

# Four Divorce Risks Your Clients May Not Know Exist

Help clients take a long-term view to protect family wealth



## Key takeaways

- Divorce can derail family wealth and affect generations far beyond just one couple
- Even those who are not divorcing or contemplating divorce—including those beginning prenuptial planning—could benefit from knowing what is at stake in the event of a divorce, be it their own or that of a business partner, parent, sibling, or descendant
- A multidisciplinary team of tax, legal, and wealth advisors can help clients position themselves against the many risks inherent in the case of a divorce

Even in the best cases, divorce is still fraught with complexity. Your clients may not be aware of all the ways a divorce could derail family wealth.

Even those who are not divorcing or contemplating divorce—and come your way instead for prenuptial planning—could benefit from knowing what is at stake in the event of a divorce, be it their own or that of a business partner, parent, sibling, or descendant.

The good news is that with some foresight and planning, these risks can be mitigated, if not sidestepped entirely.

## RISK 1:

### Unsheltered generational wealth could be lost

When clients set up generational wealth to pass directly to their heirs, and those assets are commingled with spousal assets or used to buy marital property, they may become fair game in divorce proceedings of such heirs.

*Help clients explore:*

#### **Dynasty trusts**

Families do not have to rely on prenuptials to protect assets. A less emotionally charged way to shelter generational wealth is to plan its transfer using a dynasty trust with a corporate fiduciary. This way, assets intended for multigenerational use are not lost in a divorce. Dynasty trusts are long-term trusts created to pass wealth from generation to generation without incurring wealth transfer taxes.

Corporate fiduciaries often serve as objective and experienced trustees to help protect trust assets for the benefit of successive generations.



## Four divorce risks your clients may not know exist

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1. Unsheltered generational wealth could be lost
2. Unintended beneficiaries could inherit or gain control
3. An ex-spouse's death could destabilize a family
4. Divorce could mean the demise of a family business



A collaborative team of seasoned professionals can help your clients make enduring action plans. These plans can help preserve family wealth and make sure its transfer does not rely on the success of any current or future marriage.

### RISK 2: Unintended beneficiaries could inherit or gain control

Failing to update fiduciary appointments, beneficiary designations, and guardianship arrangements for the care of minors—either during or in preparation for divorce—can be catastrophic.

*Help clients explore:*

#### **Beneficiary and fiduciary mapping**

As divorce proceedings move forward, each spouse should review and update fiduciary appointments and beneficiary designations under their wills, trusts, living wills, medical directives, and powers of attorney, as well as any insurance policies, annuity contracts, or retirement accounts.

In cases where a remarriage is on the horizon, blended families should revisit planning documents and beneficiary designations to make sure they align with the clients' collective intentions. With the help of advisors, these families can be made aware of how estate plans can be structured so that both individually and jointly owned assets benefit a surviving spouse and successive generations. This planning vigilance is most important when there are children from prior marriages on both sides.

### RISK 3:

#### **An ex-spouse's death could destabilize a family**

The death of an ex-spouse can leave a devastating gap in child support, alimony, higher education costs, or other obligations that may have been negotiated in a settlement agreement or hard fought and won in a divorce proceeding.

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#### **Using life insurance to secure the obligations of an ex-spouse**

Life insurance can provide funds necessary to meet an individual's post-marriage financial obligations to his or her ex-spouse in the event of such individual's untimely death. Securing sufficient life insurance can be made a part of the divorce settlement process.

An irrevocable life insurance trust, or ILIT, is designed to hold life insurance proceeds and then distribute them as directed by the trust's creator, or grantor. While they are often designed to provide a legacy for children or grandchildren in a tax-efficient manner, ILITs, in combination with other estate planning vehicles, can also be helpful in blended family situations where there are children from prior marriages and continuing financial obligations on the part of one or both divorced spouses.

## RISK 4:

### Divorce can mean the death of a family business

If one or both spouses are business owners, an inadequate buy-sell agreement or lack of liquidity could crush a business if an owner gets divorced.

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#### **Comprehensive business succession planning with divorce provisions**

Typically, the best prevention is to make sure your client's business has a sound succession plan in place that includes provisions in the event of divorce.

Business partners are wise to structure business agreements to protect against the claims of an ex-spouse of one of the business partners.

If liquidity is an issue during the course of a divorce proceeding (due to a disproportionately high percentage of business or real estate holdings), access to personal credit can help satisfy the terms of a divorce settlement in a way that may not jeopardize business operations.

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