Ensuring Your Massachusetts Will, Trust, and Beneficiary Designations Align with Your Prenuptial Contract to Avoid Costly Probate Litigation.

For many couples in Massachusetts, the prenuptial agreement—or "antenuptial agreement"—is often viewed through a single lens: protection in the event of a divorce. However, this narrow perspective overlooks a critical legal reality. In the Commonwealth, a prenuptial agreement is not merely a "divorce document"; it is a binding contract that fundamentally governs the disposition of assets upon death.

For practitioners and clients alike, the "best practice" isn't just signing the prenuptial agreement and filing it away. The true gold standard of planning is harmonization—the active process of ensuring that your estate plan – i.e. your Will, Trust, and beneficiary designations – serves as the functional mechanism to carry out the promises made in your prenuptial contract. This requires deliberate, thoughtful steps for spouses to take after their wedding day.

Failure to align an estate plan with a prenuptial agreement can lead to a "conflict of instruments," resulting in costly probate litigation, fiduciary disputes, and the potential frustration of your long-term legacy goals.

Important note: This blog speaks in generalities about common terms in prenuptial agreements. However, the information in this blog is subject to a hugely important caveat: the terms of the specific prenuptial agreement matter. A lot. Although most prenuptial agreements effect each spouses' rights in the event of death, some prenuptial agreements have no impact at all on such

rights. Every prenuptial agreement is different. To understand the terms of a specific prenuptial agreement, it is essential that you consult with a qualified attorney.

The Statutory Power of the Prenuptial Agreement: M.G.L. c. 209, § 25

To understand why harmonization is vital, one must first understand the weight a prenuptial agreement carries under Massachusetts law. Under Mass. Gen. Laws ch. 209, § 25, these agreements are granted broad authority to govern property rights after marriage is solemnized.

Specifically, the statute provides that these agreements have the same legal force as property deeds. They take effect at the time of marriage "as if they had been contained in a deed conveying the property limited". (This blog focuses on the intersection between prenuptial agreements and estate planning. To understand more about the enforceability of prenuptial agreements in Massachusetts divorces, check out my blog, What is the Current State of the Law on Prenuptial Agreements in Massachusetts?)

Understanding Spousal Waivers: Intestacy, Elective Shares and Separate Property

The majority of prenuptial agreements in Massachusetts include provisions where parties voluntarily waive any interest in the other's "Separate Property" in the event of death. Many Agreements also involve waiving two primary statutory rights:

- Intestacy Rights: Intestacy laws dictate how assets are distributed if a person fails to create a valid estate plan (like a Will) before they die.
- Elective Share Rights: Even if a spouse seeks to exclude their partner from a Will, the "elective share" statute (M.G.L. c. 191, § 15) sets a legal minimum share—often one-third of the estate—that a surviving spouse may claim.

Important note: whether a spouse agrees to waive all intestacy and elective share rights or simply waives those rights as to the deceased party's Separate Property is important. Many prenuptial agreements include a complete waiver of intestacy and elective share rights, as well as an explicit waiver to seek any share of the deceased spouse's Separate Property. However, it is also not uncommon to find agreements in which the surviving spouse only waives their intestate and elective share rights for the separate property of the other spouse. One reason for including a broad waiver of all intestacy and elective share rights is because partial waivers (e.g. only waiving these rights regarding separate property) can create complex legal situations that surviving spouses, estate representatives, and third-party companies then have to sort out. Such "blended" waivers also increase the need for clear prenuptial terms.

When an agreement defines certain assets as "Separate Property," those characterizations are likely binding upon a spouse's death. This means that if your prenuptial agreement says an asset is yours alone "as if no marriage had occurred," a surviving spouse is likely to be effectively barred from claiming statutory inheritance or elective shares in that specific property. Agreements must be carefully scrutinized to determine exactly what rights are being waived by surviving spouses.

Standard prenuptial waivers for Separate Property typically make clear that nothing prevents a spouse from voluntarily leaving assets, including Separate Property, to the survivor through a Will, Trust or beneficiary designation. However, the deceased spouse must affirmatively take the steps after the marriage to provide for these rights for the surviving spouse in their estate instruments. If they fail to specifically name the spouse in their estate planning tools, a standard prenuptial waiver often prevents the surviving spouse from receiving any share of the decedent's Separate Property, as well as any more general intestacy or elective share rights they waived in the prenuptial agreement.

