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Prenups Can Serve Many Purposes

Many people think of prenuptial agreements as asset protection vehicles for wealthy individuals who are concerned about losing their assets in a subsequent divorce. When a wealthy individual gets engaged, a "prenup" can also help to safeguard the assets that the individual brings into the marriage from passing to the future spouse in the case of a subsequent death. That's especially true now that second (or even third) marriages are increasingly common, with children from prior unions to be considered.

Example: Jim Smith and Ann Jones have set their wedding date. Jim and Ann already have their own children from previous marriages. A well-crafted prenup can delineate specific assets that will go to those children after the death of one spouse. Terms of the agreement will vary from one situation to the next, but one approach is to set aside certain assets brought into the marriage for each spouse's children.

0n addition to such an asset division, a prenup can address whether the couple will file a joint income tax return and who will pay the tax. Also, debts incurred before and after the marriage should be covered in the agreement.

Other uses

Even if children from a prior marriage are not an issue, prenups can be helpful. For example, for two people who enter a first marriage after they've both had careers and built up significant assets, a prenup can preserve those assets if the marriage doesn't work. A business owner might want to provide for the retention of the company and a valuation method in case of a divorce; partners or co-shareholders may insist on prenups to keep a portion of their business from ex-spouses in the future. Wealthy parents might want to be sure that a son or daughter executes a prenup before the wedding ceremony.

However, saying that a prenup can do this or that is only a beginning. To be effective, a prenuptial agreement must be enforceable under the laws of the relevant state. Very generally, a prenup should be:

- **Formal.** Ideally, the agreement should be drafted by an attorney with experience in this area.
- **Voluntary.** Compliance shouldn't be coerced. Suppose the parents of the bride are paying for the wedding and the groom's family produces a prenup once the out-of-town guests have arrived, asserting that the bride would get nothing in case of a divorce. Such a document may not stand up to a challenge in court.

One tactic that can help to produce a valid prenup is to discuss the issue as early as possible. A prenup that's been agreed upon after both sides have had competent counsel is more likely to be upheld. For some marriages, the wealthier individual will hire the attorney to draft the agreement and the other party's attorney will review it to suggest any changes.

■ **Fair.** Full disclosure of assets may be required of both prospective spouses. If one party can show the other failed to reveal substantial assets, the aggrieved spouse may be entitled to more than the agreed-upon amounts.

Retaining romance

Of course, someone who is about to "live happily ever after" may not feel comfortable suggesting a prenup to a bride-or groom-to-be. One strategy to deflect the blame is to say that your family wealth advisor, CPA or your attorney is insisting on a prenup.

Consider 401(K) Unmatched Contributions

One of the best investments you can make is contributing to your 401(k) plan to get a full match from your employer. Another investment worth considering is contributing to your 401(k) plan amounts that are unmatched.

Unmatched 401(k) contributions

In 2017, employees can contribute up to $18,000, (or $24,000 if they're at least age 50).

Example 1: Julie Benson, age 45, contributes $6,000 in her 401(k) and it is matched dollar for dollar by her employer. She could then contribute an additional $12,000 that won't be matched. The main benefit of an unmatched 401(k) contribution is income tax deferral. In addition, any earnings can compound, untaxed. Other possible advantages include access to plan loans, offered by many companies, and considerable shelter from creditors. If you are in a relatively high tax bracket now and expect to be in a lower bracket when you take withdrawals in retirement, maximizing 401(k) contributions could pay off.

Roth IRA contributions

A Roth IRA is always funded with after-tax dollars, so there is no upfront tax benefit. However, distributions from a Roth IRA, made after the 5-year period beginning with the first tax year of a contribution to a Roth IRA and after the Roth IRA owner reaches age 59½, are completely tax-free. Therefore, putting some money into a Roth IRA can provide a source of tax-free cash in retirement instead of, or in addition to, taxable withdrawals of money from a 401(k). Roth IRA contributions can be up to $5,500 in 2017 or $6,500 for those 50 or older.

Roth IRA owners are not subject to the required minimum distribution rules, which generally impact pretax retirement funds after age 70 ½. It's true that income limits may crimp Roth IRA contributions- single taxpayers can't contribute for 2017 with modified adjusted gross income of at least $133,000 or $196,000 on joint tax returns.

However, there are no income limits for making nondeductible contributions to a traditional IRA and then converting that amount to a Roth IRA. This workaround won't generate income tax for people who have no pretax money in traditional IRAs.

Health savings accounts

Another possibility exists for people with certain high deductible health insurance coverage. Besides paying for the insurance, such people can have a health savings account (HSA) that offers unique tax advantages.

HSAs have no income limits. Contributions, which are tax deductible, can go up to $3,400 for 2017 and up to $6,750 for those with family coverage. (People 55 or older can contribute $1,000 more.) Inside an HSA, earnings are tax-free and distributions are untaxed if the HSA owner spends at least that much on qualified health care costs.

Example 2: Suppose that Julie Benson is eligible for an HSA. With single coverage, Julie contributes $3,400 this year, which she invests in stock funds. Although past performance is no guarantee of future success, stocks historically have done well over long time periods. Therefore, Julie hopes that annual contributions to her HSA will provide her with a substantial fund to tap for medical bills in retirement.

Besides contributing $6,000 to her 401(k) to get the full match, and $3,400 to her HSA, Julie can still contribute $5,500 to a Roth IRA for a total of $14,900 in 2017. Each of these options has features that go beyond those mentioned in this article, but they all may be viable choices for retirement investing.

We hope this information has been of value to you.

WHAT'S NEW AT SILLER & COHEN

Speaking events:

- **February 2017:** Randy Siller was asked to provide a continuing education class to a prominent NYC accounting firm. The discussion was titled "Practical Financial Planning Advice to Enhance Your Client Service Offering". The topics covered during the session included, financial independence planning, tax traps when planning with life insurance, and investment planning.

- **March 2017:** Randy Siller was asked to Speak at Lincoln Financial Advisors Spring Forum Conference. The topic was "How to Build Income Generating Portfolios" in today's low interest rate environment.

- **April 2017:** Jeff Cohen and Randy Siller were asked to speak at The Resource Group Annual Conference. This group is comprised of the top 200 financial advisors around the country affiliated with Lincoln Financial Advisors. Jeff spoke about "Executive Planning for C suite Executives", while Randy spoke about "Advising Your Clients in an Extended Bull Market"

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About Siller & Cohen

Siller & Cohen is a boutique family wealth advisory firm providing financial solutions for the past twenty-nine years to institutions and high net worth individuals. We combine the detail and careful attention of a smaller firm with the deep resources of a national organization. Our team includes CPAs[1], Certified Investment Management Analysts, and attorneys.[1]

While we offer our clients the full range of planning services, our core areas of expertise include wealth transfer, investments, and business succession planning.

A member of Siller & Cohen has been recognized among the top advisors in the nation by Barron's magazine for 11 consecutive years.[2]

1 Licensed, not practicing
2 The list was compiled by RJ Shook, Financial Industry Consultants.
This is an objective ranking based on assets under management

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