Prenuptial agreements are commonly seen as arrangements to protect each partner's interests in case their marriage ends in divorce, and for that reason, they have a negative reputation. However, all marriages end at some point, either due to death or divorce, and a prenuptial agreement can affect property rights when one spouse passes away, just as it does when spouses divorce.

So, when you are in the process of estate planning, it is important to assess the effect any prenuptial agreements could have on the disposition of your property. If your estate planning attorney doesn't ask, make sure you let them know about the terms of any pre or postnuptial agreements you have or are contemplating.

Understanding Prenuptial Agreements

A prenuptial agreement is a contract between two people who anticipate getting married. Texas law imposes certain requirements for a prenuptial agreement to become enforceable, but if those terms are met, then an agreement overrides many standard default provisions in the law regarding the distribution of property.

For a prenuptial agreement to be valid, the terms must be In writing and signed voluntarily by both partners. In addition, each partner must have full disclosure of the property and financial liabilities of the other partner or they must expressly waive their right to this knowledge. The agreement can't set terms for child support or custody, but it can cover a wide range of other topics, including a determination of:

Whether certain property is community property or a spouse's individual separate property
Whether each spouse has the right to sell, transfer, manage or otherwise control particular property
What will happen to particular property at the occurrence of a particular event such as

divorce or death
Whether a spouse would receive alimony
Who is entitled to the benefits of a life insurance policy

In addition, the agreement can specify whether one or both partners are required to prepare a will or trust to carry out the terms of the agreement. From this, it should be pretty clear that a prenuptial agreement can have a considerable impact on estate administration and that it should be given careful consideration during estate planning.

Coordinating Estate Plans with a Prenuptial Agreement

A valid prenuptial agreement remains in force unless both parties specifically revoke it. So, when developing plans for an individual or married couple's property, the terms of an applicable prenuptial agreement need to be given careful consideration.

Very often, couples execute prenuptial agreements to protect the property rights of children from previous relationships. Estate planning documents should reinforce these goals unless the parties have changed their minds, in which case they should revoke the prenuptial agreement to avoid conflict. A revocation of a prenuptial agreement must be made in writing and signed by both parties.

If the goals remain the same as when the prenuptial agreement was prepared, then the terms of all documents should include distributions in line with this plan. Documents to consider include:

Wills
Revocable living trusts

Irrevocable trusts
Financial powers of attorney

In addition, it is critical to review beneficiary clauses in retirement plan accounts and life insurance policies as well as payable on death clauses in bank accounts to ensure that the proceeds are scheduled to go to the right people.

Couples often find it beneficial to establish a trust to accomplish goals from their prenuptial agreement. Just be aware that irrevocable trusts can be difficult, if not impossible, to change, so if there are any irrevocable trusts established prior to the creation of the prenuptial agreement, it will be necessary to build plans to accommodate those existing terms rather than to change the terms to fit the plan.

Creating Documents Required by a Prenuptial Agreement

If the prenuptial agreement requires the partners to create documents such as a will or trust, then it is important to schedule an appointment to prepare those documents as soon after the wedding as possible. Wills, trusts, and other estate planning tools should not be created as one-size-fits-all documents but custom-tailored to fit the situation and long-term goals. Rather than just asking an attorney to prepare a will, for instance, it is better to schedule an appointment to discuss the big-picture situation with an estate planning attorney and then discuss options for ensuring that your plan and documents will meet all your needs.

Find Out How The Nordhaus Firm Can Help You Reach Your Goals and Protect Your Family

Estate planning can be very complex, which is why so many people avoid the process until it is too late. At The Nordhaus Firm, we take the confusion and worry by walking you through the process step by step. If you have or are planning to create a prenuptial agreement, or if you have questions about any aspect of estate planning, contact us for a free consultation to learn how we can help. Just call us at 214-726-1450 or reach out to us online today.