

The “Daily Plan-It™”

SHUMATE BROKERAGE CORP.

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Understanding Postnuptial Agreements

In our previous *Daily Plan-it™*, we discussed how and why prenuptial agreements are effective tools to protect a client’s assets. They’re created *before* a couple is married, while postnuptial agreements are created *after* the knot is tied.

People who need postnups

Are postnuptials for people who forgot to do prenuptials? Well, kind of. Postnuptial agreements are typically used in specific situations.

The first scenario is when a couple is concerned about the condition of their current marriage, and wish to negotiate and agree that in the case of a future divorce, certain rights are fixed and agreed upon now. In short, this is usually a warm-up act for a future divorce.

The second scenario when a postnuptial agreement is appropriate is when future business partners require it. Sometimes, sophisticated business associates require a postnuptial agreement *before* a new partner is allowed to join the business. It’s used as a way of shielding the existing business partners from being brought into a divorce proceeding on valuation and property dissolution issues. It’s not often used in the small business market, but commonly used in family businesses.

The third scenario for the postnuptial is where parents of an adult child request—and in some cases require—a child’s spouse to sign a postnuptial agreement prior to receiving an inheritance. This can also be accomplished through a well thought out and structured trust that’s created by the parents through their estate plan.

The fourth, and most common reason that a postnuptial agreement is created, is to clarify the rights in an estate plan. Typically, this type of agreement is seen in a blended family, where the children are grown, and the couple is well into

retirement. This is usually the easiest and most common type of postnuptial agreement to create. The parties enter into the agreement to educate their adult children about agreements that have been made during their lives. Sure, these issues can be addressed during estate planning; but in most states, the surviving spouse is entitled to certain rights, such as 30 percent of the deceased spouse’s estate, as well as a life estate in the deceased spouse’s home.

Postnups to the rescue

Remember, these are not simple agreements. To be enforceable, the parties need to fully disclose their finances, be represented by separate attorneys, acknowledge what rights they have, and what they are giving up. However, in our experience, a well thought out postnuptial agreement, can save a tremendous amount of money, time, and pain.

Shumate Brokerage Corp.

1918 West Cass Street
Tampa, FL 33606-1232
800.330.8582
813.254.7681
Fax ~ 813.251.8049

www.ShumateBrokerage.com

Email ~ Brent@ShumateBrokerage.com

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