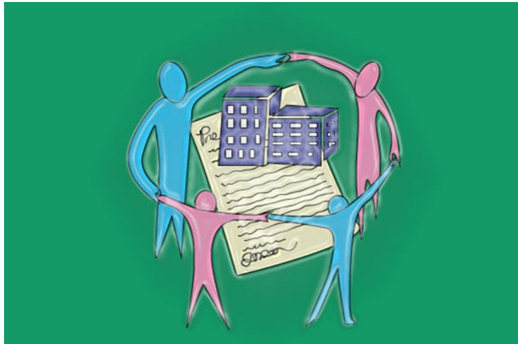
## Creating an Estate Plan Around a Prenup

Written by Alex Coppola | Friday, 11 July 2014



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The man had inherited his father's business when he was in his 30s and spent the next few years growing it into a $6 million company.

When he later got engaged, he was concerned about keeping this increasingly valuable asset in the event of a divorce. So before tying the knot, the man asked his fiancée to sign a prenuptial agreement that kept all of his pre-existing assets--including his business and the related real estate--entirely separate from his wife.

But now the man was in his 40s with two children, including one from his wife's previous marriage, so he had a more pressing concern: Providing for his family in the event of his death. Because the business represented the vast majority of his wealth, the prenup severely limited the assets that his wife would automatically receive upon his death.

He asked for help from financial planner Scott Bishop of STA Wealth Management, which manages $650 million for 875 clients in Houston. Mr. Bishop assured the man they could address his concerns."Just because you have an extremely restrictive prenup doesn't mean you can't leave money to your wife," Mr.Bishop says. "The prenup protected the client's assets from being taken against his will, but he was still free to give them at his discretion."

After discussing the client's estate-planning goals, Mr. Bishop created a plan that provided for the man's family after death, while preserving the provisions of the prenup that prevented his wife from taking his assets and business in a divorce. The adviser suggested using family limited partnerships, which offered the advantage of providing his wife with income from the business, without giving her control over its operations.

Mr. Bishop's plan called for two family limited partnerships. One would hold the business--a C-Cor--plus $2 million worth of liquid investments. The second would contain the business real estate. The client would hold both general partnerships through a new limited liability company, which Mr. Bishop suggested forming to
insulate him from litigation against the business. "Because of the liability it exposes one to, it's never a good idea to own those GP units personally," Mr. Bishop says.

Under the family limited partnership structure, the client also would have 99% limited partner ownership in both entities. Upon his death, he would bequeath a portion of that limited partner interest to his wife. The shares would be gifted into a testamentary trust for which his wife is both trustee and beneficiary. The upshot: The client's wife would be entitled to income from the business through the trust, but no controlling stake in the company. The client wanted to preserve the business for his children should they be interested in running it someday, but both his son and stepson were still minors. Therefore, Mr. Bishop had the client name his brother as successor manager of the LLC holding the general partnerships. In the case of the client's death, the brother would assume the duties of manager and trustee. At age 30, the boys will become co-trustees with their uncle; at age 35, they will become sole trustees.

With the client's support of the plan, Mr. Bishop called an estate-planning attorney to draft the partnerships and transfer ownership of the business assets into them. He also consulted the client's certified public accountant to ensure the transfer would have no adverse income-tax consequences. The client and his wife have been very happy with the results. Almost 15 years later, the business and their marriage is healthy. "She's confident in her financial security and he's confident that both his family and his business are protected," Mr. Bishop says.

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