

# Q&A

## DEREK BRADFORD & MITCH GORDON

### Bradford & Gordon LLC Family Law Attorneys

**Q: What is different about a divorce for an entrepreneur or small business owner?**

**MITCH:** Entrepreneurs and small business owners often have unpredictable or fluctuating incomes. Some years business is good and the payouts are substantial; other years may require capital contributions, with the owner not earning income at all. This type of income fluctuation can cause difficulty in negotiations because both parties may be hesitant when there is so much uncertainty about earnings. Imagine if Amazon founder Jeff Bezos and his wife MacKenzie had divorced in the company's early years. Would she still have received 19.7 million shares (valued today at about \$36.8 billion) as part of her settlement? Back then, she might have preferred a cash settlement with no stock at all. Who would ever buy books online when there's a Borders at every mall anyway, right? Clearly company valuations fluctuate even more often than shopping habits do, and that becomes a key factor in any business owner's divorce negotiation.

**Q: What's the most common concern you hear from business owners and entrepreneurs who are contemplating divorce?**

**DEREK:** Most entrepreneurs and small business owners have poured their blood, sweat and tears, not to mention significant amounts of money, into their businesses. They are worried about the impact a divorce will have on the company they have invested so much effort and money into. As lawyers, we need to find solutions that best allow the client to work hard, earn more money in the future, and ultimately keep most of that money after the divorce is final.

**Q: What can entrepreneurs do to protect their parenting rights in the event of divorce?**

**MITCH:** The best thing you can do is to stay invested in your kids' lives. Exercise your parenting time, go to their soccer games, schedule your parent/teacher conferences. The fact that the entrepreneur's work schedule is busy does not preclude them from being a parent. Typically, the business owner's work life is what provided the income and assets for the family— they shouldn't be "punished" for still providing post-divorce. An entrepreneur or business owner needs to demonstrate that they are committed to parenting their children, but they also need to show that they have a plan for how to balance their requested parenting time with their work schedule. As with any busy professional, there will inevitably be work complications from time to time; we always work to build flexibility into a parenting agreement so that the business owner will be able to make up for any missed time with their child.

**Q: What advice would you give to entrepreneurs who are just starting their businesses?**

**DEREK:** If you are currently married, a postnuptial agreement may be beneficial to both you and your spouse. A postnuptial agreement can protect your ownership of the business should a divorce occur in the future, but it can also protect your spouse from any debt that you accumulate as you pursue the business. If you are starting a business and aren't yet married, your business will likely remain in the "non-marital asset" domain. However, I still recommend crafting a prenuptial agreement to make sure that your stake in the business is entirely protected. We can help you navigate the process, no matter how complex, whether the business came before or after the marriage.

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Bradford & Gordon, LLC  
30 N. LaSalle, Ste. 3100, Chicago, IL 60602  
312.346.6911 | [bradfordandgordon.com](http://bradfordandgordon.com)