The "Marital Property" Nuance: Rights Depend on the Contract

While separate property is often clearly ring-fenced, the treatment of "Marital Property" upon death is entirely dependent on the specific terms of the prenuptial agreement. While most prenuptial agreements pay close attention to how Marital Property is treated in the event of a divorce, less focus may be devoted to the treatment of Marital Property in the event of death.

One simple solution is for the agreement to provide that a surviving spouse has a survivorship right to all Marital Property in the event of death. Such provisions are clear, easy to interpret, and ensure that a surviving spouse is provided for in the event the other spouse dies. However, as discussed above and below, it is essential that spouses update their wills, trusts, and beneficiary designations after the marriage to harmonize these instruments with the prenuptial agreement, otherwise complications (which are discussed in more detail below) can arise.

If a prenuptial agreement provides that Marital Property is divided equally (50/50) in the event of divorce, but is silent on the treatment of Marital Property in the event of death, a more complicated picture arises, sometimes resulting in complex interpretive challenges for judges, plan administrators, estate representatives and surviving spouses. In general, Massachusetts courts have not established a clear doctrine for extrapolating death-related property rights from divorce provisions, creating uncertainty for surviving spouses. In other words: just because the prenuptial agreement says that each spouse will receive 50% of the Marital Property in the event of divorce, the same rule may not apply to Marital Property if a spouse dies.

In Bickford v. Bickford, a Massachusetts Superior Court specifically declined to apply divorce-focused fairness analysis to death situations, noting that "no Massachusetts authority has yet been cited to the court, nor has the court found any, which would invoke the principle involved in a domestic relations context, that the agreement must be reasonable at the time of its application" in death scenarios. Thus, unlike a divorce case, where courts can apply broad equitable principles to the division of marital property, a surviving spouse may be limited to seeking relief under the less flexible laws surrounding estates.

The good news is this: even if a prenuptial agreement is not clear on the treatment of Marital Property in the event of one spouse's death, these ambiguities can generally be resolved through thoughtful estate planning. Regardless of whether the prenuptial agreement provides that the surviving spouse is entitled to a full survivorship interest in all Marital Property in the event of a spouse's death, or if the agreement is silent on Marital Property rights in the event of death, it is important for spouses to update their Will, Trust, and beneficiary designations after the marriage

to either harmonize their estate plan with the terms of the prenuptial agreement – or fill in any gaps in the prenuptial agreement regarding Marital Property.

The "Real Estate Recapture": Balancing Divorce Protection with Estate Simplicity

When one party uses premarital "Separate Property" to fund a down payment on a marital home, a tension often arises: how do you protect that initial investment without undermining the financial security of a surviving spouse? A sophisticated approach involves a "bifurcated" treatment of the asset based on how the marriage ends.

In the event of a divorce, the agreement can provide for a "nominal recapture," where the contributing spouse is reimbursed their exact dollar investment before the remaining equity is divided. However, attempting to maintain this same Separate Property carve-out in the event of death adds significant layers of complexity to your estate planning. If a portion of the home's value must be "recaptured" by the deceased spouse's estate, a simple deed with a right of survivorship (such as Tenancy by the Entirety) may no longer be feasible. Instead, you might be forced to utilize more complex ownership structures, such as a Real Estate Trust or Tenancy in Common, where specific shares are assigned by a Will.

By opting for simple survivorship in the event of death, you streamline the post-death transition. This approach avoids the need for special carve-outs in your estate plan and, perhaps more importantly, ensures the surviving spouse isn't forced to "buy out" the estate for the down payment amount during an already difficult time. It allows the "marital partnership" to take precedence at the end of life, while the contractual protection remains ready and waiting should the marriage end in the courtroom instead.

The Conflict of Non-Probate Assets and Beneficiary Designations

Serious complications often involve assets that pass outside of probate, such as IRAs, 401(k)s, and investment accounts. These accounts use survivorship designation forms to name a beneficiary who receives the funds automatically upon the owner's death. Massachusetts case law provides plenty of examples of surviving spouses who were left in frustrating and painful situations because the deceased spouse forgot to update their survivorship designation forms after the marriage.

A Two-Step Legal Nightmare

Harmonizing the survivorship designation forms with a prenuptial agreement is especially important because disputes over survivorship interests often involve corporations (think: Fidelity, JP Morgan, etc.) rather than just the decedent's estate. If spouses do not harmonize their survivorship designation forms with the terms of prenuptial agreement, plan administrators for such corporations can be very challenging to deal with – even if a prenuptial agreement appears to provide a survivorship right to a surviving spouse. Such disputes can also involve siblings, relatives, former significant others or whoever else might have been named as the death beneficiary on a form that was never updated by the deceased spouse.

