



**OWM NEWSLETTER  
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**ATTORNEY SPOTLIGHT  
VICTORIA S. HOLLISTER**



[Victoria S. Hollister, Esq.](#), is an associate attorney with OWM Law, concentrating her practice in all areas of [Family Law](#).

Ms. Hollister is a graduate of Penn State University and Temple University School of Law. She is a member of the PA, Montgomery County and Berks County Bar Associations.

Ms. Hollister is the mother of three daughters and resides in Berks County.

Phone: 610-323-2800  
Fax: 610-718-1365  
Email: [vhollister@owmlaw.com](mailto:vhollister@owmlaw.com)

**Prenuptial and Postnuptial Agreements**

What are they?

A prenuptial agreement (“prenup”) is an agreement, or contract, made between two people in contemplation of marriage and that becomes effective upon the parties’ marriage.

A postnuptial agreement (“postnup”) is essentially the same as a prenup except that is an agreement made during the marriage.

Marriage in Pennsylvania and throughout the country is a legal contract between two people. Since about half of all marriages end in divorce, it is important to be prepared. Although most people believe that signing a prenup is very unromantic – and it is – each party wants to make sure they are protected in the event their marriage doesn’t survive. More and more couples are becoming aware of the value of having such an agreement.

What do the Agreements cover?

A prenup must be executed before the wedding, and it sets forth what the property rights and expectations are in the event of a divorce. This would include alimony provisions. A well-drafted prenup can override the laws of the Divorce Code of Pennsylvania. So, by signing a prenup, the couple can decide in advance what property – the things that they own – will be separate (belonging to one spouse or the other) and what will be marital and how that marital property will be divided. They can waive or limit alimony to be received by either party. They can also protect one party against the debt of the other party. They do not cover child support and child custody, as these issues would be considered too speculative and would probably be unenforceable.

Who should have a prenup?

Generally, a young couple entering their first marriage and with nominal assets, wouldn’t benefit from a prenuptial agreement. However, if one of the parties will likely receive substantial gifts or inheritances, a prenup would be more important. Also, that equality may change with time for many different reasons and they still



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may want to consider how their marital affairs will be handled given possible changes to their situation.

More often, however, people prepare prenups if there is certain property that they want to protect, such as a family business or a vacation home. Other reasons include:

- Protect certain assets for children from a prior marriage,
- one party has substantially higher earnings than the other,
- clarify each party’s financial rights and responsibilities,
- avoid arguments and lengthy, expensive divorce proceedings should that occur,
- one party is bringing in substantially more assets into the marriage than the other.

The fact that people now tend to enter into marriage at a later age, means that more people now often have significant assets to protect at the time they marry.

#### Are there any requirements for a prenup?

Each spouse should have a separate attorney. If only one party has an attorney, that attorney can only represent one party. That is critical. That way both parties will be advised of their rights. In addition, a prenup should contain the following elements:

- The agreement must be in writing, executed by both parties and witnessed
- It must be executed voluntarily (*i.e.*, without fraud, misrepresentation or duress)
- Assets and liabilities must be reasonably and fairly disclosed prior to the execution of the agreement

#### What happens when the parties divorce?

It can make the divorce proceedings go much more smoothly – even amicably – when the distribution of assets and alimony obligations has already been decided. Those are the two main issues that have to be resolved in a divorce. It can save years of negotiation and litigation, reducing not just the financial cost of divorce, but the emotional cost as well.

#### Can anyone draft a prenuptial agreement?

Yes, provided it has all of the required elements. The danger in parties doing so, without consulting an experienced family law attorney, is that most parties aren’t aware of all the aspects of divorce and the agreement may not be comprehensive enough to really protect them. When drafting such an agreement, “one size does not fit all.” Again, each party should consult a family law attorney to obtain independent legal advice when creating such an important contract.

#### Is a postnup the same as a prenup except that it is executed after marriage?

The main difference is the timing and the fact that a postnup can include assets that have already been acquired since marriage. They are generally entered into when the parties are divorcing, but that doesn’t have to be the case. Postnups are essentially made for the same purpose as prenups, that is, to define and delineate the division of marital property in the case of a divorce.

Are prenups and postnups valid in all states?

Yes, either by statute or by case law. In Pennsylvania, we have a statute covering prenups but not postnups, but both have been interpreted according to the same contract standards. Having a full and fair disclosure of all assets and separate counsel are extremely important in safeguarding both prenup and postnup agreements.

If you would like to discuss prenuptial or postnuptial agreements or any other family law matter, please call me at 610-323-2800 or email me at [vhollister@owmlaw.com](mailto:vhollister@owmlaw.com). Also, please watch OWM's March 2017 Legal Talk program regarding Marital Agreements: Why and How on our website [here](#).

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### Upcoming Events

Chestnut Knoll At Home Services and Manatawny Manor are holding a seminar entitled "Alzheimer's: Managing Difficult Behaviors" at Manatawny Manor, 30 Old Schuylkill Road, Pottstown, PA, on 3/23/17 at 6:00p.m. (RSVP required - please call 610-473-3328 or email [mlaskoski@chestnutknoll.com](mailto:mlaskoski@chestnutknoll.com)).

[David A. Megay, Esq.](#), speaking at Chester County Night School Seminars at Owen J. Roberts Middle School, Pottstown, PA, on 3/28/17 from 6:30p.m.-8:30 p.m. entitled "Starting and Operating Your Own Business" and on 4/25/17 from 6:30 p.m.-8:30 p.m. entitled "Buying and Selling Real Estate in PA" (contact Chester County Night School at 610-692-1964 or online at [www.chestercountynightschool.org](http://www.chestercountynightschool.org)).

[Kathleen M. Martin, Esq.](#), speaking at Chester County Night School Seminars at B. Reed Henderson High School, West Chester, PA, on 3/29/17 from 7:00 p.m.-8:30 p.m., and at Owen J. Roberts Middle School, Pottstown, PA, on 4/11/17 from 7:00 p.m.-8:30 p.m., entitled "Unique Needs of Aging Adults from an Elder Law Perspective"; and at B. Reed Henderson High School, West Chester, PA, on 4/3/17 from 7:00 p.m.-8:30 p.m., and at Owen J. Roberts Middle School, Pottstown, PA, on 4/25/17 from 7:00 p.m.-8:30 p.m., entitled "Beyond the Simple Will" (contact Chester County Night School at 610-692-1964 or online at [www.chestercountynightschool.org](http://www.chestercountynightschool.org)).

Watch Legal Talk, brought to you by OWM, on PCTV, Tuesdays at 8:30 on Channel 28, and Thursdays at 9:30 p.m. on Channel 98, or on our website [here](#).

Read Legal Ease every first and third Sunday in the [Pottstown Mercury](#).

## O'Donnell, Weiss & Mattei, P.C.

41 E. High Street  
Pottstown, PA 19464  
610-323-2800  
Fax: 610-323-2845

347 Bridge Street, Suite 200  
Phoenixville, PA 19460  
610-917-9347  
Fax: 610-917-9348

[www.owmlaw.com](http://www.owmlaw.com)

