

The reason to go through the additional cost of filing an estate tax return when there is no requirement is to transfer the deceased spouse's unused exemption (DSUE) to the surviving spouse. This type of federal estate tax return for a nontaxable deceased spouse's estate is called a "portability election."

Time is of the essence

Estate planning practitioners are gearing up for a busy 2024 and 2025. Beginning the estate tax planning process now ensures your legal and financial advisory teams have the time to create or revisit your estate plan and determine if one of the above strategies could apply to your estate plan.



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Ohio's happily ever after: postnuptial agreements

By Dana Marie DeCapite

On March 23, Ohio Senate Bill 210 was signed into law. Ohio joined 48 other states in allowing married individuals to enter into postnuptial agreements, leaving Iowa as the lone holdout jurisdiction. Prenuptial agreements (the popular older sibling of postnuptial agreements) have been a long-standing planning tool in Ohio, allowing soon-to-be-wed couples to predetermine each spouse's financial rights and responsibilities in the event of divorce or death. Postnuptial agreements, conversely, are executed following marriage and can be implemented where no prenuptial agreement exists or to amend, modify and/or terminate an existing prenuptial agreement. Ohio Revised Code Section 3103.061 requires the following components for a valid postnuptial agreement:

- (1) In writing and signed by both spouses;
- (2) Entered into freely without fraud, duress, coercion or overreaching;
- (3) Entered into with full disclosure, or full knowledge, and understanding of the nature, value and extent of the property of both spouses; and
- (4) Must not promote or encourage divorce or profiteering by divorce.

For many married couples, life's milestones and curveballs are mostly unknown before marriage — the birth of child(ren), sale of a business, death of a close family member and resulting inheritance, liquidity events, health concerns and countless others. Postnuptial agreements facilitate flexibility in estate planning and financial planning, which are especially important when certain terms of a decades-old prenuptial agreement are impracticable, inapplicable or overly burdensome. This newfound ability to modify a previously irrevocable legal

arrangement between spouses allows for more precise planning that can grow and morph with a family.

Though the relevance of prenuptial and postnuptial agreements in the divorce context is commonly understood, the use of postnuptial agreements in estate planning is often overlooked or misunderstood. To name a few applications, postnuptial agreements can be used by married couples to (1) address family business succession planning where timely planning was overlooked or a business was created following marriage, (2) provide concrete planning for blended families with both joint children and prior children, (3) manage an unexpected inheritance and create assurances that certain property will remain in one spouse's family, (4) rework or implement planning for special needs family members unascertained at the time of marriage and (5) ensure federal estate tax optimization in requiring the deceased spouse's executor to make an appropriate portability election to preserve any unused estate tax exemption amount for the surviving spouse.

Ultimately, implementing a postnuptial agreement as part of an estate plan can aid in mitigating post-death family conflict and potential litigation emanating from outdated decision-making. Hardly romantic, yet undeniably pragmatic for certain families.



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