

Saying “I Do” Without Saying Goodbye to Family Wealth

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By Sandra A. Brooks



For high-net-worth individuals, trusts and family wealth structures are often central to long-term financial planning. A common question in divorce is whether these assets can be protected from equitable distribution, particularly when a prenuptial agreement (“prenup”) is in place. The answer is nuanced and depends on several interrelated factors, including how the trust is structured, how it is used during the marriage, and the strength of the prenup itself.

A well-drafted prenuptial agreement is one of the most effective tools for shielding trust assets from division. Prenups can clearly define: 1) what constitutes separate vs. marital property, 2) how trust interests are treated, and 3) whether income or distributions from a trust remain separate or become marital.

If the agreement explicitly identifies trust assets, and any appreciation or income derived from them, as separate property, courts are often inclined to enforce those provisions, provided the prenup is valid (i.e., entered into voluntarily, with full disclosure, and without unconscionability).

However, a prenup is not absolute. Courts may scrutinize it carefully, especially in long-term marriages or where enforcement would produce a significantly unfair outcome.

Even with a prenup, courts look beyond the document to how the trust functions in practice.

Discretionary trusts (where distributions are controlled by a trustee) are more likely to remain protected because the beneficiary spouse does not have a guaranteed right to the assets.

Mandatory or vested interests (where the beneficiary has a clear right to receive income or principal) are more vulnerable to being considered marital property.

If a spouse has significant control over the trust, such as serving as trustee or having the power to direct distributions, courts may view the trust as a personal asset rather than a protected structure.

Even protected assets can lose their separate character if they are commingled with marital property. Examples include:

- Using trust distributions to fund joint accounts or marital expenses
- Retitling assets into joint names
- Relying on trust funds to support the marital lifestyle

A prenup can mitigate this risk by specifying that commingling does not convert separate property into marital property, but courts may still examine the facts closely.

If trust income is regularly used to support the couple's lifestyle, a court may consider that income, if not the principal, when determining: spousal support (alimony), child support, overall fairness in property division.

Even when a prenup successfully shields trust principal from division, there are important limitations:

Support Obligations: Courts may still consider trust income or access to funds when setting alimony or child support.

Public Policy Considerations: A court may refuse to enforce provisions that would leave one spouse in extreme financial hardship.

Validity Challenges: Prenups can be challenged on grounds such as insufficient disclosure or coercion.

To increase the likelihood that trusts and family wealth structures will be shielded:

- Draft a detailed prenuptial agreement that clearly addresses trust assets, income, and appreciation
- Maintain strict separation between trust assets and marital property
- Avoid excessive control over trusts where possible (e.g., consider independent trustees)
- Document intent and usage of trust distributions carefully
- Coordinate estate planning and family law strategy, ensuring consistency between trust documents and the prenup

A prenuptial agreement can significantly enhance the protection of trusts and family wealth structures in the event of divorce, but it is not a guarantee. Courts look at both the legal framework and the real-world handling of assets during the marriage. For wealthy individuals, the most effective strategy is a combination of careful drafting, disciplined asset management, and aligned legal planning across trust and marital agreements.