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Lori & Gary

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## Do I Have a Complex Divorce?

**Complex Divorce often involves high-value assets and assets in dispute.** The following are a few examples:

- **Real Estate**, both in-state and out-of-state, and jointly or family-owned businesses are assets that must be valued and distributed as part of a divorce.
- **Valuing a Business** is often a matter where experts may need to be hired.
- **Accounts** such as, Retirement accounts, 401(k) accounts, savings plans and pensions), bank accounts (checking accounts, savings accounts), deferred compensation and executive bonuses.
- **Assets Held in Trust, Investments, Stocks and Bonds, and Royalties** are other assets for which complicated issues may arise. For example, tax issues can arise when it comes to valuing and distributing high-value assets, pre- or post-tax accounts, investments and off-shore accounts. Working with an attorney experienced in these matters is crucial.

Texas is a community property state, so the characterization of property as either community or separate is crucial. Each spouse has an interest in community assets. Each spouse may keep their own separate property. Therefore, it is critical to properly characterize assets as separate, community, or comingled.

Properly characterizing assets is necessary to ensure equitable division of property.

Complex issues are not limited to purely financial matters. In some cases, child custody and visitation is hotly contested and genuine issues of what is in the best interests of the children arise. Mental health professionals such as psychiatrists, psychologists and social workers may be needed to resolve such complex disputes.

Bad behavior by one spouse can also cause complexity. Frequently, we must seek Court Orders and Injunctions from the Judge to attempt to curb a spouse's bad behavior and protect the other spouse. Bad behavior can include, among other actions, family violence, wasting of assets, hiding assets and concealing debts. Protective Orders, investigation, perhaps with the help of an outside investigator or forensic accountant, may be necessary to ensure a spouse's misbehavior is stopped and uncovered.

No one should 'go it alone' in a Divorce, especially in a Complex Divorce. Experienced legal representation by a Family Law Attorney should provide you guidance, peace of mind and protection throughout the divorce process. Contact us today to schedule your 'confidential conversation' to discuss your concerns and options for next steps.

*by: Kimberly V. Wright, Ashmore Law Firm*

# Last Will & Testament

V.S.

# Prenuptial Agreement

## Hand-in-Hand “Adult Homework”™

It's very important to get your ‘*Adult Homework*’™ in order and have your Will and Estate Planning documents completed. If you are getting married, your ‘Adult Homework’™ should also include a Prenuptial Agreement as a very good plan to protect you, your spouse, your business, your legacy planning, and your assets. Having both is an ideal Protection Plan. Knowing that your Will and your Prenup work together is critical for peace of mind.

A *Will (Last Will and Testament)* is a formal written document outlining your choices about who will receive your assets (whether held in just your name or held jointly with others) and how it will be divided when you die. A Will is a ‘roadmap’ for your loved ones (and the Court) to make the distribution of your estate efficiently, both emotionally and financially. Without a Will, the probate process takes more time, costs more money, and the State decides who gets your assets.

A *Prenuptial Agreement (Prenup)* is a formal written contract agreed to between you and your spouse prior to the wedding date outlining your preferences and choices for future actions that occur after the marriage.

### Some items listed in a Prenup include:

- Division of property in case of separation, divorce, or death;

- The right to: buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage, and control property;
- In the event of death, what controls? A Will, Trust, or other arrangement; and
- The ownership rights in and distribution of the death benefit from a life insurance policy.

### The Will and the Prenup should match up

When you have a Will and a Prenup, they should match up. That is, they should have the same directions and distributions. If you are not preparing them at the same time, it is crucial to keep this in mind.

### What happens if they do not match up?

The Prenup ‘trumps’ any differences in the Will and those distributions and instructions in the Prenup will be enforced instead of those set out in the Will. Both your Will and your Prenup are important to have. You should have a legal professional prepare and review both so that you can rest easy that your Plan is “The Plan” you need and want. We help our clients have “The Plan” and the peace of mind they deserve.

by: *Kimberly V. Wright, Ashmore Law Firm*

# --- Question & Answer ---

## Q

### How is My Divorce Affected if My Spouse Dies or Becomes Incapacitated?

## A

In the event of a **spouse's death** after the filing of a divorce proceeding, but before the entry of a final judgement, an attorney or party to the case will file a suggestion of death pursuant to the Texas Rules of Civil Procedure. This suggestion notifies all parties to the suit and will essentially vacate or terminate the divorce proceeding.

From that point forward, all issues concerning the distribution of the community estate and the validity of any pre or post marital agreements will be heard in the **Probate Courts, not the Family Law Courts.**

Retirement benefits, including 401k plans and pension benefits, are typically governed by federal law. Therefore, the plan terms and beneficiary designations will govern in the event of the participants death, and the state courts will not be able to alter those terms.

If your spouse becomes **incapacitated** during the divorce proceeding, a guardian may need to be appointed for them. What the guardian will have the power to do will depend upon the nature and severity of your spouse's incapacity. If there is a complete incapacity, the guardian may be able to negotiate settlements or attend a final trial on behalf of the incapacitated spouse. The guardian is usually a person appointed by the court; however, the court may also consider a relative or close friend. Speak with one of our experienced Family Law and Probate Attorneys for more information.

by: *Cassidy L. Pearson, Ashmore Law Firm*

## Meet the Team



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# Divorce?

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Kimberly V. Wright

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Cassidy L. Pearson

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