## Divorce in the New Year: Protecting Your Business

By Michelle May O'Neil, O'Neil Attorneys Family Law, Dallas, Texas

January is the month of renewal – closing the door on the negativity of the prior year and planning for the challenges of the new year. Many commit to weight loss, exercise, or stopping smoking at the start of a new year as an opportunity to make improvements in their lives. On the other hand, some people use the beginning of a new year to make new personal beginnings, such as ending their marriage.

Planning for a divorce and new life may seem daunting. Not knowing what to expect can be scary and frustrating. In a <u>Texas divorce</u>, specific requirements must be met before someone will even be allowed to file for divorce. For example, a spouse must live in Texas for 6 months and in a particular county for 90 days to qualify to file for divorce in <u>Texas</u> and in that county.

When going through the divorce, marital assets and debts will need to be divided between the parties. Some people enter into a premarital agreement when they get married to ease the divorce process and define the division of assets and debts in the event of divorce. But, some spouses are unable to agree in advance as to the division of marital property upon divorce in Texas, which can lead to contested litigation. Also, some parents are unable to agree regarding each parent's role with their children after divorce. Child custody issues can become expensive and time-consuming.

For those spouses who own a business as a marital asset, getting divorced and reaching a fair division of the marital estate can be even more complicated. A business entity is a separate marital asset – the individual assets and debts owned by the business are not part of the marital estate, only the entity as a collective whole. The first step in dividing a marital estate that contains a business entity involves establishing when the business was started. If it was formed prior to the marriage, it may not be community property under Texas marital property law. However, any changes to the organization, such as the entity type or owners may alter the initial characterization of the business as separate or community property.

After determining that the business is community property under Texas marital property law, the second step is to figure the business's monetary value to the community estate. A CPA or business valuation expert will evaluate and establish the value of the business for property division purposes. It is recommended that the CPA be certified by the American Institute of CPAs in Business Valuations. The value will depend on many different factors, including the amount of assets the business has, properties that the business own, current customers, intangible goodwill, as well as other financial information.

Practically speaking, while the divorce works through the process, the business will need to continue to operate. Owner spouses need to know what to do to protect their investments while the divorce process is ongoing. This becomes even more important if both spouses work at the company and agreements need to be in place regarding each spouse's rights, duties and responsibilities regarding running the business.

Once there is evidence of the assets and debts contained within the community estate as well as the value of each asset and debt, the parties by agreement, or the judge after a trial, will work to achieve a fair division of the assets and debts between the parties. The division does not have to involve a split of each asset and debt, but will contemplate an overall fair division. One spouse will receive certain assets, the other spouse will receive other assets, each spouse will be allocated certain joint debts, and each party will be assessed the debts in their name only.

If you are considering a divorce or have been served with divorce papers, contact an experienced divorce attorney, especially if you own a business. The decisions you make during this process could impact not only your personal financial freedom but also your business's bottom line. You need to know what will be considered in the final split of the marital assets and debts.

Contact the Dallas firm of <u>O'Neil Attorneys Family Law</u> for your family law needs, including dividing your business assets upon divorce. <u>Michelle May O'Neil</u> and <u>Ashley Bowline Russell</u> are well-acquainted with the special concerns for <u>complex property divisions in a divorce in Dallas Texas</u> or the surrounding areas. O'Neil and Russell released their new book <u>The Basics of Texas Divorce Law</u> in December 2010. Find them online at <u>www.themayfirm.com</u> or <u>www.oneilattorneys.com</u>.