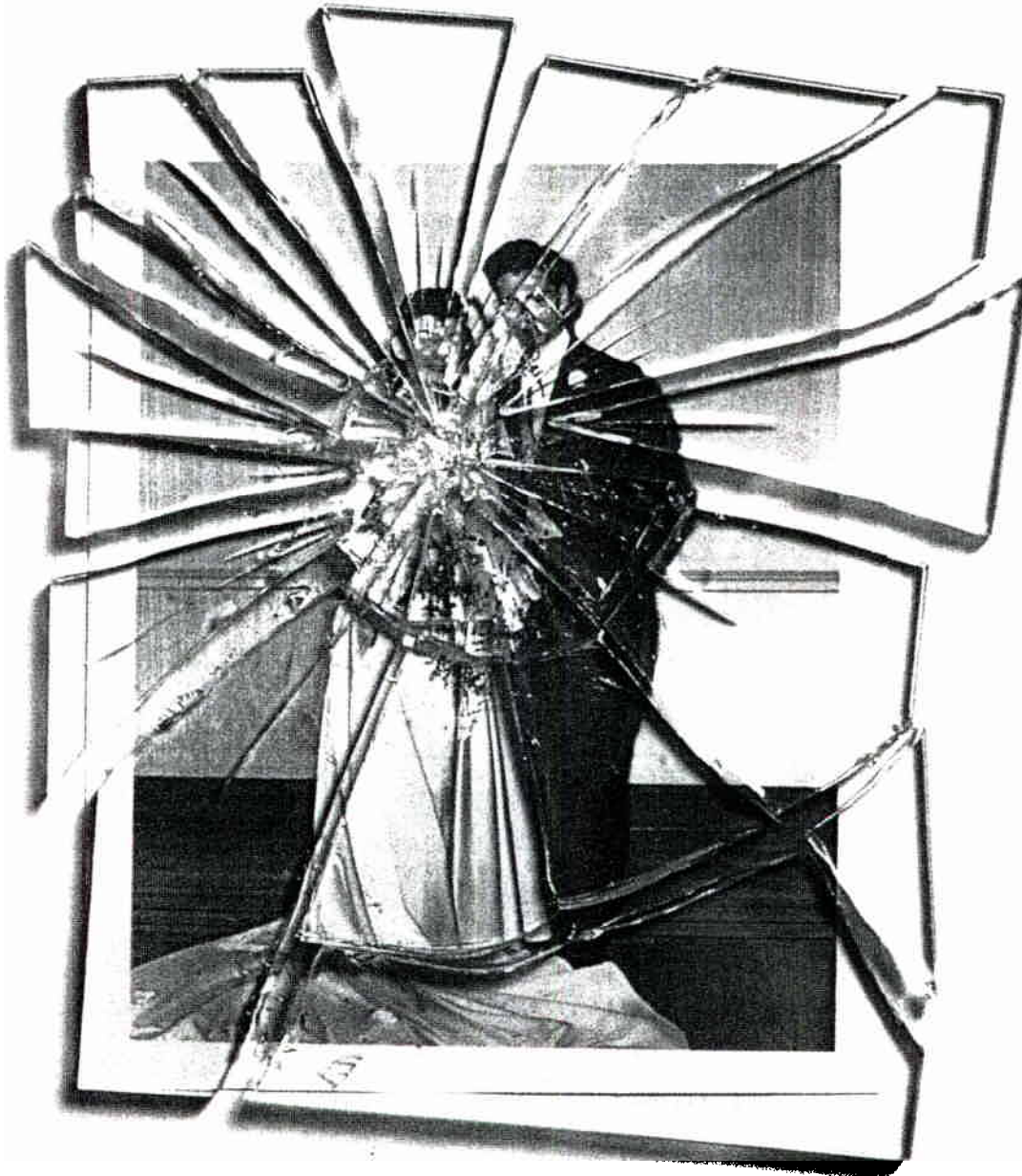


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JOANNE GREENBERG IS TRYING TO FIGURE out what to do with the rest of her life. She's dealing with a double whammy—the dissolution of her marriage *and* of her software consulting business. The 41-year-old was so eager to free herself from the business partnership with her husband that she recently sold him her 50% share for \$1 even though she claims he charged thousands of dollars on her credit cards to provide working capital for the couple's Fort Lauderdale company.

Gut-wrenching episodes like Greenberg's are not unique. Headlines announce celebrity divorces, such as the recent breakup of the 32-year marriage of Lorna Wendt and GE Capital chief Gary Wendt, but the split-ups that decimate small business owners rarely get a blurb in the local papers. Since most small business owners have more than 50% of their assets tied to their companies, some are forced to sell their business to pay off their spouse. And if the partners can't agree on division of shares and company assets, a judge can order the firm liquidated. Even in an amicable settlement, working capital is often diverted to pay attorney fees and other costs. In most cases you'll end up calling on a forensic accountant, who specializes in uncovering hidden assets and financial information a spouse might squirrel away; a C.P.A. to review tax ramifications; a matrimonial attorney (although you'll still want to consult with a business lawyer); and a business appraiser, who will place a fair value on your company.

While most entrepreneurs don't want to think about divorce, Patricia Frishkoff, director of the Austin family business program at Oregon State University, offers this advice: "Face the eventuality of divorce from the first day you start your business. After all, about half of all marriages survive." Know if you're operating in a community property state, which views both spouses as equal owners of all marital property, or an equitable-distribution state, which considers factors like length of marriage and the spouse's earning power and participation in building the business when determining a settlement. Here's advice on marital arts from some leading matrimonial attorneys and small business financial advisers:

**Safeguard your assets:** It's crucial that you take steps to guard your assets, starting the day you put the key in the door.

