



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



POST NUPTIAL AGREEMENTS IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

CALL US FOR ALL YOUR FAMILY LAW NEEDS (281) 810-9760

INTRODUCTION

Thank you for downloading our special report: about Post nuptial agreements, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

POSTNUPTIAL AGREEMENTS IN HOUSTON

ACCOUNTING FOR CHANGES IN YOUR MARRIAGE

When you first enter into your marriage, there are a variety of subjects that you might not have discussed or thought about, such as what happens to you or your partner's assets in the event that you decide to prematurely end your marriage. During your marriage, you and your spouse will undoubtedly gain assets, property, and may even have children and such changes can/will come into play in the event that you and your spouse decide to separate.

Because Texas is a community property state, it can be extremely difficult to divide property following a separation if you don't have a prenuptial or postnuptial agreement in place as it is extremely difficult to fairly divide assets obtained during a marriage. To help you avoid this scenario, our Houston family law attorneys at The Law Office of Bryan Fagan, PLLC often recommend that you and your spouse have a postnuptial agreement drafted following your marriage.

- ☑ Making Postnuptial Agreements Stick in a Texas Divorce
- ☑ Creating a Post-nuptial Agreement in Texas and its Potential Benefits for Your Family
- ☑ Can a postnuptial agreement save your marriage after one spouse is unfaithful?

WHAT IS THE PURPOSE OF A POSTNUPTIAL AGREEMENT?

While a prenuptial agreement is traditionally put into place prior to a marriage to outline certain criteria for assets obtained prior to your marriage, a postnuptial agreement is established once your marriage is active.

Postnuptial agreements often account for major changes, such as:

- ☑ Having children
- ☑ Changing careers
- ☑ New financial circumstances
- ☑ Changes in employment status

IT'S NOT ABOUT TRUST

At The Law Office of Bryan Fagan, PLLC, we know that there is a stigma surrounding both pre and postnuptial agreements as many people mistakenly believe these legal documents show that you and your spouse do not completely trust one another. This is entirely untrue. Neither of these agreements signal that your marriage is in trouble or is going to end, rather these agreements simply provide a clear legal means of dividing your marital property.

MAKING POSTNUPTIAL AGREEMENTS STICK IN A TEXAS DIVORCE

In an earlier blog post I discussed attacking the enforceability of a Prenuptial Agreement. In this blog article I will discuss Postnuptial Agreements and whether the formalities for a postnuptial agreement differ then the formalities for a premarital agreement.

BRIEF ANSWER

In 2005 changes to 4.104 of the Family Code bring post-marital agreements explicitly in line with postnuptial agreements, which do not require consideration to be enforceable.



REQUIREMENTS FOR A POSTMARITAL AGREEMENT UNDER TEXAS LAW

A partition or exchange agreement under Section 4.102 or an agreement under Section 4.103 must be:

- ☑ in writing and signed by both parties.
- ☑ Either agreement is enforceable without consideration.

JURY INSTRUCTION

A good place to start when making and executing a postmarital agreement is to consider what would happen should the case go to trial.

Should your spouse at some point in the future wish to attack the postmarital agreement during the Texas divorce process and the case go to trial an instruction would be put to the jury for them to consider regarding the validity of the agreement. That instruction would look like the following:

“At any time, spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired, as they may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse's separate property. A partition or exchange agreement must be in writing and signed by both parties.

A partition or exchange agreement is unenforceable if the party against whom enforcement is requested proves that he or she did not sign the agreement voluntarily.

A partition or exchange agreement is unenforceable if the party against whom enforcement is requested proves that, before execution of the agreement, that party --

- ☑ was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and
- ☑ did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
- ☑ did not have and reasonably could not have had adequate knowledge of the property or financial obligations of the other party.

BEST PRACTICES FOR EXECUTING THE POSTMARITAL AGREEMENT

The Jury instruction can serve as a mini road-map on what needs to be done to have a valid postmarital agreement.

- ☑ It needs to be in writing
- ☑ There needs to be a disclosure of the financial assets or a waiver of that disclosure before the agreement is signed.

My suggestion would be to do both. You should disclose your assets and debts and get a waiver of that disclosure.

I would also suggest paying for your spouse to consult with an attorney regarding this agreement or alternatively for her to sign a separate document saying she does not wish to consult with an attorney.

CREATING A POST-NUPTIAL AGREEMENT IN TEXAS AND ITS POTENTIAL BENEFITS FOR YOUR FAMILY

Post nuptial agreements are similar to pre marital agreements with the exception that post marital agreements are signed after the marriage has already begun. I realize that this will not be an earth-shattering revelation for me to make but it bears mentioning that the motivations behind signing an agreement of some sort with your spouse will have changed now that you are married.



