



PRESERVING FAMILY WEALTH

Protecting what is yours: Financial risks of divorce¹

There are many reasons a couple may consider a prenuptial agreement—the increasing complexity of lifestyles, assets that come from numerous and varying sources (inheritance, gifts, an interest in a family business, a lawsuit), career pressures, and others. Prenuptial agreements shouldn't be thought of as an exit plan for a marriage or “just” a legal document, but rather a conversation between a couple that can help them understand what they could be facing in their marriage and decide for themselves how to handle their financial affairs. If you are interested in protecting family wealth with a prenuptial agreement for yourself or a loved one, you may want to consider the following:

1. Scope of the agreement

As a general rule, a prenuptial agreement can cover a variety of topics, including:

- Rights and obligations in each other's property
- The disposition of property upon separation or dissolution of marriage
- The scope of spousal support
- The making of a will or trust

A prenuptial agreement cannot include a provision that would be against public policy—for example, eliminating a child's right to support. Further, a party to a prenuptial agreement should generally disclose his or her financial situation prior to executing a prenuptial agreement. This often includes disclosing financial assets, real estate interests, salaries, interests in trusts and sources and amounts of expected inheritances.

2. Impact of state laws

A prenuptial agreement is enforced in the state in which the divorce happens, not where the marriage or prenuptial agreement takes place. As a result, differing state laws can impact both the division of assets upon divorce as well as the enforcement of a prenuptial agreement. This makes it important to understand your specific state laws at the time of execution of a prenuptial agreement and any time you change your state of residency. For example, the inclusion of inherited wealth in a couple's marital estate depends on state law—some states include it, but others don't. Therefore, it is important for families to consider the laws of the states where their beneficiaries live—or may later live—if they want to be sure that inherited assets are not subject to a division upon divorce.

3. Postnuptial agreements

A postnuptial agreement can cover any or all of the same things that a prenuptial agreement can, but it is written during the marriage rather than prior to it. This could be helpful to the couple if there is an unexpected event or change in circumstances and they want to address how that may be impacted by a divorce. For example, if one spouse contributes more of his or her separate property to purchase an asset or maintain a lifestyle, the couple can decide how—if at all—that contribution would be handled in a divorce.

Short of avoiding marriage altogether, there's no way to avoid the possibility of divorce. A prenuptial agreement can be thought of as being similar to a will—while state laws do make provisions for both death and divorce, people can choose to make their own decisions about their assets rather than relying on a state's laws. **For more information on asset protection, visit our [Preserving Family Wealth resource page](#).**

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