

## FOCUS ON LAW &amp; ACCOUNTING

# Divorces and closely held businesses: Myths and maxims

By **LAUREN L. SORRENTINO**  
Special for Lehigh Valley Business

Business ownership interests pose unique challenges for divorcing couples.

In many instances, spouses are working side-by-side in the business – whether one or both of them hold ownership interest.

Alternatively, one spouse may be singularly focused on maintaining the home, child rearing and other domestic chores so that the other is able to focus on the entrepreneurial venture.



Sorrentino

Frequently, extended family members also are partners, members or shareholders in the business, adding to both the complexity of the

legal issues involved and potentially to the emotional stress.

While each divorce and each business are unique, having some understanding of the intersection between the two in advance of starting a new venture or saying “I do” may help to prevent disputes later.

Here are just a few of the common misconceptions that some spouses hold regarding the rights the law affords them and/or the obligations it imposes upon them.

■ **Myth: I am the only one involved**

**in the business, and my spouse has no ownership interest, so the business is off limits in divorce.**

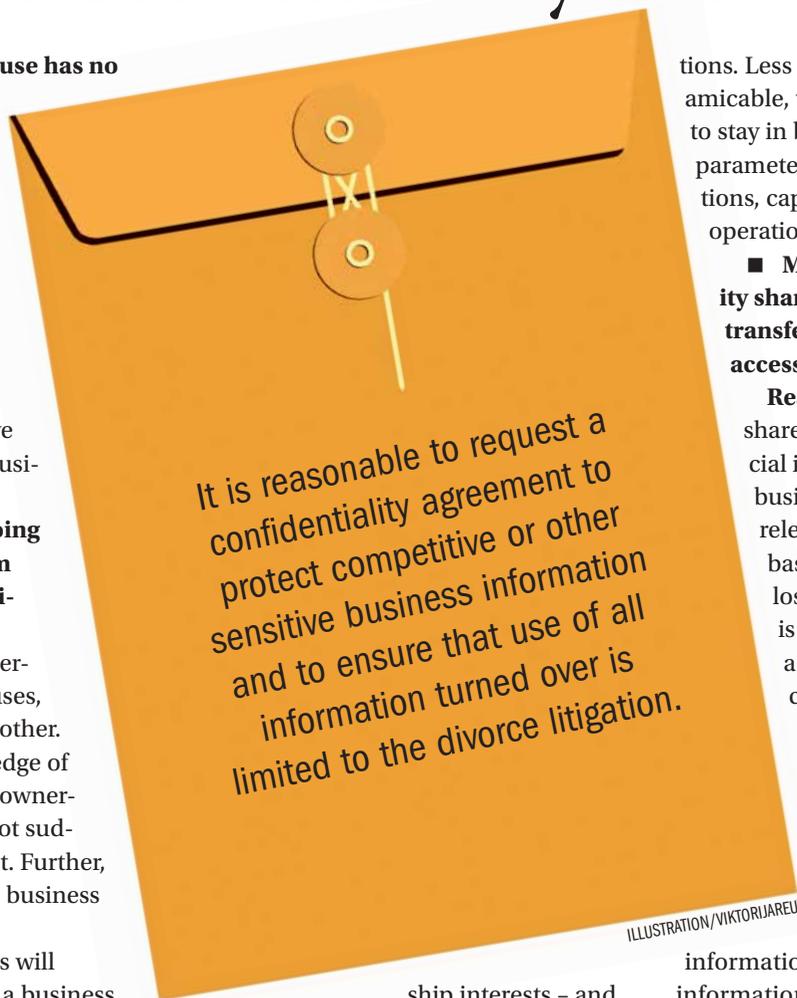
**Reality check:** Pennsylvania is “title-blind” in its definition of marital property subject to equitable distribution in divorce. Even when only one spouse has a titled legal interest in the entity, the other may still have an equitable interest in the business’ value.

■ **Myth: My spouse is going to “get” my business, or I am going to have to sell my business.**

**Reality check:** Courts generally want to disentangle spouses, not keep them tied to one another. If your spouse has no knowledge of the business and no existing ownership interest, he or she will not suddenly receive such an interest. Further, courts recognize the sale of a business is neither easy nor optimal.

