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# What to do when a prenuptial agreement is not part of 'I do'

## *There are other ways to protect the family business*

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A common question we hear from our business owner and high-net-worth clients is "what can I do to protect my family's business and wealth when my child is planning to marry without signing a prenuptial agreement?"

Clients recognize that the divorce rate hovers around 50% and that a new person entering into the family may acquire certain legal rights in the family's property upon a child's death. Under current Ohio law, a couple must enter into a marital agreement before marriage ("prenuptial") for those rights to be validly waived — marital agreements signed after the marriage are unenforceable in Ohio.

Frequently, the client's child wants to avoid upsetting the fiancé, or the client is reluctant to broach the subject of a prenuptial agreement with the child despite the potential risks to their family's business interests and wealth. In these situations, is there planning that the client can do to protect the family business and wealth? The simple answer is yes.

While not an exhaustive list, the following planning techniques are available to protect business interests and wealth for future generations when a child marries without entering into a prenuptial agreement. Of course, before implementing any of them, qualified counsel should be consulted.

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### Update the business's governing documents to keep the business "in the family."

Consider adding restrictive transfer provisions that ensure interests may be transferred only to lineal descendants in:

- Operating agreements;
- Shareholder agreements; or
- Partnership agreements.

### Establish a trust.

Consider establishing a trust to hold business interests and other assets for a child in order to limit:

- Distribution of assets to persons other than lineal descendants;
- Who may benefit from assets upon a child's death; and
- Who may serve as trustee and thereby have the power to control the business interests or assets.

### Create a family entity to manage family assets.

Consider establishing an entity to hold and manage family assets, such as:

- Family limited liability company;
- Family limited partnership;
- Family dynastic trust; or
- Corporation.

Implementing one or more of these planning techniques may help accomplish a client's goal of protecting family business interests and wealth when a child marries without signing a prenuptial agreement. Further, control over the family business and wealth may be kept exclusively "in the family" according to the client's wishes. Certainly, these techniques must be considered in conjunction with transfer tax implications.

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