Safeguarding Assets from an Ex-Spouse

Marriage is one of life's biggest milestones. Unfortunately, for many couples, so is divorce.

That's why it makes sense to consider how an upcoming wedding—be it yours or that of a child or grandchild—could impact both your current wealth and your wealth planning goals. Too often, one or both spouses in a divorce end up parting with assets they assumed were theirs to keep. Additionally, parents and grandparents worry that money they plan to pass down to their adult child might someday end up in the hands of an ex-spouse.

The good news: There are often ways that couples who are tying the knot can add layers of protection to some of their assets. With that in mind, here are some asset protection strategies to consider if you're getting married (or remarried), or if your son or daughter is headed down the aisle.

Strategy #1: Prenuptial and postnuptial agreements

There are ways you can build a wall around your separate assets to better ensure they stay separate—and remain in your wallet if you divorce.

The option that immediately comes to mind for most people is a prenuptial agreement, which formally specifies which property you want to remain yours in the event you get divorced. In general, it can make sense to consider a prenuptial agreement in situations such as these:

1. **You have children from a previous marriage.** A prenup can spell out your expectations for how your children from a past marriage will be provided for financially from your estate. This can prevent an ex-spouse from claiming assets that you want those particular children to have.
2. **You have significantly more wealth than your spouse-to-be.** If a significant financial imbalance between a couple exists—you are coming to the marriage with a significant amount of money you've inherited or earned, for example—a prenup can formally detail which assets will remain separate in the event of divorce.
3. **You expect to receive an inheritance.** A prenup can help ensure that assets you receive from family while you're married remain yours post-divorce.
4. **You are part owner of a family business.** A prenup can help secure your interests in the family business that you bring into the marriage, as well as ownership interests you gain during your marriage. Without a prenup, you may need to hand over some ownership to an ex-spouse—and your family members working in the company might find themselves becoming unwilling partners with someone they'd rather not be doing business with.

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ADDITIONAL STRATEGIES

Strategy #2: Domestic asset protection trust

However valuable a prenup may be, it may not be a bulletproof agreement. Prenups are often contested and can be overturned. That's why some divorce experts point people to trusts, which can offer stronger asset protection in some cases.

Case in point: a domestic asset protection trust, or DAPT, which can shield assets from both creditors and ex-spouses. A DAPT is an irrevocable trust—once you place assets in it, you can't take them back or revamp the trust itself. This puts the assets out of reach of most claims and excludes those assets from the category of marital property. However, unlike with typical irrevocable trusts, you can name yourself as a discretionary beneficiary of a DAPT—thereby giving you access to the assets in the trust and control over who is named trustee.

The upshot: A DAPT can give you certain benefits of both a revocable trust (such as control and access) and an irrevocable trust (such as protection from claims brought by an ex-spouse).

As of this writing, 15 states allow DAPTs—although you don't need to live in one of them to set up a DAPT for yourself. The rules governing DAPTs vary from state to state. So it pays to assess the options here.

Important: It's imperative to create and fund a DAPT before the marriage for it to effectively protect assets. Setting one up during a marriage may be seen by a judge as a fraudulent transfer, thereby negating the trust.

Strategy #3: Keep assets separated

Separate assets can easily become comingled assets with little more than a few online transfers between bank accounts. If you want to avoid turning a separate asset into a marital asset, consider taking steps such as these:

- **Put your money in its own separate bucket.** For example, don't merge inherited money into an account that includes your spouse's funds. Likewise, if you have your own premarital savings account, you risk turning it into marital property if you deposit your spouse's money in it.
- **Maintain titles in just one name**. If you have a vacation home or another valuable asset that you acquired before getting married or remarried, keep the deed in your name—don't add your spouse to it—if you're concerned about protecting that property. That said, keeping homes separate can become tricky. For example, if you spend some of your separate inheritance on a home that benefits both you and your spouse, the house may be viewed as marital property in a divorce. The best bet is to consult with a trusted attorney.

Conclusion

It's likely that you and your spouse will have a series of difficult conversations over the years. It's been said that love doesn't happen by accident, but rather by deliberate intention. The same can be said about marriage and successful wealth planning. While you're envisioning years of wonderful experience as a married couple, don't forget to have some conversations about money that could potentially help you avoid a lot of confusion and fighting if things don't work out as you hope.