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How to Protect Your Family's Assets from an Ex-In-Law

Both a prenuptial agreement and a family trust can keep your wealth from going to your children's potential ex-spouses.

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Part of parenting is allowing children to learn their own lessons about managing money when they grow up to be adults. But parenting is *not* about them learning lessons with your money, so put a big wall in between your money and your future in-laws.

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Divorce and Your Money

Yes, we are talking love and marriage and, heaven forbid, divorce. But you need to protect your family's assets from the worst kind of creditor: the ex-spouse and ex-in-law.

If your child is in a serious relationship and about to get married, encourage him or her to get a prenuptial agreement. This legal document is the preferred way to protect your child's assets. It does this in two ways: First, it states what happens to assets that enter the marriage if the couple gets divorced, i.e. "if we break up, I want my stuff back." Second, it can state what happens to a party's property if he or she dies during the marriage, i.e. "my stuff goes to who I want when I die, and that may not be you—surprise!"

Without a prenup, how a couple's assets and income are divided in the case of divorce can get complicated. Family court (sometimes called "divorce court" and many other names not suitable for print media) is known as a "court of equity." That means it tries to be fair and equal by looking at any factor relating to a married couple's assets and income and making a completely subjective (some may even say arbitrary) decision as to who gets what during a divorce. The outcome may be based on how your attorney presents the facts, when the divorce took place, even whether the judge is having a good or bad day.

Remember that the couple's assets and income might include your own wealth, too. Even if you've given gifts to your child that are not supposed to be a part of the collateralized marital property, these gifts often get deposited in joint bank accounts, comingled with other marital assets, and effectively lose their protection as gifts in a court of equity.

So, informing your children they must have prenups is especially important under the following circumstances:

- Your family is substantially more wealthy than the other family.
- You own a family business in which the child is involved.
- Your child has children of his own from a prior relationship.
- You have already gifted substantial money to your child.

If your child complains or is too shy to do it, tell him your evil attorney said he has to do it. (Then give your attorney a call, and tell him he has to tell your child he must have a prenup.)

If he continues to respond, "That's not romantic, I'll pass," you have another option. Contact your attorney to discuss how to protect your money from a future ex-in-law by using a family trust.

Creating a trust can allow you to control the disposition of your assets from beyond the grave.

The two ways to accomplish inter-generational wealth 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 him as future trustee and mandates he receive distributions when he reaches a certain age (it's almost always 25, 30 or 35), you can create a trust and leave management to someone other than the child.

By naming a trustee other than the married child, you protect the trust from a potential ex-spouse. Otherwise, the family court might count the trust money among the marital assets that ought to be divided between the divorcing couple. Also, you can give the trustee the ability to only distribute income to the beneficiary or not distribute anything if the couple is not living with one another. You may state the trustee can pay for grandchildren's education expenses or your child's legal and personal expenses directly instead of having them distributed first to the child. Your trust can even state that the trustee may distribute all trust principal when a post-nuptial agreement is executed. And, as final icing on the cake, you can tell the trustee to distribute funds to your beneficiary in an account that is comprised solely of assets you have left them, and have them detail all transactions made to and from this account.

Remember that funds held in trust are still under your control, and the boundaries relating to distributions can be as socially divisive as you want them to be. Even in today's hyper-critical world, you can limit a beneficiary's access to the funds if he or she does any number of things you might not approve of—for example, if he or she marries outside of the family's faith, race, preferred political party or gender. You can even draft requirements for baby names or pet care. And you can compel your child to execute a favorable pre/post-nuptial agreement with a spouse, in order to gain access to the trust's funds.

Simply stated: The money in a trust can remain under your complete control after you die, if the trust is drafted correctly.

This is not to say a trust is a proper substitute to a prenup: Both documents should be drafted to maximize the protection of family assets. And anything you have already given your child is fair game in a divorce, absent a prenup or postnup. But a family trust can help minimize any future mistakes that your children may make with the money you leave to them.

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Daniel A. Timins is an estate planning and elder law attorney and a certified financial planner, helping clients with wills, probate, living needs and Medicaid planning.

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