

Post-Nuptial Agreements: Practical Tips

By: Tanya N. Helfand, Esq. Martin M.
Shenkman, Esq.



**A KEY ESTATE
PLANNING GUIDE**

Law Easy



ChronicIllnessPlanning.org

General Disclaimer

- The information and/or the materials provided as part of this program are intended and provided solely for informational and educational purposes. None of the information and/or materials provided as part of this power point or ancillary materials are intended to be, nor should they be construed to be the basis of any investment, legal, tax or other professional advice. Under no circumstances should the audio, PowerPoint or other materials be considered to be, or used as, independent legal, tax, investment or other professional advice. The discussions are general in nature and not person specific. Laws vary by state and are subject to constant change. Economic developments could dramatically alter the illustrations or recommendations offered in the program or materials.

What is A Post-Nuptial Agreement

- An agreement between two people who have already entered into a marriage.
- It sets down the financial arrangements between the couple. It provides basic guidelines on key issues like:
 - Equitable distribution (division of assets in a future divorce) Who keeps what if the arrangement doesn't work.
 - Support if there is a divorce.
 - Death.
 - A difference between a prenuptial agreement and post-nuptial agreement is that the post-nup addresses property acquired during the marriage.
- There are significant differences in state law and the respect given to post-nuptial agreements.

When Might You Want a Post-Nuptial Agreement

- Example: Couple was married without children. H's father died and father's estate passed title of home to H while his mother was still living in that home. He wanted to move into the house with his wife but didn't want his wife to be able to claim an interest in the house.

Tips to Make a Post-nuptial Successful

- It is a different ballgame than a prenuptial agreement because typically it can be done under more pressure to keep a marriage together. As a result, courts scrutinize them more carefully than a prenuptial agreement. For example, one spouse might be saying something like: “I will only stay married if you sign this agreement acknowledging that I can keep [list assets or money at issue].” Courts have a problem with that type of pressure.
- Courts look at the equity of the agreement – you have to make it fair and reasonable.
- Courts will look at the reason for why it was done.
- There must be full disclosure of all relevant information.

Tips to Make a Prenuptial Successful

- There must be time for review and decision making. This is as or even more important than for a prenuptial agreement.
- Neither party can be under duress. How do you demonstrate that?
- You need legal representation that can guide you under the law so that the terms of the post-nuptial agreement are fair.

Additional information

- Tanya N. Helfand thelfand@spsk.com
- Martin M. Shenkman
shenkman@shenkmanlaw.com