

Love and Money: Is a Postnuptial Agreement Right for You and Your Spouse?

Valentine's Day might not be the best time to focus on money, but some married couples are taking the unusual step of re-setting the clock on money issues both good and bad with a legal document called a postnuptial agreement.

A postnuptial agreement is a contract between spouses. It is similar to a prenuptial agreement except it is signed during marriage to protect assets in case of divorce or separation.

Prenuptial agreements get plenty of press when high-profile divorces happen, such as the media frenzy over golfer Tiger Woods and his marital troubles. But postnups can be seen more positively as a reset button to accommodate wealth that's accumulated since the marriage or as a way to add transparency and correct past money behaviors that were tearing the marriage asunder. In some cases, this kind of "divorce planning" might actually create harmony in a relationship.

Under what circumstances are postnups written? Triggers could include:

- One partner -- or both -- handling money poorly. A postnup might be used to force full disclosure on both sides and establish a new system for managing money responsibly in the future.
- The building of a significant business or other acquisition of sizable assets. A postnup could be part of an overall financial and estate review for a couple that's worked hard to start a business together or inherited wealth. They might want to set certain protections in place that weren't in existence when the couple married or started the business.

Postnups can be expensive to arrange. Both sides generally need to engage separate legal counsel to review the legality of the document as well as coordinate with accountants and tax and estate attorneys. They may even delve significantly into business operations as well, requiring an examination of strategy of valuation and succession planning.

If you and your spouse are considering whether a postnuptial agreement is right for you, it makes sense to talk with a trained financial expert first, such as a CERTIFIED FINANCIAL PLANNER™ professional. If the problem is money, it's best to talk through options with an objective professional who handles financial planning for a living. It might be possible to work out those issues without a need for a document that will take significant expense to produce due to the need for attorneys as well as tax and estate professionals.

Some common questions to ask in preparation of a postnuptial agreement:

What problem are we trying to fix or what behavior are we trying to change? This is the central question when trying to remake a financial life. A CFP® professional can help a couple determine the root causes for the financial issues they're facing and determine how much support they really need. A CFP® professional can help both sides come to the table with disclosure of debt, assets and other business, employment and investment issues of relevance.

What about our families? Minor and adult children are part of any new financial agreements you make during your marriage. If there's a family business at stake, there needs to be a

discussion about how a postnuptial agreement will affect a split of assets that might affect their future inheritance or career options. There may be alimony and other support arrangements already in place for ex-spouses and children from earlier marriages as well as elderly parents to support. All of these financial requirements need to be part of the discussion.

Is there debt? And if so, how much? If one or both sides in the marriage have been hiding this information, disclosure is part of the process. Both sides must be willing to reveal their savings, investments and debt figures – every dime. Both should start the process of talking about how that debt should be paid off – by the person who accrued it, or by both potential spouses. Couples also need to decide how they will handle debt going forward – jointly or separately.

Are there investments? Again, this might be a disclosure issue, particularly if one or both sides are hiding assets or simply have lost track of them. There might also be wide differences on how investments should be managed and even what types of investments are appropriate.

What about the business? If one or both spouses run their own companies or partnerships and there has never been a serious effort at succession or estate planning, all of these efforts need to be linked. If there is a fear that the marriage may fail, both sides may want to have a plan in place for disposition or purchase of the assets. This is particularly necessary if the goal is to keep the company in the hands of the founding family so those assets can be passed on to the next generation.

What about everyday expenses? If one or both sides believe that certain expenses are a burden, it's time to talk about reallocating responsibilities. This might be as simple as consolidating bank accounts in both names so there's transparency over everyday finances.

What about insurance? Life, health, home, and disability – all coverage that singles hold separately needs to be reviewed and consolidated to make sure that coverage is adequate going forward.

What about our estates? There should be separate wills and supporting documents on who will get what investments, personal and business assets with updated beneficiaries – particularly when children from first marriages are involved. This new look at finances might benefit from an examination of various trust agreements to protect and direct assets for future generations, particularly for blended families or families that might blend after a breakup. And no matter how young or old the couple, healthcare directives need to be made.

What about retirement? Retirement discussions go beyond money. Couples should decide how they want to live in retirement, whether they'll continue to work and how they'll deal with illness. This is a particularly important discussion if one spouse is significantly older than the other and may retire years ahead.

When done correctly, a postnuptial agreement can benefit both spouses. The very process of working on this arrangement can be a positive exercise for many couples. Whether or not the marriage ends in a divorce, couples can breathe easier knowing they can protect what they each own.