

What Would Happen If Melania and Donald Trump Got a Divorce?

We asked high-profile divorce attorneys to speculate on the prenup—and what a presidential breakup would look like.

by [CORYNNE CIRILLI](#) JAN 12, 2018



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Eavesdrop on a steakhouse lunch between divorce attorneys and you're likely to hear them engaging in their current favorite sport: speculating on the marital arrangement between Donald and Melania Trump. "We love talking about it," one recently told me. "What's in the prenup? Did it get renegotiated during the campaign, or after he won? How would a split play out?... It's irresistible conversational fodder."

During his two previous divorces, Trump stuck mostly to the prenup; although [Ivana Trump](#) contested it, she reportedly got \$14 million, a New York apartment, a Connecticut mansion, and [Mar-a-Lago](#) once a year, as well as \$650,000 annually for alimony and child support. Marla Maples contested hers, too, and is said to have been awarded around \$2 million.

But now that the stakes are higher, we asked a few of the country's top matrimonial lawyers for their take on what could happen if the first couple were to split.

T&C: HOW IS THE TRUMP PRENUPTIAL AGREEMENT MOST LIKELY STRUCTURED?

Thomas Kretchmar, associate, Chemtob Moss & Forman: I can't speak to them directly, but in a New York high-net-worth marriage, a prenup is primarily designed to

protect what is already owned prior to the marriage, versus things that may be accumulated moving forward.

Peter Stambleck, partner, Aronson Mayefsky & Sloan: What I would have recommended to them is a title controls prenup. It makes it very clear that, in the event of divorce, everything in his name will be his and everything in her name will be hers.

What would his main concerns have been when structuring the prenup?

Stambleck: Billionaires have complicated asset structures. They have shell companies, LLCs, investments in other companies, and it's very, very complicated. One main purpose of a prenup is to avoid having to share in that, but also to avoid the headache that goes into producing all the documents and having accountants come in and look at all of it. Theoretically, that's what could happen in the absence of a prenup.

T&C:: HOW WOULD THEY DIVIDE ASSETS LIKE REAL ESTATE, ART, OR JEWELRY?

Jacqueline Newman, managing partner, Berkman Bottger Newman & Rodd: My guess is real estate will be involved. Obviously, **he has the apartment in the city** that was his before the marriage, and I can pretty much guarantee he's not giving it to her. But in situations where I've dealt with very high-income, high-asset cases, the moneyed spouse will purchase an apartment for the non-moneyed spouse and the children to live in.

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Stambleck: And usually any personal property that directly relates to that person stays with him or her. There's no question, for instance, that her jewelry will be hers, not his.

T&C:: WHAT ABOUT THEIR 11-YEAR-OLD SON, BARRON?

Newman: It's handled by the courts. Given what I've read in the tabloids, it doesn't seem as if there's going to be much question as to who the primary caretaker is. My guess is that she would get primary custodial rights and he would get access whenever he happens to be in town.

How much money is she likely to get?

Newman: In this situation, if she has \$50 million, she can afford to buy something. But \$50 million, while it's definitely a lot of money, in New York City, for what she's used to, she wouldn't be able to replicate what she has now. He probably had a good sense of what kind of lifestyle they'd be living, so I would imagine the payout would be fairly generous.

T&C:; WOULD HE HAVE AGREED TO MAINTAIN HER LIFESTYLE?

Stambleck: Can he put in a prenup that she'll have access to the Mar-a-Lago residence for a month in December? Yes, you can literally put anything in the prenup. He could say that on 72-hour notice she'll have use of the plane.

T&C:; COULD SHE NOW CHALLENGE THE PRENUP TO ANGLE FOR MORE?

Stambleck: It's unusual. One of the main reasons to enter into a prenup is that, in addition to protecting the wealth, you're also trying to make it clean—and stay out of the press. In the state of New York, it's a very high hurdle to try to get a prenuptial agreement overturned.

Kretchmar: An interesting issue with prenups in New York City, which is within a jurisdiction where it's really very difficult to invalidate a properly prepared, properly entered-into prenuptial agreement, is that it is not unusual to see the non-moneyed spouse still getting a little more in the settlement than the prenup entitled him or her to. The non-moneyed spouse may believe that just the idea of challenging the agreement will strike enough fear, stress, and overall agita into the moneyed spouse—in terms of not wanting to be in the courts, not wanting to be in Page Six— that he or she may be willing to pay a little more just to make it go away.

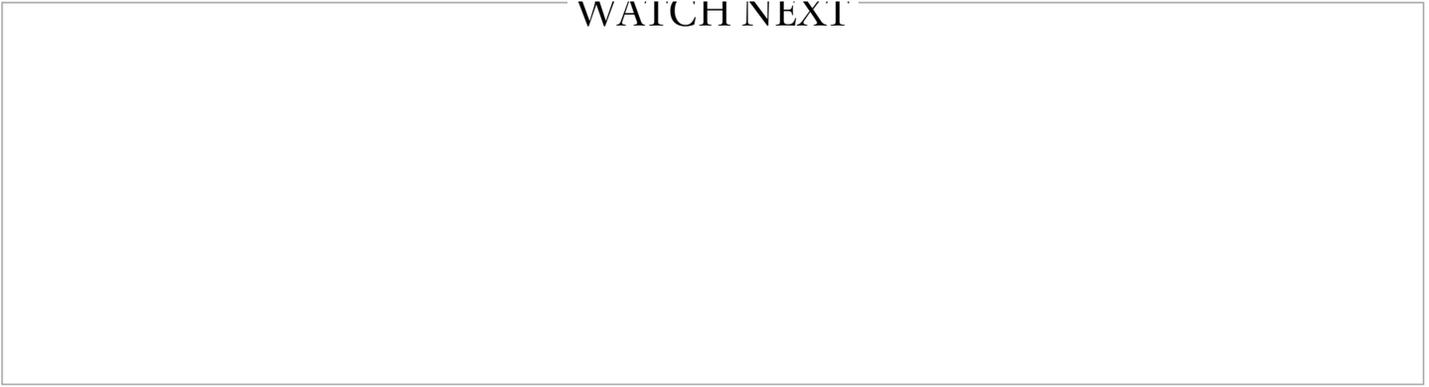
T&C:; WHEN TRUMP RAN FOR AND THEN BECAME PRESIDENT, MELANIA'S SITUATION CHANGED. DOESN'T SHE HAVE A LOT MORE LEVERAGE NOW THAT IT'S SO IMPORTANT THAT THE MARRIAGE DOESN'T FALL APART? MIGHT SHE HAVE RENEGOTIATED THE PRENUP?

Kretchmar: Without speculating on any particular case, it's certainly true that spouses can, during their marriage, modify the terms of an existing prenuptial agreement in response to a material event. is is done in a document called a postnuptial agreement. Sometimes postnups are used as a stopgap to an eventual divorce. Other times they are genuinely just a revision or refinement of existing rights in light of a change in the spouses' circumstances.

Newman: It's very hard to overturn a prenup in New York. The only thing that she could possibly try to argue—and I'm not sure it would succeed—is that when she entered into the agreement she didn't anticipate he would be president (assuming it was not discussed as a possibility at that time). Therefore, in terms of any spousal support waiver, it would not be fair and reasonable for her to waive spousal support at this time, because there are now more anticipated expenses that she will incur being first lady, especially if she divorces him when he is in office.

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