

## Family Law Fact Sheet

### My adult child is getting a divorce – is our family business safe from our son or daughter in law?

Often as part of succession planning, part of a family business is owned by different generations. When one business owner is involved in a separation and divorce, there can be a significant adverse effect on the business.

Where the separating family member owns a share of the business, their interest in the business usually needs to be valued as part of the process of dividing the assets between the separating spouses.

That valuation process can often involve the valuation of real estate and the property, plant and equipment owned by the business or related entities.

#### Disclosure of business documents

The separating family member often needs to disclose documents in relation to the business in their capacity as shareholder, beneficiary, partner, unit holder or joint venturer.

The disclosed documents often include confidential information, as well as possible disclosure of trade secrets and provision of commercially sensitive information, including financial statements, client details, level of debt and salaries paid to staff members. Care needs to be taken in providing this information to ensure that its confidentiality is maintained and commercial sensitivity respected.

#### Keeping the family business out of Court

Where a separating spouse is a business owner, a business itself can also be joined to proceedings in the Family or Federal Magistrates Court and orders can be sought against the business. The Court has a wide jurisdiction and can order:

- That the ownership in the business of the separating spouse be changed to include full or partial ownership by their former partner;
- The substitution of one spouse in relation to any debt owed to the business;
- The transfer of shares in a business to the partner of the separating spouse in the event the business is operated by a company;

- Amendment of the Trust Deed in the event the business is operated through a trust;
- The making of certain injunctions against the business.

#### Protecting confidential information

Even if proceedings between separating spouses do not progress to the extent the business itself is joined as a party to the proceedings, businesses often have to devote significant time to providing documents in the course of disclosure between various parties.

Businesses can also be forced to produce documents and answer questions from forensic accountants appointed as Court experts so the separating spouses' interest in the business can be valued.

At Hemming+Hart Lawyers we have a team of specialist family lawyers with a particular speciality in complex property settlement, as well as a Corporate+Commercial team and an Employment Law team. Involvement of businesses in Family Law disputes often involves a consideration of issues from all three legal disciplines and is something which, as a commercial law firm, Hemming+Hart is especially positioned to provide.

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