If a prenuptial agreement grants a spouse a survivorship interest in Marital Property (like a retirement account), but the account owner forgot to update the beneficiary form after marriage—leaving a sibling or other third party named instead—a "two-step" legal process usually follows:

1. Initial Distribution: Massachusetts courts generally show a strong preference for honoring beneficiary forms. The financial institution will likely distribute the funds to the named beneficiary first, consistent with their own policies to minimize administrative costs.
2. Contractual Recovery: The surviving spouse must then pursue the recipient of those funds for breach of the prenuptial agreement. While the spouse may have a cause of action for restitution or a constructive trust, this involves expensive, stressful litigation against both the estate and third parties. In short, such litigation can turn into a "battle of the contracts", in which the terms of the prenuptial agreement are pitted against the terms of paperwork the deceased spouse signed when the account was setup.

Massachusetts courts have established a strong preference for honoring beneficiary designation forms over other estate planning documents. In Fitzpatrick v. Small, the Massachusetts Appeals Court held that "a designation of beneficiary form, executed in accordance with the provisions of the IRA plan under which it is to operate, controls" over later testamentary dispositions – which likely includes a prenuptial agreement executed after the beneficiary designation was made. (Although the statute cited in Fitzpatrick was repealed, it was replaced by a similar statute, M.G.L. c. 167D, § 15, which governs beneficiary designations for pensions, profit-sharing, and IRAs in an analogous manner.) The Fitzpatrick Court emphasized that Massachusetts law in effect at the time made beneficiary designations "effective according to its terms, notwithstanding any purported testamentary disposition allowed by statute, by operation of law or otherwise to the contrary".

In short, a failure to update beneficiary designation forms to match the terms of a prenuptial agreement can leave the surviving spouse empty handed. While some remedies may be available for such spouses based on unique facts, spouses should assume that the general rule will apply if a spouse fails to update their forms after the marriage.

Many of these tips above are equally applicable to life insurance, annuities, and transfer-on-death accounts, all of which transfer outside out of probate based on contract terms.

Federal Preemption (ERISA)

For 401(k) plans governed by the Employee Retirement Income Security Act (ERISA), federal law may even preempt state contract law. A prenuptial agreement is generally not a valid spousal waiver for ERISA purposes; a future spouse often cannot execute a valid waiver until after the marriage takes place. In contrast, IRAs are typically governed by state law, offering more room for prenuptial terms to eventually prevail. Said another way: a prenuptial agreement cannot, on its own, waive a spouse's right to certain retirement benefits under federal law.

In other words, even if a spouse waives their interest in an ERISA account in the prenuptial agreement, such a waiver may be deemed invalid if the spouse fails to execute a separate waiver in the ERISA account after the marriage. Determining whether an account is subject to ERISA is not always easy. A decent first step can involve asking artificial intelligence models like Google Gemini or ChatGPT, but a phone call to the financial provider is often the only way to be sure.

For ERISA accounts, it becomes even more important to harmonize a prenuptial agreement with the applicable survivorship designation forms, where federal preemption (i.e. federal law takes precedence over state divorce/contract law) makes ERISA-based accounts especially problematic if conflicts arise between a prenuptial agreement and the survivorship designation forms for the same account. If a prenuptial agreement provides that one spouse is waiving their interest in other spouse's ERISA-based account, such a waiver is likely to be effective in the divorce context, but not effective in the event of death – unless the spouse executes a separate waiver with the ERISA provider after the marriage date.

The ERISA "Safety Valve": Rollovers and the Constructive Trust

As we've discussed, federal ERISA laws often ignore prenuptial waivers, forcing plan administrators to pay retirement benefits to a surviving spouse regardless of what your contract says. While the "gold standard" is for the spouse to sign a formal, notarized waiver after the wedding, there is another potential path: the IRA Rollover.

For some individuals, it may be possible to avoid the "ERISA trap" altogether by rolling ERISA-based retirement plans (like a 401(k)) into a Rollover IRA. Unlike many employer-sponsored plans, IRAs generally do not carry the same federal requirement for spousal consent to designate a non-spouse beneficiary. However, this is not a universal fix. This option is often unavailable if you are still actively employed by the company sponsoring the plan, and the ability to move funds depends entirely on the specific rules of your individual plan.

Because rollovers aren't always an option, a truly resilient plan still needs a contractual backstop: the Constructive Trust. This provision creates a "duty to disburse," stipulating that if a spouse receives ERISA-governed funds that they previously waived in a prenuptial agreement, they are legally deemed to be holding those funds "in trust" for the intended beneficiaries. By establishing a strict timeline for the transfer of these funds (such as ten business days), you create an enforceable contract right that survives federal preemption—even if the plan itself failed to recognize your waiver.

