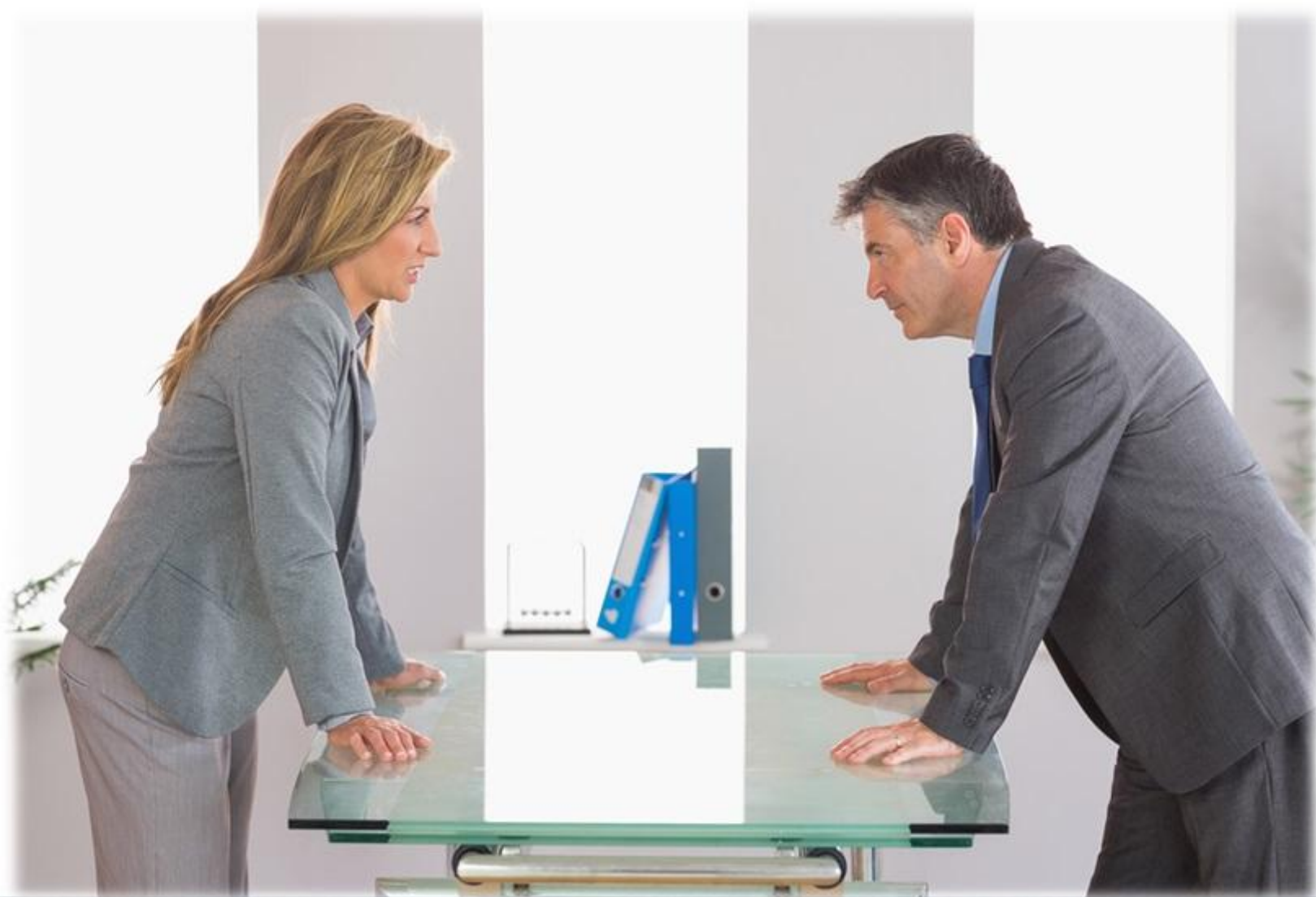


A Guide for Family Business Owners in Divorce



JEFFREY N. FINK

Attorney, Mediator and Arbitrator, Advisor.

781-237-0338

Email: info@jfinklawadr.com

|

www.jfinklawadr.com

WELCOME

There are millions of family businesses in the US. Unfortunately, with half of all marriages ending in divorce, many of those businesses can end up entangled in the separation process. To complicate matters, not all “family businesses” are mom and pop affairs. A significant number have children, siblings, aunts, uncles and cousins involved. It can get messy.

Sometimes people treat the business as just an asset to be divided. Other times, couples want to try to continue working together even if their personal relationship changes. It's hard to navigate that discussion without support.

Why? When the discussions get difficult, we don't always know how to make them work. Sometimes the problems are substantive: what's the law? How much is that property worth? Other times, the problem is that different people take different approaches – one haggling over pennies like it's a flea market, the other taking a wider view and trying to figure out what's most important. Still other times, people get locked into positions and ways of acting that go back years, or they become averse to conflict with family members. And still other times, *people just are not aware of all the options they have.*

There are a lot of lawyers out there. A lot of mediators, too. Many of them come to the dispute resolution world through a love of the fight: litigators who learned how to resolve disputes. I come at it from a different direction, representing business clients in negotiations. Resolution has always been the main goal, with litigation as just one of many tools to get there. I've learned to approach conflict as an opportunity to craft a creative outcome rather than something to shy away from, as a way to decide what is important enough to spend our time discussing. While raising the conflict level is sometimes necessary (see my Kung Fu Mediation blog at <http://kungfumeditation.com>), coming out swinging is not always the most effective way to a client's goal. That's why techniques like mediation and Collaborative Law exist. Often, with arguments between family members, they work better since they give people more control over the process and solution.

