Premarital agreements help protect the farm

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KEEPING IT IN THE FAMILY: Use a premarital agreement to ensure farm assets go to your intended beneficiary.

FARM & FAMILY

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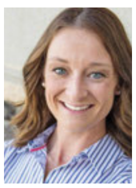

KEY POINTS

- Discussing a premarital agreement can be a sensitive subject.
- Keeping focused on the farm transfer will help.
- A premarital agreement helps farm transfer to intended beneficiary.

THANKS TO MEDIA sensationalism, we've all heard the scenario where rich Oil Tycoon divorces Second Wife for a woman the age of his eldest daughter, who just so happens to be madly in love with him — or at least his bank account.

Although devastated at being left for a younger model, Second Wife finds consolation in the idea that at least she will collect a nice paycheck in the divorce. Until she gets a call from Oil Tycoon's high-powered attorney, who casually reminds her that she hastily signed a premarital agreement the morning of the wedding and that, consequently, Second Wife is left with nothing. It's a familiar tale.

Discussing a premarital agreement can be a fairly sensitive estate planning topic. However, dramatic movie plots aside, the use of premarital agreements is an effective and oftentimes essential tool in estate planning, particularly in protecting the farm.

Consider two scenarios where your estate plan will benefit by the use of a premarital agreement.

HELP THE FARM TRANSITION

The first scenario in which a premarital agreement is a particularly useful tool is in farm transition planning. For instance, Mom and Dad own a farming operation that they have incorporated into a limited liability company. The LLC is owned 50% by Mom and 50% by Dad. Mom and Dad are nearing retirement and recognize the readiness of Son to assume ownership responsibilities in the operation. They decide to transition the farming operation to Son during their lives. Mom and Dad implement their plan, a combination of gifting units to Son equal to the annual exclusion amount, and Son purchasing units as he is able.

Son wants to get married. However, future purchases of LLC units would be made with Son and Wife's joint income, or marital property. Without a premarital agreement, upon the divorce of Son and Wife, Wife would have an ownership interest in the LLC. Assuming it is Mom and Dad's goal to see the farming operation stay in their family, Son should execute a premarital agreement before his wedding to Wife. The agreement should state that in the event of divorce, Son's interest in the LLC, any future gifts or purchases of units and any appreciation in the value of the LLC remains Son's separate property. Son's estate plan would then be updated to pass the LLC interests to his children upon his death.

AID TRANSFER TO INTENDED HEIR

The second scenario in which a premarital agreement can benefit your estate plan is to prevent unintended beneficiaries upon the death of the first spouse. This can be done by including a provision in your revocable living trust that requires your surviving spouse to sign a premarital agreement before he or she remarries, if your surviving spouse is to continue to receive the benefit of your assets after you are gone. Consider Steve and Barb, who are married and have three children. They have been farming since they married 30 years ago, and have together accumulated acres and built a valuable farming operation. Unexpectedly, Barb dies at the age of 60.

A few years go by, and Steve unwittingly meets and falls in love with Mary, a fellow widow at grief counseling. Steve gets engaged to be married.

Assume Barb's trust left her assets to a family or marital trust designed to provide for Steve during his lifetime, and of which Steve controls all the income and principal. Barb's trust does not require a premarital agreement, and Steve and Mary get married without one.

After a short period of marriage, Mary will begin to develop a marital interest in the trust property. Upon a divorce from Steve, Mary will be entitled to receive assets (such as farm ground) that were intended to be distributed to Steve and Barb's children at Steve's death. Without a premarital agreement, an unintended beneficiary of the family or marital trust may be Mary or Mary's children.

Alternatively, Barb's trust could require that if Steve wants to continue to receive the benefit of Barb's assets after her death, Steve must sign a premarital agreement with Mary. If Steve refuses to sign one, then he will be restricted from accessing the principal held in the family or marital trust. However, if Steve and Mary sign a premarital agreement, then Steve can benefit from the trust's assets, including principal, during his life. At his death, Steve and Barb's assets will go to their intended beneficiaries, their children.

Premarital agreements are really just contractual arrangements that are effective at keeping property, including family farms, from going to unintended beneficiaries. Always consult an attorney before entering into a premarital agreement.

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