

Prenuptial Contracts Can Shield A Business From the Heir's Ex

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Some engaged couples are being squeezed between love and money -- their love, and their parents' money.

At issue are prenuptial agreements of the sort that posed a dilemma for Albert Salame III of Danbury, Conn., when he was married four years ago. Mr. Salame owned 10% of a wholesale food business controlled by his father, and they were anxious to safeguard the business in the event of a divorce.

Mr. Salame concedes he hesitated before asking his fiancée to sign such a document. "You're basically making a choice between protecting the family business and the romantic side," he says. Nonetheless, when the marriage broke up earlier this year, Mr. Salame was glad he had the agreement.

The greatest intergenerational transfer of wealth in history will occur in this country over the next decade; an estimated \$10 trillion is expected to change hands, and much of this wealth is tied up in family-business stock. Accordingly, attorneys are seeing a surge of interest in prenuptial agreements designed to keep businesses from becoming the spoils in divorce suits. Not only are wealthy business owners signing these "prenups" themselves, but they are insisting that their sons and daughters follow suit -- or forgo any stock in the family enterprise.

A messy divorce "can strip a company" of assets when one party claims a stake in a spouse's family concern, says New York matrimonial attorney Jacalyn F. Barnett.

Even if unsuccessful, acrimonious litigation can "expose your business to incredible discovery," she says, such as turning up family members who draw salaries but don't perform any work.

Indeed, more prenuptial agreements contain confidentiality clauses barring divorcing spouses from revealing family or corporate secrets, Ms. Barnett says. With the divorce rate near 50% and tax codes that encourage wealthy parents and grandparents to give away stock to their heirs before death, prenuptial agreements are "the best way to Scotchgard a business," she says.

Today, "it's the rare exception" when wealthy business owners don't require prenups from their sons and daughters, says New York attorney Raoul Felder, who estimates that a third of the 300 marital contracts he writes each year involve business heirs. A decade ago, Mr. Felder says his firm drew up only a couple of dozen prenuptial contracts altogether. (The contracts, which range in cost from about \$2,000 to tens of thousands of dollars, aren't filed in courts, so the precise number signed each year can't be tracked.)

Mr. Felder adds that prenups are nearly universal among members of real-estate dynasties, which typically are closely held and pass from one generation to the next. "Most times, there's great resentment on the part of the child," he says.

Increasingly, attorneys are videotaping prenuptial signings in an effort to avert later nullification of the agreements. A contract can be overturned if a divorcing spouse can successfully demonstrate it was signed under pressure, and many spouses have made such claims.

In one widely reported prenuptial feud, billionaire financier Ronald O. Perelman boycotted his son Joshua's wedding last year, ostensibly because the young man didn't obtain a prenuptial contract from his fiancée. Mr. Perelman, whose MacAndrews & Forbes Holdings Inc. controls most of Revlon Inc., declines to comment on the matter, and his son couldn't be reached.

Not all children of wealthy business owners are averse to prenups. When she got married, Marcy Syms, president and chief operating officer of Syms Corp., readily signed one. "Of course, you must love each other and think you'll be together forever, but what you're really doing is combining estates," says Ms. Syms, whose father founded the off-price clothing chain, based in Secaucus, N.J. In the event of divorce, she adds, "you don't want to destroy your family business over a personal failing."

Some shrewd heirs are even using prenups as bargaining chips, says Craig Aronoff, director of the Family Enterprise Center at Kennesaw State College outside Atlanta. After he counseled one business owner to withhold stock from his son until the young man obtained a marital contract, Mr. Aronoff recalls the son telling the father: "If you agree to retire at 65, I'll sign a prenup." The difficulty of compelling children to sign prenups is among the most frequently mentioned problems at his family-business seminars, Mr. Aronoff says.

Even in states like California that don't consider stock given to children as marital community property, a divorcing spouse can wreak havoc on a family business, says Beverly Hills attorney Alexandra Leichter. The scenario often goes something like this, she says: The patriarch gives a chunk of stock in the business to his son, and in exchange pays the son a lower salary. When the son divorces, his wife argues that she's entitled to a stake in the company because her husband sacrificed higher income, which is considered community property, for stock that isn't. In recent years, Ms. Leichter has worked on about a dozen such cases, most settled out of court. She advises clients before they marry to specify in a prenuptial contract that the reduced salary is understood and acceptable.

Beverly Hills attorney Daniel Jaffe recalls how, for lack of a prenuptial agreement, a divorce involving the son of a Los Angeles real-estate tycoon tied the family business up in litigation for nearly a year. The son's wife claimed that her husband had received ownership in office towers, shopping centers and industrial parks from his father in lieu of heftier compensation. While the case was ultimately settled for less than \$1 million, Mr. Jaffe says the process was "tremendously disruptive to the

business." If they are signed freely, prenuptial agreements usually are ironclad -- even those containing obviously lopsided disbursement plans favoring one spouse over the other. "Just because a [marital contract] is unfair doesn't mean it can be broken," says Los Angeles attorney Peter M. Walzer. And he points out an emerging trend: He's recently worked with several couples in their 60s, 70s and 80s whose children insisted the parents sign prenuptial agreements. The children, Mr. Walzer explains, "want to protect their inheritance."