



## ALERTS

### Tips For The New Year: Safeguarding Family Wealth In The Event Of A Divorce

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#### Highlights

In the event of divorce, particular attention should be paid to preserve family wealth

Antenuptial (prenuptial) agreements, trusts and buy-sell agreements are three ways to address such preservation, in advance of marriage or divorce proceedings

While it may be difficult to discuss divorce, it is often necessary, particularly when the need to preserve family wealth is at stake.

For those contemplating marriage – or divorce – in 2021, here are some ways to address the issue of such wealth with antenuptial agreements, trusts and buy-sell agreements.

#### Antenuptial Agreements

One of the best mechanisms for protecting family wealth is an antenuptial (or prenuptial) agreement that specifically identifies and preserves family wealth, which may be real estate, business interests, investments or a broad array of other assets. Antenuptial agreements outline the rights of

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spouses upon dissolution of their marriage or the death of either party. Most jurisdictions now accept these agreements and favor enforcement of them in the event of both death and divorce.

An antenuptial agreement ordinarily defines the rights of the parties at the beginning of the marriage, throughout the marriage and at the end of the marriage. They can help to avoid litigation upon dissolution. One of the goals, if not the primary purpose, of an antenuptial agreement is to alter state-prescribed rights that would otherwise arise on dissolution of marriage or death of either party.

A post-nuptial agreement may be an alternative or appropriate to explore, depending upon the circumstances, if the parties did not sign a prenuptial agreement at the start of their union but would like to enter into one during their marriage to define their rights in the event of death or divorce.

## Trusts

Recognizing the importance of preserving family wealth, family members who are gifting or transferring assets may want to consider creating a trust. A trust can restrict the ability of a non-family member to obtain a portion of the family wealth upon divorce with careful planning.

## Buy-Sell Agreements

A spouse may hold interests in a closely held, family business. Any buy-sell agreements in connection to such businesses should contemplate the possibility of divorce and the resulting impact on the business. Ideally, a buy-sell agreement should provide a mechanism to buy out the divorcing spouse on reasonable terms and most people prefer to avoid the potential for a divorcing spouse to obtain any ownership interests in a business after divorce.

However, depending on the jurisdiction, buy-sell valuation formulas may not be dispositive of value upon dissolution of marriage.

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work, or Sonja Trom Eayrs at 612-367-8737 or [seayrs@btlaw.com](mailto:seayrs@btlaw.com).

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