As with other assets, courts will attempt to offset the value in a business with other assets. Where there is insufficient liquidity, secured payment streams and/or an increase in alimony duration or amount may be considered.

**Note:** When both spouses have owner-



ILLUSTRATION/VIKTORIJAREUT

ship interests – and both are actively involved in running the business (and this is key) – a division of the business may be an option if practical, particularly if there are franchises or services with multiple loca-

tions. Less frequently, if the parties are amicable, they may be able to continue to stay in business together with tight parameters regarding salary, distributions, capital expenditures and general operations.

■ **Myth: I’m just a minority shareholder; my interest is not transferable and I do not have access to any information.**

**Reality check:** Even minority shareholders are entitled to financial information regarding their business interests. Contesting the release of information regarding basic revenue, expenses, profits, losses, assets, debts and taxes is typically not worthwhile in a divorce case and may prove counterproductive by escalating mistrust.

That being said, it is reasonable for the spouse involved in the business to request a confidentiality agreement to protect competitive or other sensitive information and to ensure that use of all information turned over is limited to the divorce litigation.

■ **Myth: My shareholder, partnership or operating agreement dictates the**

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## PEOPLE: promotions, appointments and hires

**MKSD architects** based in South

Whitehall Township added two project designers to its staff. **Gina Vary** is a Leadership in Energy and Environmental Design-certified accredited professional with experience in construction document production, project management and interior and exterior designs that integrate with landscape architecture. Vary earned a master's in architecture from the University of Houston.



Vary



Peluso

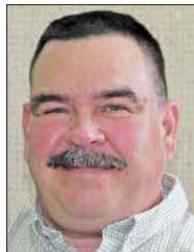
**Haley Peluso** earned a bachelor's degree in architecture from Philadelphia University. She was an intern at MKSD in 2015 and 2016.

**Vizinex RFID** based in Hanover Township, Lehigh County, hired **Angela Han** to its engineering team where she focuses on industrial automation. She previously worked at Simplex Homes.

**Barry Isett & Associates Inc.** based in Upper Macungie Township hired three people. **Brett Johnson** was hired as a construction services associate in the special inspections department. Johnson previously worked at Advantage Engineers. **James Kelley**, Professional Engineer, was hired as a senior project manager in the civil department. Kelley has nearly 30 years of experience in the industry in north-eastern Pennsylvania and previously worked at Colwell-Naegele Associates. **Richard Sopko** was hired as a code specialist in the code services department. Sopko has nearly 13 years of experience in residential, con-



Johnson



Kelley

struction and building code and zoning enforcement experience. He previously worked for the borough of Dalton.

**Bay View Funding** based in Santa Clara, Calif., named **Bob Seidenberger** as vice president, regional sales manager, based in Bethlehem. With more than 30 years of experience in middle market financial sales and marketing, Seidenberger will represent Bay View Funding in the Philadelphia area and surrounding markets.



Sopko

**Addison Wolfe Real Estate** based in New Hope added agent and broker associate **Jay Ginsberg** and his five-agent team to the brokerage. Ginsberg, who has more than 40 years of experience, founded The Jay Ginsberg Group, New Hope.



Ginsberg

**Keith Costigan** of Perkasio, **Susette Dubin** of Telford and **Karen Johnson, Corissa Seraydarian** and **Stephanie Thibodeau**, all of Doylestown, also joined the firm.

**Tompkins VIST Bank** headquartered in Wyomissing promoted three employees at its Wyomissing administration center. **Andrew Park** was promoted to credit department manager. Park has worked at Tompkins VIST Bank for six years and previously was a credit analyst coordinator.



Park

**Jennifer Binter** was promoted to bank officer and senior credit analyst. In addition to approving financing, she assists the chief operating officer. Binter has worked at the bank for four years and previously was a credit



Binter

analyst. **Andy Fredrick** was promoted to bank officer and senior credit analyst. He has worked at the bank for four years and previously was a credit analyst.



