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Lessons from a Skinny Girl mogul:

Minimize the disruption to your business during divorce.

When it was announced that Skinny Girl Cocktail mogul Bethenny Frankel filed for divorce from her husband of three years, many wondered how much of her fortune would go to her husband and what effect it would have on her Skinny Girl empire.

During her short marriage, Frankel sold her low-calorie cocktail concept to Jim Beam for a reported $60 million. Following the sale, Frankel amassed a fortune in endorsement deals landing her on the cover of *Forbes* as one of its highest earning women. It is reported

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that Frankel and her husband had a premarital agreement that was modified after the marriage. Whether her entire fortune was protected remains to be seen, but having a premarital agreement was probably one of the best business decision Frankel ever made, and it should serve as a lesson for all business owners. It is important to understand how a divorce will affect your business assets and what steps can be taken to minimize the cost and disruption to your business.

In North Carolina, when spouses divorce it is presumed that the marital assets will be equally divided. If one or both of the parties own a business, that property must also be valued and distributed along with other marital assets.

Many business owners ask "Can I be forced to run my business with my spouse? My spouse has never worked in the business and my business partners will never agree."

It is not common, but it can happen. Carl, a client with an Italian restaurant filed for divorce, and during the process a court ordered that his wife could come in and operate the business three days per week. His wife had never worked in the business, and the disruption eventually led to its closing. More often, the business will be awarded to the spouse best able to run the business, and the owner spouse will pay the other spouse for their interest in the value of the business.

Why would I have to pay my spouse for a company that I built? My spouse contributed nothing to the success of my business.

Frankel probably asked this question many times over. Frankel single-handedly built the Skinny Girl Cocktail business from an idea to a multi-million dollar company. Her spouse, on the other hand, contributed nothing to the value of the company other than to assist Frankel in their daily marital activities. There is no "my" when it comes to assets acquired during a marriage. In North Carolina, if an asset is acquired during the marriage, it is a marital asset, and title to an asset does not determine ownership. Retirement accounts, automobiles, real estate and businesses are all valued and equally distributed regardless of how they may be titled. Although one spouse may have owned and operated a business during the marriage, it is not his or her business. It is a marital asset, and its value will be calculated as part of the marital estate.

How will my business be valued, and what is that going to cost?

Business valuation is a highly specialized area. Competent divorce lawyers skilled in business valuation issues are not inexpensive, and neither are competent business appraisers. Having a CPA or economist without the necessary business valuation and litigation training and experience may save you money on the front end, but his or her value may ultimately cost you thousands of dollars or more in the end. Appraisals can range from $10,000 to $50,000 depending on the level of complexity and whether the appraiser is required to participate in the litigation as a testifying expert. The old adage "you get what you pay for" applies in this context, and divorcing business owners must be careful not to compromise their entire case by hiring inexperienced counsel or an inexperienced business appraiser.

What does the process of business valuation involve, and how can I reduce the cost and disruption to my business?

A business appraiser will provide a list of documents that will be needed to value the business. The appraiser will also want to physically see the business and

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interview management. When one spouse is valuing the business of another, the process is generally not well received, as business partners and company employees do not want to provide any assistance to the non-owner spouse who is now viewed as the enemy. This is where parties waste an inordinate amount of money. In a recent case, the husband business owner refused to produce the documents necessary to value a business formed during the marriage. I was forced to subpoena his business partners for information and documents from collateral sources such as the bank where the business was applying for a loan. Ultimately, both parties spent thousands of dollars in a court hearing over the production of documents, and documents were still required to be produced. The most cost effective strategy is cooperation. This is the time to make a good business decision and not an emotional decision. It is more cost-efficient and less burdensome to the company to put a plan in place to put the documents together and at least produce what is reasonable, because they ultimately will have to be produced. Another cost-saving option is to engage a joint business appraiser to value the business. The intrusion feels less painful if the appraiser is a neutral expert who works for both parties.

My business partners are not happy about producing business information for my divorce. What can the company do to protect sensitive information?

The business will likely be required to produce detailed revenue, salary, and benefit information. Although this information may have to be produced for purposes of the divorce case, business owners may wish to require the non-owner spouse, consultants, accountants, lawyers and others with access to the information to sign a confidentiality agreement in which they are bound to not disclose the information unless legally required to do so. If the information is subpoenaed, the company's attorney may seek a protective order from the court, which may in turn order precautionary measures to keep the information confidential. The company's attorney also may wish to request that the court place the information under seal so that it is not available to third parties without the court's permission.

Is there any way to avoid having my business valued or distributed if my marriage dissolves?

There are things you can do in advance that will help to protect your business from being valued or distributed in the event of divorce. You should plan from the beginning to maintain control of your business. This can be done in a number of different contracts such as premarital agreements, postmarital agreements, buy-sell agreements, operating agreements or shareholder agreements. In Frankel's case, the decision to have a premarital agreement to protect her Skinny Girl fortune avoided the valuation and distribution of her business and saved hundreds of thousands of dollars in legal fees and valuation costs.

Parties going through a divorce often struggle with making good business decisions that are not at least partially influenced by emotional decisions related to the divorce. More often than not, those emotional decisions are costly to the business — financially and otherwise. Good advanced planning goes a long way in keeping the business out of a divorce. In addition, experienced legal counsel that routinely handles divorce cases involving business owners will provide a good roadmap on how to most efficiently proceed with the least disruption and costs to your business.

CATHY C. HUNT is a senior partner with Gailor, Hunt, Jenkins, Davis and Taylor PLLC. She dedicates her practice to the representation of high-net-worth business owners going through divorce. Formerly, she practiced corporate law with Womble, Carlyle, Sandridge and Rice in North Carolina and McGuire, Woods, Battle and Booth in northern Virginia. Her corporate-law experience provides her with the expertise that is necessary to understand complex equitable distribution cases, especially those involving business valuation issues. Her peers have recognized Cathy as a member of North Carolina's Legal Elite in family law. She has also been named as one of North Carolina's Top Lawyers in that practice area. She welcomes any follow up questions and can be reached at chunt@ghdivorcelawyers.com.