

A Creative Way to Divorce-Proof Your Premarital Assets

If the full-disclosure aspect of a prenup agreement is a sticking point for you, an irrevocable trust could be an interesting way around the issue.



By Jeffrey M. Verdon, Esq.

Whoever said “money can’t buy happiness” has never paid for a divorce. Paul Tommins should know ... he’s paid for two of them. This is an area we are regularly contacted about.

His divorces – expensive as they were – came with silver linings. Free of the daily push and pull of domestic life, Paul — a fictional example whose story is a compilation of several clients I’ve encountered over the years — was able to focus on building his business, diving headfirst into creating a corporation that

was ultimately acquired by a large tech company for many millions.

A New Relationship, But Old Fears

Golden parachute in hand, Paul doesn’t have to work for the first time in his life. But without the driving motivation of building his company, Paul becomes lonely. Then, he meets Julianne. She’s perfect. A Midwestern girl whose beauty and warm personality can light up a room, he can’t wait to see her every day. Soon, he starts thinking about their future together. But he’s gun-shy – the burn of his previous

divorces still stings – and his biggest fear is that he may be falling in love with the next future ex-Mrs. Tommins.

Paul believes in the old adage, “Fool me once, shame on you, fool me twice, shame on me.” His previous relationships were defined by money. This created a sense of entitlement in his ex-wives that he found intensely distasteful as a self-made man. The mix of his intense work ethic and his exes’ spendthrift ways was a recipe for unhappiness, and he is not going to let

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himself be fooled a third time.

He asks his family law attorney how he can protect his current assets prior to proposing to his new girlfriend.

She recommends that he negotiate a prenuptial agreement.

An Interesting Solution to a Prenup Problem

Unfortunately, for a prenup to be valid, he must reveal all personal assets that will be covered by the agreement. This is exactly what he wants to avoid: He's not ready to disclose his entire financial universe to Julianne. Money was the cause of his first two divorces; he wants to do everything he can to prevent money from being the cause of a third. But his lawyer warns that most states require parties to a prenup to disclose the assets they own and are planning to bring to the marriage. Without full disclosure, a prenup will not

be enforceable, meaning money would definitely be at issue in a divorce.

While a financial planner or a marriage counselor might look at this situation and advise Paul that he should think carefully about whether he should consider getting married if he can't be open with his partner, the lawyer he chooses has a very different viewpoint. The lawyer offers a simple solution: Don't own such assets at the time the prenup is signed.

To accomplish this, Paul can form an irrevocable trust for his assets for the benefit of his children or other designated beneficiaries in one of the favorable states that have "no exception creditors," such as Nevada, Alaska or South Dakota. Paul can even use an offshore jurisdiction to get "suspenders and belt" protection, where the trust can be drafted to provide the trustee with

the power to add future beneficiaries, including – but not limited to – Paul.

A Divorce-Proof Proposition

When Paul signs his prenup, he would literally not own the assets previously given to his irrevocable trust, and thus, does not need to disclose them. Should Paul later need or want some or all of the assets held by the trust, the trustee may add him as a beneficiary. This simple "divorce-proof" solution to a tricky problem gives Paul peace of mind as he plans to embark on his new life with beautiful Julianne.

We all hope for the best in any relationship, but hoping for the best and gaining peace of mind are not mutually exclusive. If you or someone you know may benefit from "divorce-proofing" hard-earned assets, contact us before it is too late to take action, and learn how you can achieve peace of mind for years to come.



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