Fredrick

**Univest Insurance**, a subsidiary of Univest Bank and Trust Co. based in Souderton, hired **Jodi Krawitz** as human resources practice leader. Krawitz, who has more than 25 years of experience, previously worked at Gemini Consulting.

**SWBR** based in Hanover Township made two promotions and a hire. **Donna Sinko** was promoted to senior vice president of digital and creative services. Sinko joined the firm more than 30 years ago as a receptionist.



Sinko

**Jessica Dentith** was promoted to account coordinator. Dentith interned at SWBR before joining the agency as a content and social media specialist in January. **Mackenzie Liberatori** was hired as an account coordinator. She previously worked at Lehigh Mining & Navigation.



Dentith

**Nick Swartz** joined **Klunk & Millan** in South Whitehall Township as director of brand strategy. Swartz previously worked at Lehigh Mining & Navigation, BBDO and Publicis.



Liberatori

**Rose Craig** joined **Communities in Schools of the Lehigh Valley** as vice president of advancement and communications. Craig previously worked at Lutheran Social Services of Central Ohio, Make-A-Wish Foundation of Central Ohio



Swartz

and Just Born Inc.

**Phoebe Ministries** hired **Todd Saylor** as executive chef and director of culinary services for the Phoebe Allentown Health Care Center. Saylor is responsible for overseeing all operations related to dining services in the skilled nursing and personal care communities, including the hiring and training of the culinary team. Saylor previously worked at Keystone Culinary Systems and Services.



Craig

**Berks Fire Water Restorations Inc.**

based in Reading promoted **Jason Stone** to services manager. Stone, who joined the company in 2011, worked most recently as a contents manager.



Saylor

Seven physicians and about 60 employees



Stone

from Urology Specialists of the Lehigh Valley joined **St. Luke's University Health Network**. **Dr. Paul M. Berger, Dr. Jeffrey L. Gevirtz, Dr. Brian P. Murphy, Dr. Daniel M. Silverberg, Dr. Richard M. Lieberman, Dr. Joseph G. Trapasso, Stephanie Marie Meehan, Denise Martinez and Debra Kramer** joined St. Luke's Center for Urology in Lower Macungie Township. **Dr. Mark E. Alden**, a radiation oncologist with the group, joined St. Luke's affiliated **Advanced Radiation Oncology Associates**.

**Rachel Seitzinger** of Frackville joined **St. Luke's Family Medicine** in Coaldale and **St. Luke's Primary Care Nesquehoning** as a nurse practitioner. She had been a hospital nurse working on medical surgical floors for 10 years before returning to school to get an advanced degree as a nurse practitioner from Bloomsburg University.

— WENDY SOLOMON

## DIVORCES

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**value of my interest. There is no need for an expert or a business appraisal.**

**Reality check:** While such agreements contain formulas for valuing shares or interests in the event of a buyout, these formulas are not dispositive of value in equitable distribution.

The agreements are informative and should be reviewed and considered by counsel. However, if the spouse without the ownership interest did not sign off on the agreement, he or she is not bound by the value.

■ **Myth: My spouse makes a very significant income, therefore his or her business must be very valuable.**

**Reality check:** Possibly, but not automatically. Particularly with professional practices, much of the business' value is tied up in the individual professional. This type of personal goodwill, while valuable, is not distributable in divorce cases.

Moreover, if an income stream is used to determine support or alimony, capitalizing the same stream of income to value the business may be considered a double dip in some cases.

Business owners should not overlook the potential

value of a prenuptial or postnuptial agreement as a way to reduce or eliminate some of the difficult issues posed by divorce.

They also should seek qualified legal advice from counsel familiar with these unique issues.

*Lauren L. Sorrentino is a member of the firm and chair of the Norris McLaughlin & Marcus Pennsylvania family law practice, Allentown. She focuses on matrimonial and family law, including divorce, equitable distribution, alimony, prenuptial and property settlement agreements, child support, child custody and protection from abuse. She can be reached at lsorrentino@nmmlaw.com or 610-391-1800.*