



Protecting Your Legacy VIA PRENUPTIAL AGREEMENTS AND TRUSTS

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A CHILD'S DIVORCE CAN HAVE A SIGNIFICANT IMPACT on the legacy you wish to leave. Well-crafted trust provisions in your estate plan along with an enforceable prenuptial agreement will protect against this risk, and can also provide other important protections.

Marital Property

In Wisconsin, most property acquired after a marriage is presumed to be marital property and owned equally between the spouses (title to the asset notwithstanding). There is an exception for inherited property, which is considered to be the individual property of the inheriting spouse, as long as that property remains separately titled and is not commingled with marital property. Income earned from that property (rents, interest, dividends) is considered marital property, so it is extremely important to segregate that income from the individual property.

Prenuptial Agreements

Prenuptial agreements allow couples to define which assets are marital property and which are individual property, and to determine how assets will be divided upon death or divorce. In Wisconsin, a prenuptial agreement is enforceable if the divorce court believes it was equitable both when entered into and when enforced. In addition, there must be full financial disclosure, adequate legal representation (each party should be separately represented) and both parties must enter into it knowingly and voluntarily. We recommend having the agreement signed at least a month prior to the wedding. This typically means that the process should begin at least three to four months prior to the wedding.

A prenuptial agreement protects inherited property and the income generated from that property. In addition, it is extremely important to keep the property separately titled.

Trusts

Wealthy families use trusts to provide for segregation in the event of a divorce and for creditor and tax protection. By leaving your children's inheritance to them in trust, the trust assets will be segregated from any marital property, and if the inherited property is the only property the child wishes to protect in the event of divorce, a prenuptial agreement may not be necessary.

The trust can be structured to provide the child with significant access to the trust's assets and can even allow the child to act as his or her own Trustee. As the trust's accounts and other assets are titled in the name of the trust, the assets cannot be commingled

with marital property. Further, all income generated by the trust assets remains individual property. All trust distributions will be individual property as long as the distributions are not commingled with marital property.

In addition to providing segregation from marital assets, trusts can provide protection from general creditors, and can shelter the trust assets from imposition of the estate tax when the beneficiary dies.



Chart a Course for Lasting Legacy

Our experienced team of Trusts and Estates attorneys helps high-net-worth clients build and preserve wealth, whether they are actively engaged in business or enjoying the rewards it has produced.

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