



/guide



## Your questions answered

### HOW TO: GET A POSTNUPTIAL AGREEMENT

[Watch the supporting 'Get a postnuptial agreement' video](#)

**T**his Stowe talks: How to guide will look at what a postnuptial agreement is and how to get one.

Postnuptial agreements are not legally binding in England and Wales. However, they can offer some protection for your finances and assets, providing they adhere to specific criteria.

#### What is a postnuptial agreement?

Postnuptial agreements are also called postnups. They are written documents which detail the ownership of a couple's assets, including money and property, and what should happen to them if the marriage ends.

Many people will know about prenuptial agreements (prenups), but postnups tend to be less well known.

Postnups are similar to prenups as they offer a degree of protection for a couple. The main difference to prenups is that postnups can be drawn up and signed any time after the couple marries. However, they must be put into place before any discussion around divorce or separation.

They can be constructed if there was no prenup signed before the marriage or civil partnership. They can also supplement or mirror an existing prenup.

A postnup can include:

- Details of your income - both current and expected, for example anticipated inheritance or whether one party will be financial supported by the other
- Any personal and joint belongings and who will retain them in the event of a divorce
- Any assets you wish to protect for any children from a previous relationship
- Any debts, and who will be responsible for paying them. This can help to protect you from any historic debts that

continued ...

- your spouse has incurred
- Protection for your business to help ensure that you can retain control in the event of a divorce
- Any maintenance agreements to be put in place if you divorce, e.g. spousal maintenance
- How property will be dealt with
- Any financial arrangements regarding the children, for example who will be responsible for school fees

## Why would you need a postnup?

There are various reasons you may choose to get a postnup including:

- To protect an inheritance that you gained after your marriage or civil partnership
- To give clarity on ownership of assets, for example a business
- To ring fence money or assets for your children
- To have total transparency with your spouse
- To give you better financial security if you have to or choose to take time out of work, for example if you are a stay at home parent
- To reduce the potential of any court proceedings and legal fees in the event of separation

Because postnups are created after you are married, they are likely to be drawn up when significant life events happen, or are expected to happen, for example if you have children, or start a new business.

## What are the criteria for postnups?

The only time constraints for a postnup are that it must be written after the marriage ceremony, and before any discussions relating to any separation or divorce proceedings.

However, it is important that there is full and frank financial disclosure from each person - this will help to ensure that the financial details within the postnup are accurate.

Each of you must get independent legal advice to ensure the best chance of the postnup being considered in a divorce settlement.

In addition, you must both freely enter into the agreement and understand its implications.

The agreement must be fair to both parties at the time of your separation, so it is important that you review the postnup periodically to ensure it remains reflective of your circumstances.

An expert family lawyer can advise you on the fairness of your agreement, and whether a judge would be likely to uphold it if you divorce.

## How to get a postnup

If you and your partner agree to enter into a postnup, you must first seek independent legal advice from a specialist family lawyer.

Next, you need to disclose all of your financial information including assets, income and liabilities, including debts. This will then be written into a Financial Schedule by your solicitor and attached to the postnup document.

You should also disclose any assets you expect to receive in the foreseeable future, e.g. inheritance.

It is important to provide all this information to your solicitor to minimise any risk of allegations of hiding or underestimating your assets, and to ensure the agreement has the best chance of being accepted by the courts.

If you and your spouse find common ground and agree on the terms of the postnup, the process will likely only take a few months to complete, and any revisions can be done quickly. However, if there are complex assets or international elements to your finances or your marriage, the process may take longer.

The agreement will be drafted, and must be signed by both parties and two witnesses.

It is highly recommended that you review the agreement regularly to account for changes in your circumstances - at least every five years or if an important event occurs, for example you have a child. This means any changes in circumstances are accounted for and improves the likelihood of the agreement being accepted by the court.

## How long does a postnup last?

Postnups are ongoing documents and will last as long as the marriage lasts.

It is important to note that they are 'living documents' and must be kept up to date with any changes in financial circumstances.

You should seek legal advice whenever altering the document to ensure it remains fair and reasonable.

## Are postnups legally binding?

Postnups are not legally binding in England and Wales.

However, if you meet the qualifying criteria and the document is drafted by a family lawyer, it is likely the court will consider the terms of the agreement.

The court will also consider the fairness of the agreement at the time of your divorce or dissolution, as well as the present and future needs of both partners and any children.

## The importance of legal advice

If you have decided to get a postnup, it is extremely important that you both seek independent legal advice. Your respective solicitors can advise you on the agreement and assist with financial disclosure, and any complexities.

## Useful Links

For more Stowe talks: How to videos and further free resources, visit: [stowefamilylaw.co.uk/support](https://www.stowefamilylaw.co.uk/support)

This information is provided by Jennifer Hargreaves, a Solicitor at Stowe Family Law.

## Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit [www.stowefamilylaw.co.uk](https://www.stowefamilylaw.co.uk)