

# No Nup, Prenup, or Postnup?

## How Your Marital Contract Can Affect What You Own After Divorce

By Paul Nelson, Esq.

Attention, Californians! Because we reside in a “community property” state, all your household assets, including money in savings accounts, checking accounts, stocks, bonds, and other investments, will likely be split evenly with your spouse in the event of divorce.

That is, unless you have personal assets that are to remain yours—and yours alone—under the terms of an established prenuptial (“prenup”) or post-nuptial (“postnup”) agreement.

### What is a Prenup and Why Does It Matter?

Popularized in movies like *Liar Liar* and *Body Heat*, a prenup is a contract signed by both parties before marrying. It details how finances will be handled during marriage and divided between spouses should they divorce.

Imagine a couple, Ted and Mary. Prior to matrimony, Mary owned a condominium townhouse. Ted rented an apartment. After deciding they would move into Mary’s townhouse upon marrying, they stated in the prenup the property would remain in Mary’s name and any payments made to reduce the principal loan will remain her separate property.

In the event of divorce, the townhouse is 100 percent Mary’s. Absent the prenup, Ted would likely gain a financial interest in the townhouse because principal payments are

made from community funds. Depending on the length of the marriage, this could be a large sum (not to mention, the costs involved to prove this issue at trial could be significant.)

### What is a Postnup and Why Does It Matter?

Less well-known than its well-publicized peer, a postnup is like a prenup, only it’s signed after a couple marries. As I’m sure you know, over time, marital bliss can devolve into a life of mortgage payments and long hours at work. There is the Seven-Year Itch, the Twenty-Year Twitch and the Classic Porche@-GTS-mid-life crisis. (Although here in Newport Beach I’m seeing an uptick in ‘Lambo’-mid-life-crises.)

Any of these can put stress on the marital arrangement. The good news? An alternative to divorce is the post-nuptial contract. Essentially, you and your spouse get to re-write the rules...mid-marriage. What’s more, each of you may bargain for an updated

financial arrangement in the event you cannot resolve your conflicts and a divorce ensues.

Note: Prenups and postnups generally focus on financial payments, real and personal property, and other tangible assets, not on individuals’ roles and responsibilities in a marriage. And while the terms “marriage contract,” “marriage agreement” and “postnup/prenup” are sometimes interchangeable, the terms of formal prenups and postnups can be enforced by the courts—if they are drafted precisely and clearly.

### Create a Paper Trail Now

So, what happens if you are married, have neither a prenup nor a postnup, but still have cash, investments, or personal property you want to protect as your separate property in the event of divorce?

My advice: Compile detailed records to prove you’re the sole source of your assets. (For example, if you entered your

marriage with \$100,000 in savings, you must be able to trace where this money originated, and when it was earned.) Also, keep a copy of your financial statements in a private email account available to your attorney. (This will ensure you can prove your claim in the event of a divorce action.)

Why? When records are not kept contemporaneously, future attempts to find documents can be difficult—at best. It may even require the hiring of a specialized forensic accountant to assist if need be. While acquiring such individuals can be expensive, it is well worth your investment if you have significant assets you wish to protect.

It’s no secret popular culture pokes fun of couples who require contractual agreements before tying the knot. Sure, these don’t exactly scream romantic, but they do provide peace of mind—especially if you’re like Mary or Ted, facing a divorce that can cost you your hard-earned assets.



PAUL NELSON

**NELSON**  **KIRKMAN**

FAMILY LAW ATTORNEYS  ADVISORS

4100 Newport Place Drive, Suite 250,  
Newport Beach, California 92660

949-760-8888 ■ [nelsonkirkman.com](http://nelsonkirkman.com)

*High Stakes Divorce Lawyers*