

Postnuptial agreements gaining traction with couples

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By Tim Grant / Pittsburgh Post-Gazette

Prenuptial agreements often make headlines, especially when rich and famous people tie or untie the knot. But even when couples marry without a prenup, it is still possible to create a midmarriage contract that carries as much legal weight.

It's never too late to enter an agreement that could protect individual financial assets, improve domestic harmony and potentially save marriages headed for a breakup.

"Most people probably don't even realize a postnuptial agreement is even an option," said Chris Stachtiaris, a family law attorney at Frank, Gale, Bails, Murcko & Pocrass, Downtown.

Such agreements have had a touchy past in family court, because a married couple has been considered one person and thus could not contract with itself. Postnuptials also were thought to encourage divorce. Today, most states will enforce them as long as they were negotiated fairly.

Pennsylvania is a state that has no fairness criteria when it comes to postnuptial agreements.

"In Pennsylvania, you can have a totally one-sided agreement and it is enforced," said Ken Horoho, a partner at Gentile, Horoho & Avalli, Downtown. "In other states, they look at fairness. But as long as there was full disclosure of assets and no fraud, it will be enforced in Pennsylvania whether it is one-sided or not."

The legal agreements spell out in detail what each spouse will receive in the event of a divorce and often establish guidelines for other aspects of daily married life. "It's a contract, so you can put anything in there," Mr. Horoho said.

"I've seen provisions like how many vacations they will take, who buys the gas, who takes out the trash, or who gets the dog," he said. "It could stipulate that the parties must show public affection

toward each other or that they have sexual relations at least once or twice a week. Postnuptial agreements can get bizarre."

While both prenuptial and postnuptial agreements can resolve financial issues and clarify what each person expects in the marriage, postnuptial agreements are fundamentally different.

Before the marriage, neither person has any legal rights involving the other. However, married couples have very well defined legal rights regarding support and division of property. When they sign an agreement, they could be giving up rights they are entitled to by marriage.

In Pennsylvania, one spouse cannot disinherit another through a will or estate plan. But spousal claims on an estate can be modified or eliminated in a postnuptial agreement.

It is not easy to find data on postnuptial agreements because they do not have to be filed with courts and they usually come with confidentiality provisions. But divorce attorneys say they are being asked to write more of them.

Mr. Horoho, former president of the Pennsylvania Bar Association, said he handles at least one a month, and it is usually because either the wheels are falling off the marriage or for business reasons. One factor is the desire to protect a family-owned business for future generations or protect a potential inheritance for children from a prior marriage.

"People think the only time it's appropriate to do a postnup is when parties are getting a divorce, but it's also useful if a business is involved," Mr. Horoho said. "If a son dies and his will says the business he owns goes back to his brother and sister, his wife could interfere. If he and his wife were to get divorced, the business could be considered a marital asset.

"Sometimes when the child of a business owner is going to receive stock in the company, the parents will ask the child to do a postnuptial agreement with their spouse dictating that the stock is a nonmarital asset and in the event of a divorce, the wife waives her share of the company."

Postnups also come into play after one partner has been caught cheating, he said. The victimized spouse will sometimes agree to work on the marriage with a contract that gives a greater share of the marital assets or more alimony if the infidelity does not stop.

Lisa Turbeville, a Mt. Lebanon-based certified divorce financial analyst, said postnuptials usually come up in divorces where the stakes are high, but she has worked with many couples across the financial spectrum who could have benefited from an agreement.

"I see lots of divorces where women are in their 30s and have been out of the workforce for a long time, and suddenly get a divorce," said Ms. Turbeville, owner of Watermark Financial. "The husband can make \$200,000 a year. She can earn \$25,000. If they jointly decided that one of them will stop their career and raise the children and support his career, then she should be compensated for that.

"The wife can't get back her earning power as though she had been working all that time. There could be an agreement in a postnuptial that at least acknowledges the couple made a joint decision for a spouse to give up her earning power and career growth."

Sometimes one partner may not know what's happening with the finances and the full disclosure that is required to create a postnup could bring them out of the dark. Postnuptials also can be handy when couples argue about gambling, credit card debt and other money problems. Separating the finances might reduce the number of fights.

Mr. Stachtaris had a client who was having trouble with his spouse spending too much. The man didn't want a divorce, but he was worried about going broke.

"We worked out a postnuptial as if they were already getting a divorce, which gave them an opportunity to work on the marriage and gave him peace of mind that his portion of the marital assets was protected," Mr. Stachtaris said. "They gave it a shot for several years and eventually got divorced. But they had that agreement to work from which made the divorce less complicated and costly."

He thinks the postnuptial agreement is a tool that could be useful to many.