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Whose Business Is It?

BY ATTORNEY BOB LaCROIX

Have you ever wanted to tell your over-eager spouse to mind his or her own business with regard to the way you run shop? Well, in light of community property laws, your spouse may be doing just that.

When you, as a business owner, physically work at the business site, all income produced by you from the instant you say "I do" automatically becomes community property and, thus, belongs to both you and your spouse 50-50.

Moreover, if any portion of that income is reinvested in your business (for example, to purchase inventory), that reinvested portion also becomes community property.

What this means, in general, is that everything generated by your business from the time of your wedding immediately becomes subject to equal rights of management and control by you and your spouse, unless you have both signed a valid agreement to the contrary.

For this reason, the income and capital of your business, like all assets acquired during your marriage, will be greatly impacted by the laws of community property in determining your heirs to the business.

Perhaps you have long dreamed of your eldest child one day taking over the family business... but your spouse has always favored the baby of the family. What happens then?

When one spouse passes on, the living spouse automatically gets one-half of all property.

This is the 50% that was acquired by the surviving spouse automatically when the property was obtained.

The other 50% (the half that belonged to the deceased spouse) becomes subject to the deceased spouse's will or trust. The deceased spouse can leave all, part, or none of his/her share of the property to the surviving spouse.

So, what is "one-half" of the property? Quite simply, it is the assessed value of the property split right down the middle. For this reason, it is essential that spouses act responsibly and fairly when managing their community property.

In fact, the law tries to protect each spouse's share of the community property by imposing the obligations of a "confidential relationship" on a husband and wife. A "confidential relationship" requires that partners in a relationship always act in good faith toward one another when managing their property.

If you or your spouse act irresponsibly with any part of your community property, that part of the property which was lost will come out of the irresponsible spouse's half of the estate only.

In other words, if your business is worth \$300,000, and, for example, you have provable gambling

debts that resulted in the loss of \$50,000, your spouse (and, thus, his or her heirs) will receive \$150,000 of the business, and only \$100,000 will be subject to your will or trust.

Another factor to consider is the benefit derived from your spouse's participation in your business.

Perhaps your spouse is a marketing whiz; maybe he or she has a remarkable aptitude for business investments. Whatever the case, if it can be shown that your business profited substantially from the input of your spouse, what started out as YOUR business could feasibly end up belonging more to your spouse than to you.

All things considered, it is essential that you and your spouse fully understand the implications of community property law and, together, accommodate your business interests in your estate plan.

Together, it is the key to community property... and the only way to mind your business.

Bob LaCroix is an attorney who has served the Ocean Beach Community since 1979. If you would like to request a topic for an upcoming issue of The o.b.server, or if you have a legal question you need to discuss, feel free to call Bob's office at 223-2527.