

# PROTECTING YOUR WEALTH WHEN YOUR CHILD MARRIES

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When it comes to your estate plan, it's important to ensure your wishes are respected by your loved ones and your assets are protected for future generations. But, as often is the case, life in general can complicate family matters—not the least of which may be your child's decision on who to marry.

Some parents may find they are concerned about the person their son or daughter has chosen for a future spouse. Or perhaps you adore your future son-in-law or daughter-in-law, but you're well aware the odds of your child and spouse having a long, happy marriage are against them. They may be blissfully happy before, during, and right after the wedding ceremony, but in reality the average length of first marriages ending in divorce is about eight years.<sup>1</sup>

Either way, for whatever reason, your concerns are valid when you're trying to protect your child's inheritance from falling into the wrong hands. Here's why.

## WAYS TO PROTECT YOUR ADULT CHILD'S INHERITANCE

We've all heard the horror stories from family members and friends who have “been there.” When a married couple goes through a divorce, the courts decide how the assets will be split. The legal decisions are based on many factors, including whether the assets are considered marital or non-marital, what state the parties are domiciled in, whether the marriage was formed in a community property state, and many others.

If your son or daughter is in a serious relationship and about to get married, there are several steps you can take to protect your child's inheritance from ex-in laws in case of a divorce.

### 1. ENCOURAGE YOUR CHILD TO GET A PRENUPTIAL—OR POSTNUPTIAL—AGREEMENT.

Prenuptial (prenup) agreements—once thought to be reserved only for the famous—have become increasingly popular over the past few years. There was a 62% rise in prenups created for millennials between 2013 and 2016 alone.<sup>2</sup> Both prenups and postnups (financial agreements drawn up after marriage) are legal contracts that lay out which spouse is entitled to what “property” in the case of a divorce.

Without one of these agreements in place, the division of assets is left up to the courts guided by the laws of the state where the divorce matter is filed. In the unfortunate event of a divorce, a prenup or postnup helps to make it more likely that the division of assets and debt takes place on terms your child and his or her spouse had agreed to already.

## HOW MANY MARRIAGES END IN DIVORCE?

Over the past few years, statistics indicate that over 40% of all first marriages in the U.S. end in divorce. The divorce rate for subsequent marriages is even higher. It's estimated that 60% of all second marriages don't last, while 73% of third marriages fail. In fact, the U.S. has the sixth highest divorce rate in the world (overall, Russia holds the top spot).<sup>1</sup>

Generally speaking, prenup agreements are more widely enforced than postnuptial agreements, in part because they have been around longer. Some state courts will uphold postnup agreements as long as they are in writing, signed without coercion, and fulfill disclosure requirements of both parties. Prenups and postnups are not guaranteed—you should check with a legal professional about specific requirements for enforcement in your state.<sup>2</sup>

It's important for your adult child to consider a prenup or postnup agreement under the following circumstances:

- Your family is substantially wealthier than the in-law's family
- Your child will receive a future inheritance or has been previously gifted substantial assets
- You own a family business and your children are involved in ownership or control
- A prospective spouse has substantial outstanding student or credit card debt
- Your child has children from a prior relationship

Your son or daughter may be hesitant about getting a prenup or postnup—that reaction is normal. They may need to understand that these agreements allow a couple to determine what each wants in case of divorce or death rather than having to adhere to what state law dictates. The increasing popularity of these agreements is happening not because people don't trust each other, but rather because marriage is a partnership that requires open and honest communication about all matters, including finances.

## **2. CREATE A TRUST.**

If your son or daughter absolutely will not agree to a prenup or postnup, then talk with your legal and estate planning professionals to create a well written trust that allows you to control the disposition of assets (even after death).

A good way to accomplish an inter-generational wealth transfer is to create an estate plan where (1) your child is not the only individual in control of the trust in the future, and (2) they are not absolutely required to receive the funds at a specific time or age.

In other words, instead of having a will that leaves your estate to your child outright, or a trust that names her or him as future trustee and mandates the receipt of distributions upon reaching a certain age, you can create a trust and leave management to someone other than the child. You can also limit a beneficiary's access to the funds if he or she does any number of things you might not condone.<sup>3</sup> Remember that funds held in trust are still under a trustee's control.

If there are grandchildren, they could be the beneficiary and their parent (your adult child) could be the trustee of the assets. The key would be for your child to not have a vested interest in the assets. Limit accessibility so that the courts would deem the assets non-marital and not subject to being divided.

## **CAREFULLY WEIGH ALL YOUR OPTIONS**

Passing your wealth on to future generations can be as challenging as it was to build it. Estate planning decisions should be weighed carefully to preserve precious family dynamics, so it's important to get advice you can trust.

Contact Commerce Trust Company today—we can assist with sensitive matters such as discussing prenuptial agreements and estate plans with your family. Our team of professionals can also help with transferring your assets according to your wishes, and distributing your wealth privately and expeditiously when the time comes.

<sup>1</sup> Source: Jason Crowley, CFA, CFP, CDFA (<https://www.survivedivorce.com/how-many-marriages-end-in-divorce> “How Many Marriages End in Divorce?” March 6, 2020

<sup>2</sup> Source: “Prenups and Postnups,” <https://missnowmrs.com/prenups-and-postnups/>; June 02, 2020

<sup>3</sup> Daniel A. Timins, Esq., CFP®, “How to Protect Your Family’s Assets from an Ex-In-Law,” Kiplinger, <https://www.kiplinger.com/article/saving/t065-c032-s015-protect-your-family-assets-from-ex-in-laws.html>; June 22, 2016

The opinions and other information in the commentary are provided as of September 21, 2020. This summary is intended to provide general information only, and may be of value to the reader and audience.

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Arthur is senior vice president and director of wealth management consulting at Commerce Trust Company. He leads Commerce Trust Company's private client business development efforts across the east region. Arthur brings 17 years of financial services experience to Commerce Trust. Prior to this role, Arthur was the sales manager for Commerce Brokerage Services and was responsible for recruiting, supervising and managing the financial advisors. Arthur earned a Bachelor of Business Administration degree from St. Louis University. In 2009, he obtained his CERTIFIED FINANCIAL PLANNER™ designation. Arthur is involved with the leadership program at Focus St. Louis. He has also volunteered at St. Francis Community Services and Volunteer Lawyers and Accountants for Arts.



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