The law in Texas holds that you and your spouse may agree to and sign a post-nuptial agreement where a portion or all of their community estate is included in the agreement in some form or fashion. A common part of this agreement is that either your income or your spouse's income will be the separate property of whichever one of you has actually earned those wages.

The other spouse will have no claim to it should a divorce occur. Regardless of the type of income or property that is partitioned, if the property or income goes to you in the agreement then it is yours free and clear of any subsequent orders from a court or negotiations between you and your spouse.

A PRE-NUPTIAL AGREEMENT CAN TAKE SEPARATE PROPERTY AND MAKE IT PART OF THE COMMUNITY ESTATE

If you and your spouse agree to do so, a piece of property that was previously a part of one of your separate estates can be converted into community property within the pre-nuptial agreement. A statement that "Piece of Separate Property" is now part of the community estate is what I am referencing here, as opposed to you transferring the title to a piece of your separate property to your spouse or deeding a piece of land that was in your name to your significant other.

REQUIREMENTS OF A POST-NUPTIAL AGREEMENT IN TEXAS

Texas law holds that certain requirements must be met for your post-nuptial agreement to be valid and enforceable.

In Writing

For starters, like a last will and testament, a post-nuptial agreement must be in writing in order for a court to enforce the agreements contained within it.

Free of any Fraud or Duress

In fact, the failure of one party to sign the agreement and the possibility of fraud or duress being in existence are probably the two most commonly stated reasons as to why the validity of a post-nuptial agreement may be challenged by either you or your spouse.

Must Disclose Financials or Waive Disclosure

The other big reason that family law attorneys in Texas encounter is a similar reason for going back and having to open up a previously closed divorce case- that there was a failure by one spouse to disclose information that otherwise stated would have caused the agreement not to be signed off on by one party. This two part analysis must show that one spouse withheld the information and secondly the "innocent" spouse would have had no other way of knowing this information.

WHAT ARE SOME MOTIVATING FACTORS FOR SIGNING A POST-NUPTIAL AGREEMENT?

If you entered into your marriage with plenty of assets and very little or no debt, but your spouse is in the opposite position, then you know what it is like to have creditors hounding you for money and payments.

ASSET PROTECTION

This may have come as a shock to your system and caused you to consider your options in regard to how best to protect your assets. A post-nuptial agreement is one such way that you and your spouse can actively protect the assets that could be sought by creditors in collection efforts for your spouse's debts.

I have also seen married people enter into pre-nuptial agreements when their marriage is on the rocks and in need of shoring up through therapy or counseling. If you are questioning whether your marriage can last it is likely that you are questioning the motivations and motives of your spouse at least to a certain extent.



REDUCE SUSPICION

A post-nuptial agreement can decrease the level of suspicion by both you and your spouse prior to these important therapy sessions even beginning. What better way to ensure that your intentions are purely the maintenance of your marriage rather than an attempt to shield or steal away a portion of your spouse's assets?

If you partition your assets and debts prior to beginning counseling both you and your spouse understand the what the playing field is and can have greater peace of mind as a result.

INSULATE RISK

Finally, it could be that you or your spouse are taking on a new business opportunity, expanding an existing business or have simply come into money through an inheritance or gift from a family member. If you all have engaged in a recent "big ticket" purchase or are planning on engaging in a risk like expanding a business then it may be beneficial for you and your spouse to insulate the "other" spouse from the risks incurred by the spouse about to take on a loan.

A situation that I have seen before involves a spouse taking out loans on behalf of her business. She was using inheritance money to pay for the debt and the married couple was experience tough financial times as a result.

When fear and worry over money rises to this level then a post-nuptial agreement can put those fears to rest. For instance, in the above situation the family home was transferred into the husband's name in order to provide him and the children with the security of knowing that their home would not be in jeopardy should the wife's business creditors begin to look for assets to pay off unpaid debts. At the same time, this agreement alleviated concerns that the wife had towards her husband's perceived lack of faith in the future success of her business.

CAN A POSTNUPTIAL AGREEMENT SAVE YOUR MARRIAGE AFTER ONE SPOUSE IS UNFAITHFUL?

After having represented thousands of people across southeast Texas, the family law attorneys at the Law Office of Bryan Fagan, PLLC like to think that we understand a lot of the characteristics that can make a marriage successful.

