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Before "I Do!"
Premarital Agreement Considerations Long Before Popping the Question

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Business-owning families and families of wealth find that premarital agreements for new marriages amongst their descendants provide numerous benefits, including protection of legacy assets and protection of businesses in which ownership is often shared amongst a group of people. While no couple in love ever believes their marriage will end in divorce, the facts are well known — roughly half of new marriages unfortunately do result in a divorce at some time.

It is important to understand that having a premarital agreement does not mean that the partners anticipate a divorce. When asset ownership is shared by a group of family members, a couple's divorce can impact the entire ownership group unless a premarital agreement is in place to insulate the broader family.

Much has been written by attorneys and others about the legal reasons that premarital agreements are recommended for wealth-holding families. Yet, creating a premarital agreement is generally something families have little experience with. Or, perhaps, the experience has been negative. Bringing up the topic of a premarital agreement after saying, "Yes, I will marry you!" can take the wind out of the sails of a budding, passionate relationship and cause real discord between the young couple, as well as between the generations and their advisors.

Why families avoid the discussion

If a family member is asked to sign a premarital agreement with their bride- or groom-to-be after they announce their engagement, a common response is to feel that their parents care more about assets than their own child. Similarly, when the future spouse learns about the concept, he or she may feel hurt or embarrassed, asking questions like: Do they think I am greedy? Don't they trust me? Will I always be an outsider?

In the worst cases, these feelings convert to anger and relationships become irreparably strained. While it is difficult to remove all of the emotion from such a significant discussion, guiding young family members through the rationale behind a premarital agreement, and helping them gain the skills to manage the discussion when the time comes, makes the process that much easier.

We have long recommended that families educate young generations on the nature of the family's values and beliefs and the role of the assets in the life of the family. Having a basis to understand the value of a business or other legacy assets to the family — and the deep meaning that those entities hold for those who created them and for those who will inherit them — serves to provide a context for the protection of the assets.

How to start the conversation

When children are entering into their late adolescent years (think late high school or early college), they are generally ready to begin learning about the specifics of how family assets are owned and protected. This is a good time to bring up the topic of premarital agreements — long before anyone pops the question. In a family meeting setting, devote time to discuss legacy assets, what it means to be in shared ownership and how the family stewards those assets over time. At that time, introduce premarital agreements as merely one tool to help achieve the family's purposes. Take the time to ask young family members what they know about premarital agreements so that you can establish baseline perceptions that will help to frame up future conversations. After all, many may have heard about well-paid athletes or megastars in Hollywood having premarital agreements. Creating the dialogue in a safe environment when there are no marriages pending is an excellent starting place.

A successful, educational family meeting on a topic like premarital agreements is best structured in a way to correlate to the style of the family. Often, families bring an attorney who is able to relate well to young people to speak in terms they would understand and demystify the process around premarital agreements. The education session might include discussions around:

- The pros and cons of premarital agreements;
- The impact on the family's shared assets in the event of a divorce;
- The content of an agreement; and,
- The process required to make a premarital agreement valid.

We have also seen families adopt a creative approach, such as having young family members act out the roles of business leadership, business shareholder and the young couple in a play, so that they experience the dilemmas faced by the intersection of shared ownership and divorce. No matter which course is followed, the important first step is to establish a foundation of understanding that can lead to many rich discussions within the family about a topic that is often difficult to discuss — financial assets.

After establishing a baseline understanding of what a premarital agreement is all about, it is especially important to inform young family members about the assets they will own and what will be a part of the premarital agreement, answering these key questions:

- What are the family's values and purposes that drive the need for premarital agreements?
- What assets will be protected by a premarital agreement? All assets or, perhaps, only those assets that are shared with others, such as a business?

Preparing the next generation

A premarital agreement is a contract that deals with property and finance. In the best cases, the almost indescribable feelings of love and respect that cause two individuals to marry have nothing to do with property and finance, so it's complicated to help young people prepare for discussing a premarital agreement. It is possible to execute an agreement with little negative effect on the relationship if both parties approach the process with a spirit of honesty and determination to conclude the agreement in a positive manner. When parents proactively look for ways to foster good self-esteem and confidence with financial matters, there is a much greater chance of success.

Lead by example — discuss financial matters candidly. Be honest and open, inviting questions in a progressive manner that meets the learning style of your child, so that he or she understands what is collectively owned, as well as their future personal assets. Don't talk about it once and then drop the topic.

Demonstrate the value of advisors. Create situations where your child meets both with you and individually to ask questions of and hear the opinions of an advisor. Help them understand that an advisor with a specialty in a specific area is comparable to a sports coach, professor or boss. Coach them in advance about the expertise of the advisor and the role they play in supporting the family business or the management of the family's assets.

Support your child in establishing their own expectations around property and finances. A sound advantage of a premarital agreement is that discussions

around them cause each partner's expectations with regard to finances to be articulated clearly prior to marriage. The discussion and planning that goes into laying the financial foundation for the marriage often provides a more solid framework. Helping a young person to think early on about their views regarding appropriate levels of spending, the real purpose of wealth, the importance of philanthropy in their lives and how they feel about raising children when there are significant resources are conversations that can happen long before the need to get into the details of a premarital agreement. A person who has thoughtfully engaged in a dialogue about their preferences will be less intimidated by this discussion.

Identify a mentor for your child who has signed a premarital agreement and experienced the benefits of protecting shared assets. A well-written premarital agreement can ensure that transition planning in the business and estate planning achieves its goals, including the planning of family members (such as grandparents) who are not party to the marriage.

Discuss the value of avoiding conflict by articulating how something will end before it starts. Talk with your child about the value of reducing the chance of future conflict by negotiating the terms for ending an employment arrangement, business partnership, volunteer relationship, etc. Experiencing the process of planning an exit strategy provides a context and perspective for discussing a pre-marital agreement in the future.

When the family's values, the process and content of premarital agreements are shared openly, before anyone pops the question, the intensity around the concept usually dissipates. If a young person is shocked when the specific assets are revealed, he or she is likely to feel guilty or embarrassed. Parents and their children who have these discussions well in advance will be prepared to take the next step of bringing a potential new family member into the fold gracefully and thoughtfully.

Education is the key.



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