain in his knees. The USPS then sent him home without pay and subsequently fired him for his answers to open-ended questions on an application form that called for subjective-based answers.

When Calix-Hestick brought a retaliation claim under the Rehabilitation Act, the USPS argued that it had a legitimate, nonretaliatory reason for doing what it did. But a federal judge ruled that the claim could proceed, noting that conflicting explanations by USPS managers involved in the decision suggested that the employer's stated reason for the termination may have been a pretext — or smokescreen — for retaliation.

Calix-Hestick now will have a chance to bring his case before a jury. But even if the postal service prevails, it will likely come after a costly, time-consuming trial, which is not desirable for any employer.

Additionally, while the Rehabilitation Act covers federal workers and employees of government contractors, the federal Americans with Disabilities Act offers similar protection to private employees nationwide. This means all employers should have an attorney review their procedures for dealing with workers requesting accommodations for potential disabilities.

Own a business and getting divorced? Beware of common mistakes

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records aren't clear, no matter how big or small your business is.

- **Commingling business and personal funds**

One of the most important steps you can take as a business owner is keeping your personal and business funds and expenses separate. This means if you have a credit card or a separate bank account for your business, you should not use it for personal expenses and vice versa.

By mixing up your finances, you're making it a lot harder to value your business properly and get a fair and reasonable property settlement. If you're in the habit of commingling your finances, now is a good time to divide your personal life from your professional life and even gather, organize and review your records with a family law attorney.

- **Hiding personal expenses in your business**

If you're like a lot of business owners, you might be tempted to write off certain personal expenses as business expenses for tax purposes. You may even use your business to cover all your personal expenses.

If you do this, however, you run the risk of a divorce judge attributing additional "deemed income" to you, which could result in higher child support or alimony payments.

This is just the tip of the iceberg. If you want to learn about other mistakes you could be making, call a local family law attorney today.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

HRBK Attorneys & Counselors
HASSELBERG, ROCK, BELL & KUPPLER LLP

4600 N. Brandywine Drive, Suite 200
Peoria, IL 61614
Phone: (309) 688-9400 • Fax: (309) 688-9430
www.hrbklaw.com

EPA issues clean water rule

In December, the Environmental Protection Agency (EPA) and the U.S. Department of the Army finalized regulations that more clearly define which bodies of water are protected under the 1972 Clean Water Act.

The rule returns to water protections that were in place before 2015 when the Obama administration expanded federal protections. A Trump-era rule had sought to roll those protections back but was rejected in federal court.

The revised EPA rule applies federal protections to a tributary or wetland that is relatively permanent or meets the significant nexus standard. A nexus exists if the water "significantly affects the chemical, physical, or biological integrity" of a nearby body of water.

The 2022 update was developed "to reduce uncertainty from changing regulatory definitions," according to a joint press release from the EPA and the Army. It returns to a "reasonable and familiar framework … with updates to reflect existing Supreme Court decisions, the latest science, and the agencies' technical expertise."

Nevertheless, the update was made just ahead of a relevant U.S. Supreme Court decision. The court heard oral argument in Sackett v. EPA last October. The case, which is still under consideration, has the potential to upend the regulations.

The Sackett case deals with whether wetlands adjacent to defined bodies of water fall under Clean Water Act jurisdiction. At issue is whether water on a property must have a connection to a river, lake or other waterway, or whether the significant nexus test applies.

The challenge was brought forward by an Idaho couple, Chantell and Mike Sackett. In 2004, the Sacketts purchased a vacant lot and obtained local permits to build a home. But after they started construction, the EPA ordered them to stop work, claiming the property contained a wetland that could not be filled without a federal permit.

The case has been making its way through the courts for years. The Sacketts' lot, reportedly, has a subsurface connection to nearby Priest Lake.

Analysts disagree over whether there's any lasting benefit to the EPA's move, ahead of the Sackett case. Some say it gives the agency more control over how to respond to an adverse Supreme Court decision. Others have described it as a mere "stopgap."