THE END
OF A PARTNERSHIP

WHEN A **PARTNERSHIP** AT BOTH HOME AND WORK **DISSOLVES,** DO YOU DIVIDE, SELL OR CLOSE? BY SUSAN DEGRANE • ROSEMARY FANTI ILLUSTRATION

"I was having difficulty finding cute, affordable clothes for my daughter," Joyce* explains. After realizing her knack for turning consignment store duds into unique outfits, Joyce had photos taken of her creations and created a website storefront.

"Within a year, I was swamped," she says. "I made patterns, hired a friend to help, and my husband, who worked in technology, got the online ordering and billing side under control."

Businesss boomed, Joyce's husband quit his job, and the couple clocked 20-hour days for two years. But the constant grind took a toll, eventually leading to the marriage's demise, resulting in a sticky legal situation.

"Not only did we have to figure out the usual custody and property issues, we also had to make decisions about the business, our careers and our futures," she recalls. "The choices came down to divide, sell or close. Each seemed unthinkable to me."

With the number of women-owned businesses continuing to rise and with women controlling significant portions of family-owned businesses, the phenomena of business partners getting divorced is more common than ever.

Married couples, according to the 2007 U.S. Census, own nearly 3.7 million businesses in the U.S. Women-owned businesses account for 28.7 percent of all non-farm businesses. And Cook County had the nation's second largest number of women-owned firms.

For divorcing couples sharing a business, the extra layer of partnership adds additional challenges. Pamela J. Hutul, a partner at Davis Friedman LLP, says, "Business owners typically derive not only their sustenance but also identify themselves by the companies they own."

In Joyce's case, her husband sold her his interest. "It turned out for the best, even though it was tough going for awhile," Joyce says.

"People have been known to fight indefinitely, deciding how to divide the enterprise," Ms. Hutul notes. "Most often, if someone operates a successful business, she or he doesn't want to start anew. So it's hard to just 'let go.' In a forced sale, such as in a divorce, even if one partner keeps the business, another problem arises where the former spouse could start a competitive business, thereby challenging the value of the original enterprise."

How do you value a business where there's an imminent competitor with first-hand knowledge of clients, products, services and margins? "It's best to work out a preemptive agreement at the formation of the business that determines how to dissolve the partnership," cautions Ms. Hutul. Will one partner buy out or sell to the other? What formulas and payouts will be used for the valuation? Will the business be sold to outside parties or will one partner be favored? Will there be a non-compete clause protecting the value of the purchaser? Will the business close or continue with divorced partners still joined at the helm?

Working out such an agreement, much like a premarital agreement, establishes ground rules. This can bring peace and clarity – whether for divorcing business partners, business partners who intend to remain married or for individuals in business together considering marriage. Pre-nuptials for individuals who already own a business together or when one spouse invests in the other's enterprise should include buy-sell agreements that can make for healthier boundaries in marriage.

The most challenging scenario is opting to continue as business partners. "One adage of law is that post-divorce, couples retire from contact with each other," Ms. Hutul says. "Running a business in concert after the divorce goes against that belief. It's possible for a good outcome, but it takes very mature people who can set their emotions on a shelf."

Amy* never thought she'd end up in the auto parts business until she met her future husband, John,* while she was a freelance auditor. He was the youngest of three sons, and his father had inherited the business from his father.

"Once Amy got involved in the business, it was never the same," John acknowledges. "She organized the office and the staff, established a health insurance program, created a human resources department. She made the back-end of the office work seamlessly so I could handle sales." Seven years later, the couple was so successful that they bought out the other family members. Everything worked for 13 years, until their marriage ended.

John and Amy, recognizing that the business needed them both to continue to grow, decided to remain business partners. "Some days it's not easy," Amy says, "but we've found a way to do it."

"I recommend that people deal with the emotional component first in order to make better personal and business decisions," Ms. Hutul says. "I start by asking where they want to go in life and what they want to leave behind. I encourage them to redefine who they are, and to consider what they would like this new person they are becoming to look like. With that, they're feeling more in control, and can begin to look with confidence and certainty to the future."

She often recommends *The Good Karma Divorce*, by Judge Michele Lowrance. "A 'good karma divorce' is one in which both parties are able to communicate and feel acknowledged," Ms. Hutul says. "If people can stay objective through it all, that goes a long way. To feel empathy, they can start by taking the position of their partner. This is never easy for either party, but taking this approach offers the most chance for bringing about a respectful conclusion for both sides."

Though difficult to navigate, the transition of marital and business partnership can lead to a new identity, and, in that sense of self, a renewed peace and optimism. Concludes Ms. Hutul, "There's always goodness in that." ■

**Names have been changed at subjects' request.*