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# Prenuptial Arrangements as a Family Conversation

Insights from Charles W. Collier,  
Harvard's Senior Philanthropic Adviser  
Author of *Wealth in Families*



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"My wife and I talked to our two daughters about a prenuptial arrangement when they were in college," says Steve Baird '74, president and CEO of a family business, Baird & Warner, a real estate company in Chicago. "After a number of conversations, they agreed to have a prenuptial arrangement when they get married. Our business has been good to the family for five generations, and I hope that the enterprise will survive another generation."

There are compelling arguments for having prenuptial arrangements for members of a family for whom a business is important. The company is a family asset and ongoing enterprise that may have been in place for a number of generations, and many families want to see the business continue to grow for many additional generations. A business family's financial future is interconnected in a way that is different from a financial family, whose worth may consist of houses and marketable securities that allow each member to manage his or her own financial affairs independently of the others. In contrast, having a vital business requires an interdependence among family members that is best served without competing outside interests of nonblood relatives or possible divorce disagreements.

If you have a family business or financial wealth or a vacation home that you would like to be part of your family's legacy in the future, should you consider a prenuptial arrangement for your children? Are you concerned that the dissolution of a marriage of one of the next generation heirs would jeopardize that cohesive ownership? If yes, what would make it feasible to talk with your children about a possible financial contract? Should you have *all* the children in the room? The primary question is, how do you prepare yourself for this important conversation? This can be an extremely difficult but rewarding conversation to have with your children.

Many families have had prenuptial arrangements and they often say to their children, "This is just what our family does." Other families stress that the financial wealth of the family is an important family asset and needs to be passed down for more than one generation. And the threat to that happening is worth planning for and discussing. In some cases, parents say that this takes money off the table when a young man or woman marries into your family—meaning that they are not marrying your son or daughter for their money. Some parents say to their daughter or son, "Your spouse will enjoy the benefits of our money for a long time." While these answers suffice at the start of the conversation, they do little to address the main issue and to use the opportunity to discuss an important topic with the next generation.

There is no question that timing about this conversation regarding prenuptial arrangements as an opportunity creates anxiety. This is an important and sensitive subject. There will be differences that provoke emotions. "Discussing them creates a lot of anxiety," says Michael Fay JD '75, senior partner in the Private Client Group of Wilmer Hale, a law firm in Boston. "The anxiety relates to the fact that these arrangements are intended to deal specifically with the possibility that the marriage will be terminated. Prenuptial arrangements have distrust written all over them. There is really no easy way to address this except by urging openness and honesty on both parties."

Another way of discussing a form of prenuptial arrangements can be started while talking about the trust documents and the financial legacy currently in place. Many parents have trusts for their children, and, in many cases, the parents think of the trust almost as a prenuptial arrangement. Some lawyers will say that the prenuptial arrangement is a companion document to reinforce the trust provisions for their children. Research indicates that a high percentage of what the children who are beneficiaries receive comes to them under discretionary trusts, and they have no control over the principal or the income during their lifetime.

At the root of the discussion is "the parents' fear as the driving force," says Jay Hughes, a retired counselor of law in Aspen and author of *Family Wealth—Keeping It in the Family*. "They are afraid of the money getting into the wrong hands, which often means their son-in-law who is not good enough. It is totally impractical to ask these young people to enter into an agreement requested by the earlier generation. The reason for doing this is the parents' fears—fears over financial assets that their children will never own." Perhaps articulating the fears in a conversation will assist in finding an agreeable solution.

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Jay Hughes continues his thinking: "The core question is, 'Can you be a resource to this young couple?' Can you have a conversation about money and discover one another's philosophy, so that whatever agreement emerges will reflect that philosophy? The highest good that parents should keep in mind is being focused on encouraging the success and sustainability of their children's relationships."

It is my opinion that one way through this prenuptial dilemma is a series of conversations that I call "breakthrough conversations." The topic of prenuptial agreements is hard to discuss and can be uncomfortable. It takes time and courage to confront. Needless to say, I think the conversation should take place early enough so that no fiancé(e) has yet arrived at the door.

My preferred process is a two-part conversation.

The first part begins with your spouse and focuses on what is important to you around your money and a prenuptial arrangement. A key goal is to create clarity about your expectations and why they are important to you. The two of you may not agree, but these differences should be discussed and respected. Indeed, you may find that there are differences where you thought there were none, and points of agreement that you did not expect.

Ask yourselves the following questions:

- What is the prenuptial arrangement meant to accomplish? For what reasons do you want a prenuptial arrangement?
- What worries you if your children get divorced?
- What history and principles inform your thinking around the prenuptial arrangement?
- Where have you seen this done well? Where have you seen it managed poorly?
- What would your parents say about asking your children to negotiate a prenuptial agreement?
- How does your faith factor into these decisions?
- What will it take to bring your children into a conversation around the idea of a prenuptial arrangement?
- What are the downsides of a prenuptial arrangement?

- Could you let the couple or the individual family member make their own decision?
- In what ways do you want to share some of your wealth with your daughter- or son-in-law?

The second part is a talk with your children about a prenuptial arrangement. You can have this talk one child at a time or all the children together. It may be helpful to have a facilitator at one of your meetings. Steve Baird had a number of conversations with his daughters, and I led one discussion for the whole family. Here are questions that you may want to ask:

- What is the purpose of the inheritance for the next generation?
- In what ways is a prenuptial arrangement important to you or not? Why?
- How do you differ from your mother or father?
- How do you differ from your siblings?
- Can you maintain separate financial resources and have a viable marriage? What would it take?
- What principles inform your thinking?
- What potential obstacles stand in the way of negotiating a prenuptial arrangement?
- How does your faith factor into these decisions?
- Could you bring your fiancé(e) into the conversation?
- What would your fiancé(e) be "up against" in marrying into our family?
- What are you "up against" in marrying into your fiancé(e)'s family?
- What is your dream for the future of your family?

So my suggestion is: **Engage all of your young adult children in conversations about the distribution of your financial wealth.** Planning for a possible prenuptial arrangement is both a legal process and a family process. Meaningful conversations over a period of time can be an opportunity for strengthening the family and addressing difficult topics with openness and respect. In the long run, these "breakthrough conversations" can be enormously informative and useful all around.

For further information, please contact

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