

# How to Protect Your Child's Inheritance for Future Generations

**Current clients: If your plan includes a special needs trust, please contact us. The Social Security Administration has narrowed its position on certain provisions in these trusts, particularly regarding the 'sole benefit rule.' Therefore, we may recommend some changes to your plan.**

When preparing an estate plan, it is important to consider the impact a child's or grandchild's future divorce may have on your legacy. With approximately 50% of U.S. marriages ending in divorce or separation, divorce is a statistically significant risk, no matter how unlikely it may seem at the moment. There are a few helpful estate planning techniques you can employ to mitigate the risk of your child's inherited assets becoming the property of an ex spouse—or another family altogether.

Prenuptial agreements enable children to delineate with their future spouse how assets are to be divided at the termination of the marriage, whether by divorce or death. Additionally, the use of lifetime trusts within your overall estate plan can be a helpful tool to protect your assets from divorce in a future generation.

In Wisconsin, all property of married individuals is presumed to be "marital property," and therefore each spouse owns an undivided one-half interest in each asset. There is an exception for inherited property, which is considered to be the individual property of the inheriting spouse, as long as that inherited property remains separately titled, is not comingled with marital property and can be otherwise proven to be inherited. Income on an individual account, however, is considered marital property, so ensuring the income is regularly separated from the account will avoid comingling. Prenuptial agreements enable couples to define which assets are marital property and which are individual property during the marriage and upon death. Further, prenuptial agreements allow spouses to determine each spouse's rights to assets at the termination of the marriage and can limit which assets are available to each spouse's creditors.

In Wisconsin, a prenuptial agreement's enforceability turns on whether it is equitable in the eyes of the divorce court. A court may determine a prenuptial agreement is inequitable (and therefore unenforceable) if: (1) both parties did not knowingly and voluntarily enter into the agreement; (2) there was incomplete financial disclosure; (3) there was inadequate legal representation; or (4) the

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terms of the agreement were not equitable at the time the agreement was executed or at the time the marriage terminates. As such, in order to be effective, prenuptial agreements must be carefully crafted.

In addition to a thoughtfully written prenuptial agreement, it is important that inherited assets remain segregated from marital property. As mentioned above, if the individual property is commingled with marital property, its "individual" classification may become eroded. Even with a prenuptial agreement, it is important to discuss holding inherited assets individually titled accounts with your children. To add an additional layer of protection, you may consider using lifetime trusts for the benefit of your children in your own estate plan.

Lifetime trusts are one way to provide for asset protection and segregation of assets for future generations within your own estate plan. A lifetime trust provides that your child's inheritance will not be distributed outright, but rather held in an irrevocable trust that lasts for the child's lifetime. A lifetime trust can be structured to provide the child with sufficient access to the trust's assets so as to provide for the child's needs (including the child serving as his or her own Trustee) and with enough restriction on that access to prevent the trust from being divisible in a divorce proceeding. As a lifetime trust's assets are held in trust accounts, the assets cannot be comingled with marital property. Further, all income generated by a lifetime trust's assets is individual property, and all distributions from lifetime trusts are individual property as long as they are titled individually and not comingled.

Prenuptial agreements and lifetime trusts are a few of the estate planning strategies that can help structure inheritance for future generations to ensure it remains to benefit your family for years to come. Although no one ever *plans* to get divorced, it is important to consider that possibility when evaluating your own estate plan and as your children get married and start families of their own.

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