The Limitations of the "Safety Valve": Why a Constructive Trust is Not Foolproof

While the Constructive Trust serves as a vital last line of defense, it is important to understand its limitations. First and foremost, a Constructive Trust is not "self-executing". Even with clear language in your prenuptial agreement, an estate or intended beneficiary may still be forced into expensive and time-consuming litigation to compel a surviving spouse to relinquish the funds. Because Massachusetts courts generally show a strong preference for honoring official beneficiary forms, the financial institution will likely distribute the funds to the named beneficiary first. Only after that distribution can a "battle of the contracts" begin.

Furthermore, the interaction between state contract law and federal ERISA law is incredibly complex. While some courts have allowed for the recovery of funds after they have been distributed, there is no absolute guarantee that a judge will impose a Constructive Trust in every scenario. Ultimately, the only truly "safe" option is to ensure that a spouse executes a formal, notarized waiver after the marriage as required by the ERISA plan. While rollovers and Constructive Trusts provide essential backstops, they are defensive measures meant to fix a problem that is best avoided through proactive administrative harmonization.

Maintaining the "Active Process" During Separation

A common oversight in estate harmonization is the "limbo" period that occurs after a divorce complaint is filed but before a final judgment is entered. In Massachusetts, Supplemental Probate and Family Court Rule 411 typically freezes all beneficiary designations the moment a case begins.

However, a well-crafted agreement can include a Rule 411 Waiver for Separate Property. This allows you to update death beneficiary designations for your individual, non-marital assets even while the divorce is pending. This ensures that the process of "de-harmonizing" your estate from a departing spouse can begin immediately, rather than leaving your Separate Property at risk during months of litigation.

Defining “Harmonization”: A Functional Checklist

Harmonization is the active coordination between family law and estate planning counsel to prevent these “legacy traps”. An individual's estate plan should be the tool that fulfills the contractual obligations the individual made in their prenuptial agreement.

Effective harmonization typically involves:

- Immediate Disclosure: Provide your signed prenuptial agreement to your estate planning attorney immediately.
- Explicit Referencing: Matching your estate plan with the prenuptial agreement is essential, butan individual's Will or Trust should explicitly reference the prenuptial agreement so they are interpreted together. By referencing the prenuptial agreement in their estate plan, an individual helps ensure that the intent of the prenuptial agreement becomes a basis for interpreting the estate plan in the case of ambiguities.

- Asset Alignment: Ensuring that “Separate Property” isn't inadvertently swept into a spouse's hands via general “residuary” clauses.
- Beneficiary Coordination: Updating all survivorship designations (IRAs, 401(k)s, insurance) immediately after marriage to match the prenuptial agreement's requirements. If a spouse has a full survivorship interest in the account under the prenuptial agreement, the survivorship designation should say so. Most providers also allow individuals to designate multiple beneficiaries, e.g. 50% of the account will pass to the surviving spouse in the event of death. For ERISA accounts, this process can also include requiring a spouse executing a separate waiver in the account after the marriage if that spouse waived their death benefit in the account under the prenuptial agreement.
- Funding Promises: If the agreement requires a specific benefit (like a life insurance policy or a Q-TIP trust), those vehicles must be active and properly funded.
- Amend, Don't Contradict: If your goals change, formally amend the prenuptial agreement rather than creating a conflicting Will.
- Regular Review: Review both sets of documents periodically to ensure they remain fair and consistent with your current assets.
- Separation Steps: As long as the Prenuptial Agreement contains a waiver of Rule 411 (or similar rules in other states), it is prudent to change beneficiary designations as soon as a complaint for divorce is filed.
- Prenuptial Agreement Language Controls: Remember that the specific terms of the prenuptial agreement control; general rules, informational blogs and artificial intelligence summaries are only relevant in the context of what the prenuptial agreement actually says.

Key Case Law: Lessons from Massachusetts Appellate Courts

Matter of Estate of Stacy (2019): The Power of Characterization

The court held that broad language treating separate property “as if no marriage had occurred” effectively prevented a wife from claiming an intestate share, even without a specific “waiver of inheritance” clause.

Fitzpatrick v. Small (1991): The Primacy of Beneficiary Forms

This case warns that an IRA beneficiary designation form generally controls over later testamentary dispositions. This underscores why you cannot rely on a Will or a Prenup alone to “fix” an outdated beneficiary form.

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