

Asset Protection Strategies: Consider A Tool Often Overlooked

As many of you know, one of my specialty fields of practice is divorce financial planning. But wait – don't stop reading! This is not an article about divorce or items pertaining only to those in marital strife. Instead, this is a topic that applies to almost all of us. I encounter the question more and more these days of – what do you think of prenuptial agreements? Are they something to be considered for individuals getting married, and if so, who should use them?

The answer is that prenuptial agreements are definitely something for marrying individuals to consider. The interesting thing is that they're not just a tool for use in situations of divorce. They can also be very important tools as a part of estate planning, particularly if the marriage comes later in life and the marrying individuals want to make sure at death that children, friends, or charities receive the assets instead of the automatic rights under the law to the new spouse.

First, let's briefly discuss the basics of a prenuptial agreement. A prenuptial agreement is a legally binding contract signed by spouses-to-be that governs how their assets will be divided in the event a marriage is terminated by death, divorce, separation, or annulment. In particular, it spells out in precise detail who owns which assets, which assets are held jointly, and the rights and obligations of each partner. In some cases, related issues, such as alimony, child support, and the provisions of inheritance, may also be covered. For the agreement to hold up in court, both partners **MUST** be represented by legal counsel – in fact, by separate legal counsel. Each partner must fully disclose all financial assets and liabilities to ensure the agreement is not legally voided in the future.

So, let's consider some uses of prenuptial agreements. As I began this article, I was struck by the broad range of clients and situations this topic addresses. For example, many of you - our clients - have adult children. A number of you have children who are past that "just out of college" phase in life. They have established themselves in their careers and accumulated wealth, no doubt like you taught them! One of the very best financial tips you might give your child before marriage is to get a prenuptial agreement – not because you don't like their choice of a mate, and not because you think the marriage won't last – but for their protection. In the event of divorce, help them make sure what they've worked hard to accumulate thus far in life remains theirs. Think of Beatles' great, Paul McCartney. Have you heard about him in the news recently, and the nasty divorce ensuing with wife of 5 years – Heather Mills? The reported \$375 Million settlement she'll receive represents approximately one-quarter of McCartney's net worth. The sums may not always be that large, but think of your own risk aversion to a double-digit loss in the stock market. Without protection, losses of significant percentages are very real in divorce.

Another use of prenuptial agreements is for individuals considering remarriage later in life, whether previously divorced or widowed. One or both spouses may enter the marriage with significant assets. If so, it may be important to ensure family members from the first marriage inherit property and assets. Once married, unless there are estate planning documents in place to determine otherwise, a new spouse has an automatic entitlement to a certain portion of assets. A prenuptial agreement, drafted with full disclosure before the marriage, may help avoid such an outcome.

Prudent financial planning advice includes protection of assets from significant risk. You protect your home from fires and catastrophe, your auto from collision; protecting your assets from events in life can be an important protection measure as well.