



Over 10 years, 43% of first marriages can fail. Here's why couples might want a postnuptial agreement

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KEY POINTS

- Whether or not a couple has signed a prenuptial agreement, they may find later in their marriage that a post-nup is called for.
- Here's a look at just what exactly a postnuptial is, and when it might be appropriate.
- "Preparing these agreements opens an avenue of communication," said Crystal Cox, senior vice president of Wealthspire in Madison, Wisconsin.

While couples might sign a prenuptial agreement before they're married and a "post-nup" after, it's more than just the timing that differentiates these arrangements, experts say.

"It's a whole different ballgame once you're married," said Martin Shenkman, estate attorney with Shenkman Law in New York City.

"With a pre-nup, you have no obligation to a spouse," he explained. "With a post-nup, once you're married, you have a legal and fiduciary obligation to your spouse."

Shenkman emphasized that it's important to check what your state law allows.

When a post-nup might be called for

What situations might prompt a couple to prepare a postnuptial agreement?

For example, married couples may need to adjust a pre-nup they'd signed, according to attorney and certified financial planner Keith Singer, president of Singer Wealth in Boca Raton, Florida. "They want to make sure the new terms are based on the things that have happened in your life," he said.

Changes in marital dynamics can trigger a change in the terms of a pre-nup. For example, couples may not have anticipated one spouse starting to earn significantly more than the other or that, as the marriage endured over time, greater trust grew between the partners, Singer said.

A post-nup may also come into play when a couple is contemplating divorce but still trying to work things out. According to the [Centers for Disease Control and Prevention](#), over 10 years as many as 43% of first marriages can fail.

"Because divorcing sooner [rather] than later could be more advantageous to one of the spouses, their agreement may stipulate that the marriage ended as of the date of the post-nup for purposes of calculating alimony and property division, should efforts to repair a marriage be unsuccessful," Singer said.

There are times when a postnuptial is necessary to supersede certain state laws to allow one spouse to leave the other one less than what is required by their state.

"A lot of people are unaware that once they are married, state law gives their spouse a minimum percentage of the estate, even if the deceased spouse tried to leave it to someone else," Singer said. An example of that case would be a person in a second marriage who intends to leave all their assets to children from a previous marriage.

How various professionals help with post-nups

- **Matrimonial attorney:** knows the state laws and drafts the agreement
- **Estate attorney:** ensures the plan is consistent with the couple's estate documents, especially with regard to trusts

- **Financial advisor:** helps the couple with a budget and financial forecasts, addresses inherent capital gains, determines which assets should be set aside and how to divide accounts, etc.
- **Insurance professional:** helps the couple select insurance to fulfill the necessities of the plan

— *Martin Shenkman, estate attorney with Shenkman Law in New York City*

There also may be external forces, such as a future change in wealth, that trigger a post-nup, said CFP Crystal Cox, senior vice president of Wealthspire in Madison, Wisconsin.

In the event of a potential inheritance, for example, an heir — or the relatives leaving the assets — may insist on a post-nup so that the wealth will stay on their side of the family and not be included in any possible divorce negotiations. A financial advisor can help by setting up accounts for the heir only, Cox said.

“It’s a lot easier to do it while you still have faith in the marriage,” she said.

‘An avenue of communication’

Not all post-nups need to be legal documents. **Lili Vasileff**, CFP, certified divorce financial analyst and president of Wealth Protection Management in Greenwich, Connecticut, is a marital mediator who prepares post-nup agreements that are private memoranda of understanding.

“Preparing these agreements opens an avenue of communication,” she said. “They don’t always lead to divorce, but give couples more time to work through financial issues.”

There are generally two types of parties who work with **Vasileff**. The first are spouses with a mature mindset who need to have better communication around finances, especially later in life.

The second type includes spouses who need a way to atone for something that went wrong in the marriage. The postnuptial may aim to remediate the wrong financially, to rebuild the relationship and show good faith.

Or the agreement may outline how the couple can stay married, but separate themselves financially and become independent of the other's financial activities.

"It's a process that requires time, energy and participation ... and a tool to learn more about each other," **Vasileff said.** "[Post-nups] have been much more in demand recently than in prior years.

"They're less emotionally charged than pre-nups, which are a condition to marry."