Give me a call. Let's talk about how I can bring decades of real-world experience to helping you, your family and your business through the separation.



Jeffrey N. Fink

Law Office of Jeffrey N. Fink

462 Washington St.

Wellesley, MA 02482

Office: 781-237-0338

Email: jfink@jfinklawadr.com

Website: www.jfinklawadr.com

JEFFREY N. FINK

Attorney, Mediator and Arbitrator, Advisor.

781-237-0338

Email: info@jfinklawadr.com

| www.jfinklawadr.com



A Guide for Family Business Owners in Divorce

Family businesses often struggle in the period leading up to divorce. It can be hard to tell cause from effect: financial pressures can lead to marital pressures, and marital problems often carry over to the office. Divorcing co-owners are often distracted by the stress of the process and actively avoid each other. Communications break down, business arguments occur that are really proxies for home arguments and parties tend to put off difficult decisions because of uncertainty about the future. It all gets complicated.

If you find yourself in this situation, there are a few important considerations to make your life easier. Think of them as elements of a divorce transition plan.

Choose a divorce process carefully.

1

There are a handful of ways that you and your spouse can choose to get divorced. You can litigate; you can have lawyers try to negotiate on their own with various levels of court involvement; you can use Collaborative Law to negotiate a resolution with the support of a professional team; you can call on a mediator to guide the discussions; or you can do it yourselves. With a marital asset as complicated as a family business, most professionals advise choosing a process that enhances communications but is more formal than a conversation in the living room. The worst outcome is when a spouse becomes spiteful enough to kill the goose that lays the golden egg.



Is there documentation?

2

Existing partnership agreements, shareholder agreements, stock ledgers, prenuptial agreements and even employment agreements may guide the discussions. You will want to fix them up afterwards, too, depending on what you decide to do with the business.

JEFFREY N. FINK
Attorney, Mediator and Arbitrator, Advisor.

781-237-0338

Email: info@jfinklawnadr.com

| www.jfinklawnadr.com



A Guide for Family Business Owners in Divorce

Do you want to keep working together?

3

Your business is both a financial and emotional investment. If you and your spouse both work in the business, do you want to keep working together afterward? It takes extra effort and planning, but it can be done if you have some difficult planning conversations up front and are diligent at keeping up an operating structure that works. On the other hand, if you choose to separate your personal and professional lives, you also need to make sure all the operational roles are filled. These basic decisions drive the rest of the process.

Ownership questions.

4

Whatever happens, you will need to have a conversation about who owns what percentage of the business going forward. Your business will not only be a marital asset that gets divided in the divorce but also a reflection of the work you are doing in the future.



- You may need a valuation in order to divide up the business ownership regardless of whether you both work for the business after the divorce. You will definitely have to open the books. Some find this difficult.
- If you are planning to continue working together and one person will be putting in significantly more time or effort than the other after the divorce, many couples find it fair to give that person extra ownership or compensation.

Look at it in the context of the whole divorce.

5

Your business is not just an asset. It is also the source of any ongoing payments. It is important to make sure the income stream from the business dovetails with support or maintenance obligations in the most tax-efficient way. Be sure you have good advisors to help design the way forward.

JEFFREY N. FINK
Attorney, Mediator and Arbitrator, Advisor.

781-237-0338

Email: info@jfinklawnadr.com

| www.jfinklawnadr.com



A Guide for Family Business Owners in Divorce

Deal with the inevitable third parties.

6

Other parties may have a legal, practical or personal stake in the divorcing couple's success. A successful divorce transition plan will address their most significant concerns:

- Lenders or landlords that still want both parties to be jointly and severally responsible for personal guaranties.
- Customers and vendors that wonder what is going on.
- Employees who have been caught in the middle of a war between the spouses.
- Children who work in the business or who might want to work in the business.
- Parents, grandparents and others who founded the business in an earlier generation or funded the growth of the business.
- Other relatives who work in the business.

If you keep working together, structure your responsibilities carefully.

7

Small businesses are notoriously informal, with everyone chipping in to do whatever needs doing, but especially right after a divorce that approach can breed resentment. Your work after the divorce does not have to be business as usual. You can find ways to keep conflict at the door. Some people have found the following ideas helpful:

- Map out both parties' responsibilities in as much detail as you can to make sure as little as possible slips through the cracks.
- Tinker with titles.
- Consider formalizing lines of responsibility if you need to clarify who the boss is over which aspects of the business. You may also need to decide who is the overall boss.
- Decide what kinds of action require both parties to agree. Even if one person is the day-to-day boss, the other is still a shareholder or partner.



A Guide for Family Business Owners in Divorce

If you keep working together, formalize the way you interact.

8

At the same time as you clarify responsibilities, you should think about committing to more structured interactions going forward. For instance:

- Establish regular meetings, with formal agendas that you generate together, so that the day-to-day concerns of running the business are broken down into manageable pieces.
- Consider working with a conflict coach if you need to bridge communication styles.
- Keep business and personal debt and finances as separate as possible.
- Ask an accountant to set up the right internal procedures for companies with unrelated co-owners.
- Make accounting and finances transparent to reduce room for distrust. You both should get regular reports.
- Agree on a process for deciding compensation fairly.

If you keep working together, it takes time for the dust to settle.

9



Rebuilding and restructuring may take time and effort. If you both commit to rejuvenating the business, you may find that working together toward a common goal may help repair a frayed work relationship.

Share this eBook



JEFFREY N. FINK
Attorney, Mediator and Arbitrator, Advisor.

781-237-0338

Email: info@jfinklawnadr.com

| www.jfinklawnadr.com