It doesn't matter who the spouses are, what their backgrounds are or how much money they make certain hallmarks of a good marriage ring true across the board. In this writer's opinion, at the top of that list of characteristics are trust and communication.

I realize that it's unlikely that anyone reading this blog post is surprised at that either trust or communication is included as important characteristics of a good marriage. But in the simplicity of those two words lie their importance.

There are a lot of other good qualities to have in a marriage but few others will have the impact that trust and communication do. The next question is this- what happens when one of those qualities is compromised by a spouse's actions?

It is unfortunate that many marriages that end in divorce do so because of infidelity- one spouse (or both) going outside of the marriage to have their physical or emotional needs met.

How can spouses deal with the marriage after this occurs? More and more people in Texas are meeting this challenge by creating "marriage contracts" that take this sort of occurrence into account.



POSTNUPTIAL AGREEMENTS AND INFIDELITY

The process of reconciling with a spouse who has cheated on you can be one of the most emotionally taxing and difficult experiences you will ever go through.

The trust that I mentioned in the opening to this blog post will need to be re-established and there is no one way to start that rebuilding process. Some folks try counseling or therapy as a means to start communicating better with one another.

For those that have tried that route without experiencing the success, they would like a post nuptial agreement that centers on infidelity can be an option.

The basis of a postnuptial agreement is that it is a contract of sorts that married people enter into after they are already married. You've probably heard of pre-marital agreements or "pre-nup" before. These are contracts that parties sign off on regarding assets/debts prior to the marriage that take effect once the "I dos" are said.

A post nuptial agreement takes effect immediately, on the other hand. In the area that we are discussing, many married couples are essentially allowing a faithful spouse to be paid a certain sum of money by an unfaithful spouse if the cheating ever occurs again. These sorts of agreements are given the nice sounding name of a "lifestyle clause"

WHY DO SPOUSES ENTER INTO POST-NUPTIAL AGREEMENTS?

These agreements are supposed to be a response to one spouse's actions when the faithful spouse is not yet ready to give up on the marriage. Many unfaithful spouses want to assure their spouse that they will not act in this way again and are willing to put their money where their mouth is.

If you are attempting to prove to your spouse that you will not act this way again, contracting with them to pay a large chunk of money in the event that you stray is a good start by some folks.

I don't know that I would agree with this reasoning, but many spouses view the marriage more along the lines of a business relationship than anything else. Therefore, it is easier for them to see their spouse's willingness to pony up some money for a future act of infidelity as a positive sign. Whether these sort of postnuptial agreements work is a different matter altogether.

One memorable agreement we drafted for a wife was a result of her husband has had an affair with a woman he had met on the internet. The husband never actually met this woman in person, however, she had managed to convince him to give over \$20,000 dollars.

When his wife found out about what he had done she was understandably upset. Rather than divorce, he agreed that he would sign a post-nuptial agreement that would result in her getting just about everything in the marriage should he screw up again.

DO POSTNUPTIAL AGREEMENTS BASED ON INFIDELITY SUCCEED IN MOST MARRIAGES?

Although the frequency with which these sort of agreements are entered into is rising in my opinion, they are rising among upper-class people more than middle-class people. For one, middle-class people don't have the sort of money available to them to essentially pay their spouse for any future instance of cheating.

If you find yourself in a situation where you have cheated on your spouse multiple times, it's more likely that you're just going to hire a Texas divorce attorney and end the marriage rather than spend money to draft a post nuptial contract that commits you to paying your spouse money. So, for the average middle-class Texas family, a post nuptial agreement may not be an option to consider at all.



Even for the more wealthy people these agreements may appeal to, whether or not a family law court in Texas will enforce them is a separate matter altogether. It would seem that an agreement that attempts to restrict the behavior of one spouse will need to be drafted very carefully in order to have a court enforce its provisions.

Generally speaking an agreement made by two people will be enforced in Texas- that general policy keeps the courts from being further overburdened by litigants.

By opening up this Pandora's Box, however, spouses may think that by agreeing to a contract that covers infidelity that they are doing themselves a favor by settling an issue between themselves rather than involving others.

If you find yourself in a situation like this, however, what you may be doing is pre-acknowledging that cheating will occur again in your marriage. Having this reality stare at you in the face every day will most likely cause you to view divorce less as a last resort and more as a means to take advantage of any contract provisions that you stand to benefit from.





LAW OFFICE OF
BRYAN FAGAN
— PLLC —

WE'RE HERE FOR YOU

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

CALL US FOR ALL YOUR FAMILY LAW NEEDS

(281) 810-9760