

## Does Your Client Need a Postnup?

### How to discuss this delicate document with spouses

By Vanessa Richardson

Because divorce is no longer such a big deal in modern society, so goes the prickliness of prenuptial agreements (although the engaged person with fewer assets may still disagree). But what about postnups? Similar to prenuptials but crafted and signed after a couple is married, most people still haven't heard of them but they are on the rise as an estate-planning tool. An [American Academy of Matrimonial Lawyers](#) poll found that 49 percent of members were writing more postnup agreements than they were five years ago.

Another reason for their popularity is how people make their money today. Hedge funds and private-equity firms, swimming in cash, are reportedly making prospective and current partners sign postnup agreements barring their spouses from making claims on the company assets. But does middle America even know what a post-nup is?

"I have not seen many clients requesting it," says Lili A. Vasileff, president of the [Association of Divorce Financial Planners](#) and a fee-only planner in Greenwich, Connecticut. "However, the discussions leading clients along the path to considering it are on the rise. More people are openly discussing their finances, concerned about long-term security, and consider divorce just one more life event to be plan for."

Although some postnup agreements are drafted when a marriage is on the rocks, Vasileff says they can also be created when there are no problems and can actually strengthen the marriage. "It can have a positive spin because it causes a couple to conduct proactive planning and communication. And if a marriage is disintegrating because of financial issues, this is one way to iron those matters out."

#### What clients will benefit?

Who are the ideal postnup beneficiaries? People going on their second (or multiple) marriage are obvious ones. Same for those marrying later in life who have established income and separate assets, and those with different opinions of how money should be spent. "I have one spouse who is an extreme overspender while the other spouse has paid off the debt over and over," says Vasileff. "Now they're losing their house. That's because they never discussed how to handle debt when they got married."

Some may want to amend their prenup agreement. A client who comes into a windfall—inheritance, a new high-paying job, sale of their business—may not have expected what the impact it will be on her lifestyle. Parents may ask their married children to sign one to keep family assets in the family. Alternatively, baby boomer children will ask parents who have remarried to sign one to sort out sort out healthcare and estate-planning issues.

What are the red flags you should look for in clients needing a postnup? Besides second marriages and unexpected windfalls, look for an imbalance of power in financial issues, says Vasileff. "If one spouse knows far more about financial planning, an advisor should try to level the financial playing field." Also recommend one to couples constantly arguing about money issues. "Catch them before they head for divorce, ask them to share their value and meaning of money, then you can lead them into the discussion and save the marriage," says Vasileff.

#### What does a postnup cover?

A postnup is drafted similarly to a prenup, covering the same topics. There are four areas it must cover.

1. There must be full and complete disclosure among both parties.
2. It must be prepared voluntarily by both.
3. Both parties must have time to consult and discuss with their own attorney, and both must have their own attorney.
4. The postnup must be in writing and signed by both parties.

Even though financial advisors can't draft a postnup (that's where your estate-planning attorney comes in), it's good to know what should be included in it:

- A list of all assets, liabilities, income and expectations of gifts and inheritance

- Description of how post-marital debts will be paid—important because I have one spouse who is extreme overspender and the other spouse has paid off debt over and over, and now they're losing their house and saddest thing is they never talked about handling debt.
- Resolution of what happens to post-marital property in terms of appreciation, gain, income, rentals, dividends and proceeds of such property in even of both divorce and debt.
- Decision about who will own the marital residence and secondary homes in case of death or divorce.
- Specification of the status of gifts, inheritance and trust either spouse receives and benefits from either before or after marriage
- Clarification of what will happen to each type of property (artwork, real estate, jewelry) in case of death or divorce.
- Detail of all death benefits, what spouses will provide in their will and decisions about medical, disability, life or long-term care insurance in postnup.

Attorneys said they have seen postnup agreements drafted to deal with specific personal situations, like how many times a week for conjugal relations or who takes the trash out when. But most postnup-agreement issues center on finances and estate-planning, primarily because many states don't even recognize a postnup agreement's existence. "In my state of Connecticut, there is no such thing as a postnup guaranteed by law," says Vasileff. "It is seen as a contract and enforceable by contract law, while a prenup has its own enforcement code across all states. Grey areas make it more liable for being overturned, so that's why the issues discussed must be made very clearly, and those are usually only financial issues."

### **How should you approach the subject?**

Vasileff recommends bringing it up by turning the topic to estate planning. "I ask questions like, 'Do you feel comfortable with each other's wishes?' 'What are your life goals, family expectations of wealth, how would you like to pass on wealth?'" Discuss it when they're both calm, and wanting to know more about planning for the long-term. Make it a collaborative effort upfront so they can communicate freely."

If your client's marriage is already on the rocks, there's no need to beat around the bush. "Ask if they've considered trusts or, if they have a business, making their children shareholders," says Vasileff.

If the situation is just too awkward, there are other estate protection tools to discuss, such as drafting an ironclad will or setting up a trust naming only specific family members as recipients of assets "You should examine the whole range of planning tools," says Vasileff. "A postnup is just one of many things to talk about, but it's not the only carrot out there."

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