Breaking  
up your  
marriage is  
especially  
tough if your  
assets are  
tied to your  
business.  
To make  
sure the  
company will  
survive,  
create a  
divorce  
contingency  
plan now.

BY SHERYL  
NANCE-NASH

First, draft a legal buy-sell agreement, says Barry Karson, a matrimonial attorney with Ballou Stoll Bader & Nadler in New York City. Such agreements outline the terms and conditions under which one partner will agree to sell back part of the business. "While these tools are used extensively for estate-planning purposes, they can also serve as a defensive tool in case of divorce," says Victoria Collins, a certified financial planner and co-author of *Divorce and Money* (Nolo, \$26.95).

If you operate a partnership, you can include a provision in your partnership agreement called a restriction of transfer, which states that there can be no transfer of ownership without the partners' approval. "This way, if the court orders a transfer of ownership to your spouse, your partners will bail you out and you won't lose all your interest in the business," says Donald Schiller of Chicago's Schiller DuCanto & Fleck, the nation's largest matrimonial law firm.

**Create a good-will pact:** "A great armament in spousal warfare is a prenuptial or post-nuptial agreement," advises New York City lawyer Raoul Felder, who has represented the likes of actress Robin Tyson in her divorce from boxer Mike Tyson. This agreement, which can be drawn up by a matrimonial lawyer either before or during the marriage, can be as broad as the parties wish. It can spell out how business assets should be divvied up, overriding community property laws. And it can be used to ensure that the laws of the state where the couple were married will govern in the event of a divorce, no matter where they reside at the time of the breakup. While such documents are common in Hollywood, only 20% of the owners of family-operated businesses have them, according to consulting firm Arthur Andersen.

Laws for nuptial agreements vary by state, and they must meet basic standards to hold up in court. "Judges want to make sure each party completely discloses the value of his or her personal assets, liabilities and sources of income," says attorney Michael Fay of Hale & Dorr in Boston. "They also want the agreement to be fair and not impoverish either party."

**Avoid common mistakes:** The last thing you want to have to do is sell your business in order to settle the score with your disgruntled spouse. So keep a line of credit at hand to cover six to 12 months of

business operating expenses to keep your business from becoming cash-strapped during the proceedings. The cash could also come in handy when it's time to pay Uncle Sam. Although transfers of money or assets in a divorce settlement are not taxable, you'll be hit with capital-gains taxes if you sell the stock you receive.

Also be sure to hire a pro to value your business. Hire a local business appraiser who is experienced in your line of work. He or she will obtain the business' adjusted book value (its assets including depreciation minus its liabilities) by using a variety of methods. While this can cost \$2,000 to \$6,000, you'll get a realistic evaluation that the court should approve.

And think carefully about your compensation scheme. "If you don't pay yourself a fair wage and instead plow everything back into the business, your spouse might claim that he or she is entitled to more money be-

cause you kept pumping money back into the business that should have gone to the household," says Ginita Wall, a certified financial planner in San Diego.

**Control the damage:** Even if you find yourself facing divorce without a plan, you can still avert disaster. One smart strategy is to use a promissory note to buy out a spouse's interest in a business. As its name implies, it is a promise to make future payments, and it specifies the amount needed to equalize a divorce settlement. The IOU allows an entrepreneur to pay the spouse on an installment plan and deduct all interest payments as long as he or she continues to run the business. One founder of a recycling and solid-waste-collection company in Oregon wishes he had had one.

To buy out his wife's interest in the firm, he had to merge with another company and settle for just a 25% equity slice in the new entity.

**A buy-sell agreement gives an owner the muscle to force a spouse to sell back his or her share of the business.**

Above all, do not lose track of the proprietary information you release during the divorce proceedings. Says Schiller: "Keep a trail of any sensitive documents like tax returns and contracts that you give your spouse and his or her lawyers. Get a protective order from the court that prohibits them from disclosing proprietary information like client or supplier lists." That's because a vengeful spouse can fork over trade

secrets to your competitor and destroy you, he explains.

Keep in mind, the love song can quickly segue into a battle cry. VE

## Splitsville

In real life, star wars don't happen in outer space—they occur in divorce court. Celebrity breakups are great fun to read about, but they can devastate an entrepreneur who has spent years building a business empire. Here are some splits that made front-page news:

DAVID STRICK



### ► Lorna and Gary Wendt

This divorce sparked a debate about the worth of a corporate wife. Lorna, ex-wife of GE Capital's CEO, is getting a bundle.

**Settlement: \$20 million**

### ◀ Susle and Doug Tompkins

The marriage of the co-founders of Esprit came apart at the seams in 1988. While they bickered, Esprit hit a snag and company sales stalled.

**Settlement: Susle reportedly paid \$120 million to buy out Doug.**



### ◀ Jane and Jann Wenner

Rolling Stone's founder rocked the media world when he left his wife for a male lover in 1995.

Jane went for her share of the company, reported to be worth \$200 million.

**Settlement: Unknown**

### ► Frances and Norman Lear

TV producer Norman Lear gave his wife half his assets when they divorced in 1985. Frances used some of the money to start Lear's magazine.

**Settlement: \$112 million**

