

Nuptial Agreements: How Do I Love Thee?

The Family Business Consulting Group

My recent 23rd anniversary, coupled with my oldest son's current and longest-lasting sweetheart relationship, made me think about nuptial agreements. I don't know why. My marriage is great and my son is a pauper. Perhaps it's only the relentless passage of time creating the need for yet another Professional Insight column!

Call me a hopeless romantic, but I believe in a complete, unequivocal and everlasting commitment between newlyweds. Certainly, the joy of pending or recent nuptials should not be marred by anything remotely hinting of possible future problems. After all, why should the joyous union of two people be blemished by a suggestion that anything other than joy may lie ahead?

Dirty Business

Of all the matters in my consulting repertoire, nuptial agreements rank right up there with changing diapers, house training the new puppy and helping with geometry homework. I truly share the joys of my clients' and their children's marriages. I actually cry at weddings. So, I personally identify with concerns about nuptial agreement discussions, whether they relate to soon-to-be spouses or soon-to-be children-in-law. It seems only yesterday that I faced the issues myself. More on that later.

A nuptial agreement is very simple in theory. It is a legal agreement between current or soon-to-be spouses. The agreement can be written before the wedding (a 'prenuptial' agreement) or after the deed is done (an 'anti-nuptial' agreement). The agreement's purpose is to predetermine how the couple's property will be divided in the event of a divorce or death. 'Predetermination' is the alternative to letting a divorce or probate judge decide. Unfortunately, the happy couple must discuss it to reach an agreement. Since divorce is such a great conversation topic during bridal showers and death is fun to discuss about just about any time, you quickly see why nuptial agreements are high on my 'desirable

topics' consulting list.

Most of us get married believing in our hearts that our marriages will last forever. We don't expect or intend to fall out of love. But more than half of marriages in the United States end in divorce. The inescapable conclusion is that a fair number of us that start with the one-in-a-million-failure expectation somehow change to 50:50. Besides, if divorce doesn't get your marriage, there is a 100 percent chance that death will. Either way, spousal property rights come into play.

Marital Rights

What happens in divorce or if one spouse dies? Marital property rights are a unique combination of property and family law, sprinkled with a heavy dose of which side of the bed the judge got up on that morning. Your spouse may have an unequivocal right to anywhere between a third and half of your assets, plus alimony and the then house-trained puppy. Surely you've read enough newspapers and seen enough TV soaps to know that divorcing couples are less than genteel in dividing up the spoils of marriage. Since I don't know your state's laws, check with your lawyers for specifics. It's what they live for.

Even though you are happily married, your death can leave more than a grieving widow or widower. If death does thee part, your surviving spouse may no longer feel constrained by love when claiming assets from the estate. Your spouse and your parents/siblings just might be affected by what happens to your property when you leave the scene. Alternatively, consider what happens if your spouse dies and you must debate the estate's division with your spouse's parents and siblings. Either way, the love between you and your spouse may not translate into an equal love between the survivor and the two families. After all, you and your spouse got married. Your families did not.

Anticipate the Issues

It should go without saying that it is better to know how

to resolve a problem before it becomes a problem. When I travel, I am comforted by the assumption that the pilot is highly trained in problem resolution. Even though the statistical chance of a flight problem is low, I want the pilot to be prepared for the worst case scenario. Unfortunately, marital statistics are horrible compared to flying. Every marriage will end some day. Preparing in advance for that eventuality just makes sense.

Merely raising the divorce/death issue can create a problem where none otherwise exists. Raising the issue, whether you are getting married or the parent of someone who plans to do so is guaranteed to cause someone to wonder whether you are challenging the appropriateness of the marriage.

But talking about a possible catastrophe does not make it more likely to happen. Recognizing that an airplane can crash and preparing for the unlikely event does not imply that you should avoid flying. Everyone certainly can believe that the marriage's benefits far outweigh the risks, but still recognize the need to discuss all the implications, both good and bad. It is the responsible thing to do. It does not imply a lack of love.

What's More Important?

Let's put this issue in the context of the family business. Ownership of the family's business transcends a family member's marriage. I am not suggesting that the business is more important than the marriage. Rather, there simply are more people involved in the business than just the newlyweds. The newlyweds have a duty to recognize the rights and interests of the other owners. Whether it's your family's business or you are marrying into one, are you showing your love by failing to recognize the others' interests?

Please understand that you choose your spouse. You probably don't want your family members to have any say in that decision. But, if you choose not to give them that say, protect them from the consequences if it doesn't work out. Your parents and siblings may love your spouse, but they did not choose your spouse as a business partner. You should respect your family's potential concerns even if you do not share them.

If you request a nuptial agreement, are you cheating your spouse or child-in-law out of something to which he or she otherwise is entitled? Unfortunately, the entitlement issue gets very blurry after many years of marriage, combined with long work hours and the spouse's sacrifices for 'your' business.

Balance is Key

The discussion on this issue must be balanced. You must consider the spouse's concern about financial security. If your family is typical, most of its net worth is and will be tied up in the business. If the nuptial agreement prohibits spousal ownership, you should ensure that your spouse will be well cared for from other assets after you're gone (whether due to death or divorce).

The best time to raise the marital agreement issue is before anyone in the family gets engaged. That way, the discussion focuses on a hypothetical in-law, rather than an actual one. Maybe the discussion should occur before any family member starts dating. The family should agree on spouse's business rights. That agreement can be helpful when someone later must raise the issue with a pending in-law.

How to Begin

All this sounds good in theory. Whether your concern is with your soon-to-be spouse, your current spouse or your engaged child, it's still hard in real life. Here is my suggestion to open the conversation. Say, 'I love you. I trust you and our relationship enough to raise tough and sensitive subjects. I have confidence in you and respect your opinions.' If your child or spouse returns this love and trust, he or she should be willing to discuss divorce and death issues. You may find this article to be a helpful way to start the conversation.

So, what did I do? When I got married, I had a small amount of cash that my parents entrusted to me to hold for them if they ever needed it. If they didn't, it was mine to keep. I admit that I 'chickened out' and did not protect that money with a nuptial agreement. You should take no solace in my shortcoming. My gamble with my parent's well-being was very small and was not family business related. Is yours?

To learn more about The Family Business Consulting Group and how we serve families like yours, call us at (773) 604-5005 or email us at info@thefbcg.com. There is absolutely no obligation.

Reprinted from The Family Business Advisor®, A Family Business Consulting Group, Inc.® Publication. The copyright on this article is held by Family Business Consulting Group Publications®. All rights reserved. All forms of reproduction are prohibited. For reprint permission, contact editor@thefbcg.com. THE FAMILY BUSINESS CONSULTING GROUP, INC. and FBCG are registered trademarks and the FBCG logo is a trademark of The Family Business Consulting Group, Inc.