

Farm Family Business

Before the Wedding, Talk About Prenups



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Bio

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Wedding season is upon us, with all its images of joyous ceremonies, beautiful flowers, new beginnings -- and for many family business partners, downright fright at the idea of an outsider laying claim to a portion of the family business! In our capital-intensive agriculture businesses, unique lifestyles and common emotional attachment to the land, the idea of a business break-up or failure due to a divorce -- especially when the divorce rate is high -- is a real concern to many family operations.

Somewhere in the span of time between the life-changing question "Will you marry me?" and the altar commitment of "I do," come thoughts, and sometimes discussions, of a prenuptial agreement. Those thoughts and conversations generally range from awkward at best to destructive at worst. However, approached in the right way, discussions about a prenuptial agreement can create more certainty about the future success and stability of the family business.



Before the wedding vows, consider what happens to a family business in the event of divorce.

A caveat: I recognize two philosophical camps related to prenuptial agreements.

One says that to even think about an agreement suggests a lack of confidence in the union and perhaps even a lack of trust between the engaged. The other camp says that divorce is a reality, it could happen, and if it does they want to be prepared. If you are part of the first camp, you've probably stopped reading. But if you are in the second camp, here are some ideas about discussing what can often seem "un-discussable."

First, acknowledge that bringing a new spouse into the family changes the whole family business system -- the constellation of family, ownership and management relationships that comprise the organization -- and that change should be discussed.

It's not just about adding an extra chair at the Thanksgiving table. The business management and ownership systems change, as the newlywed brother now has someone to share his family business joys and frustrations with, and the parents contemplate how their annual gifting strategy or estate planning might need to be different.

This change in the system warrants a discussion about managing risk in the relationships. You may, after a discussion with your fiancée, decide that a prenuptial agreement is not the right risk management tool. But you may also decide that an agreement to establish how a marriage will end (different from divorce law) is an important part of family business succession and continuity. At least have the discussion.

Second, define the issues that are most relevant. Property is often a key issue as much business capital and net worth is invested in equipment and land. If a divorce occurs, how will those family business assets be considered in a settlement? And while premarital property is brought into a marriage and taken out in a divorce, Dustin Mullin, an attorney in Clay Center, Kan., suggests that the value of premarital property "will likely be offset to the spouse through other marital property. Thus there is very little protection absent the agreement."

For second marriages, the eventual disposition of assets that each party brought into the marriage is usually a concern, suggests Mullin. "Prenuptial agreements are very useful, often, not because the spouses are worried about divorce, but because at death they want to protect their assets to be distributed to their children." Thus, a prenuptial agreement should be considered along side an update of your estate planning documents.

Another issue is alimony, or financial support, paid to a spouse in a divorce. This is usually governed by state and sometimes local laws unless specifically addressed in an

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agreement. Another issue is how premarital debts will be treated.

Third, if you think a discussion about a prenuptial agreement is important, sit down sooner rather than later with an attorney. I've mentioned just a few of the issues to consider and there are different and creative ways to craft a fair agreement. Mullin indicates there are state laws to consider in terms of deciding where the agreement will be interpreted, and each spouse will need their own attorney. Finally, the discussion and agreement should be crafted and signed well ahead of the wedding to reduce stress or claims of duress.

Prenuptial agreements, while focused on potential endings, establish important ground rules that can help the family business successfully pass to future generations. A wedding marks a new phase in a relationship, and entering that phase with more clarity and certainty about the future can be encouraging for everyone involved.

EDITOR'S NOTE: Lance Woodbury works as a consultant to family owned and closely held businesses in Garden City, Kan., with a special emphasis on business planning, mediation and conflict resolution. He also maintains an interest in his family's western Kansas ranch. E-mail suggestions for this column to lance@lancewoodbury.com.

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