Getting Married and Thinking Through the Pros and Cons of Combining Assets

The milestone of getting married and combining your life with another person is momentous, and also warrants some careful thought and planning. As you move forward with your future spouse, below are the key personal financial subjects you should be considering.

- **Talk about Financial Compatibility.** We recommend the couple spend time reviewing their personal finances together, including any outstanding debt, total projected combined income, expectations for saving and spending, and long-term financial goals. These discussions will help lay the foundation for future planning together.
- **Update your Budget for Combined Expenses.** Think through both the new and reduced expenses of living together (if you aren't already).
- **Decide if you Need a Prenuptial Agreement.** While it's not fun to think about, you should consider what would happen if your marriage ended in divorce. This is a difficult conversation to have, but important to think through. For example, in Massachusetts, courts have wide latitude to decide how a couple's assets (the "marital estate") will be divided between them in the event of a divorce. You should consider if you need a prenuptial agreement, especially if one of you has a higher net worth than the other or is the beneficiary of trusts created by parents or other family members. Depending upon the terms of the trust, trust assets set aside for you by family members may not be directly reachable by your spouse in the event of a divorce. However, without a prenup that addresses how your marital estate will be divided on divorce, a court can take family trust assets into consideration and can shift the division of the marital estate between you and your spouse to account for one spouse's family trust interests.
- **Consider Joint Accounts, Tax Filing, and Insurance.** As you think about combining your two lives, you should also consider how and if you plan to combine financial assets and investment accounts once you are married. You will also have to make the decision of how to file taxes – either jointly or separately as a married couple. Keep in mind that married couples with similar incomes are often hit with the "marriage penalty", where the two combined incomes bump the couple into a higher tax bracket. Make sure you plan for this and set additional funds aside to cover the increased taxes. You should also plan to review insurance coverage. If you both have health insurance coverage through work, you should look at both plans and decide which provides the greatest benefit to both spouses.
- **Create an Estate Plan.** Everyone over age 18 is eligible for and should have an estate plan. A basic estate plan answers four key questions: (1) While I am living, who will make decisions for me if I can't make them for myself? (2) Where do my assets go on my death? (3) Who will manage my property on my death? (4) Who will take care of my minor children if my spouse and I have both died? An estate plan also helps minimize and defer taxes so that more of your property goes to your family and/or charities of choice. If you do not answer these key questions yourself by implementing an estate plan, the law will provide default answers for you that might not align with your wishes. In addition, the process of implementing these defaults requires court involvement, which is time-consuming and costly, and is not private.

A basic estate plan consists of four documents:

1. **Health Care Proxy.** In a health care proxy, you name someone as your agent to make health care decisions for you if you are incapacitated. You also give your health care agent directions about your wishes regarding end-of-life treatment choices (sometimes called a "living will").

2. **Durable Power of Attorney.** In your durable power of attorney, you name someone to make decisions (called an "attorney-in-fact") on your behalf regarding assets and financial affairs. The document is primarily meant to be used if you become incapacitated, and people often leave it with their estate planning lawyer to release only if needed.

3. **Will.** In your Will, you name a "personal representative" to wind up your affairs and distribute your property in accordance with the terms of your Will. You also name one or more guardians for your minor children (a critical requirement for new parents). You then provide who should receive your tangible personal property (cars, jewelry, artwork, furniture, etc.), and also provide what happens to the remainder of your "probate" assets. Certain assets are set apart from the probate process. These include (1) joint property with rights of survivorship (such as joint real estate or bank accounts), which automatically pass to the surviving joint owner on the death of the first owner; (2) accounts or assets with a designated beneficiary, which will pass to the named beneficiary when the account or asset owner dies – examples of these types of accounts and assets include retirement accounts (such as IRAs, 401(k)s, 403(b)s), life insurance, and accounts with a "transfer on death" ("TOD") designation in place; and (3) assets that have already been contributed to a trust, which will be held and distributed pursuant to the terms of the trust instrument. The rest are probate assets.

   The two common types of Wills are outlined below.

   a. A "simple" Will gives your property outright to people or charities of your choice and works best for less wealthy families, small estates, single people, and people without young children.

   b. A "pour-over" Will works in combination with your revocable trust and transfers (pours over) your other probate assets to the trust you created. The benefits include (i) privacy, (ii) preventing minors from inheriting outright and protecting descendants from creditors (which includes divorcing spouses), and (iii) minimizing estate and other taxes.

4. **Revocable Trust.** A trust is a mechanism for holding property for the benefit of your chosen beneficiaries. A trust involves 3 distinct roles:

   - **Grantor (also called Donor or Settlor).** This is the person who creates the trust.
   - **Beneficiary.** This is the person(s) who can receive property from the trust.
   - **Trustee(s).** This is the person legally responsible for managing the trust property and making distributions to the beneficiaries.

   A revocable trust is a trust that you, as the Grantor, can revoke or amend at any time during your life. You can fund your revocable trust during your lifetime or your revocable trust can remain unfunded until your death. If you choose to fund your revocable trust during your lifetime, you will continue to have full control over the assets of the trust. Upon your death, your revocable trust becomes irrevocable (i.e., cannot be changed).

   There is no tax benefit or detriment to funding your revocable trust during your lifetime. However, there are two non-tax benefits to funding your trust during your lifetime. (1) If you should become incapacitated, your successor trustees will be able to manage your investments, pay your bills, and make distributions to you and anyone else you designate as a beneficiary (i.e., your spouse and children), without the cost and delay of instituting a conservatorship proceeding in the probate court to appoint someone to manage your financial affairs; and (2) Assets titled in the name of trust at death avoid probate and are immediately available for investment and distribution to your named trust beneficiaries, whereas assets titled in your individual name at your death must go through probate before they become available.

   Planning with trusts can also be structured to provide significant tax savings for you, your spouse, and future generations.