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Poll shows postnuptial pacts on rise

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A recently released poll showing the increased use of postnuptial agreements by married couples can be attributed in part to the sluggish economy, three local divorce lawyers said.

In the poll of American Academy of Matrimonial Lawyers members, 51 percent cited a jump in the use of postnuptial agreements during the last three years, but 46 percent found no change.

Such agreements consist of voluntary contracts between married spouses that can cover myriad issues, said Meighan A. Harmon, a Schiller, DuCanto & Fleck LLP partner and current president of the academy's Illinois chapter. Those issues can include what happens to a couple's assets in the event of a divorce or death and what spousal support gets paid as part of a divorce, she said.

Harmon said she's handled two such agreements this year and continues working on a third.

"I've seen more people express interest in postnuptial agreements" than in the past, she said.

She offered three reasons for the increased use of postnuptial agreements.

The first reason involves the 50 states more commonly accepting such agreements as enforceable, she said.

The second reason relates to a greater use of prenuptial agreements and the postnuptial agreements often become amendments or modifications to prenuptial agreements, she said.

"No. 3, I think the economic crisis has resulted in there being lots of couples who plan to divorce, but for whatever reason can't currently afford to get divorced," she said. "For example, they have a house (with) a mortgage underwater, but they still want to settle between them and separate their finances as though they were getting divorced."

Divorce lawyer Gemma B. Allen, a partner at Ladden & Allen Chartered, called postnuptial agreements "kind of a new concept and people are just learning how to work with it."

As to the increased interest in and use of such agreements, the difficult economy made people rethink their relationship with money, she said.

"I think that prior to this economy, couples could relax in the notion that equity was accumulating in their home and other real estate and their 401k (plans) were growing," she said. "Those days are either over or



Gemma B. Allen

suspended. So, now people have to be more practical."

A postnuptial agreement "implies that you are at some kind of crossroads, either interpersonally, financially or both," she said.

Allen said she handles at most five postnuptial agreements annually for clients.

A postnuptial agreement sometimes leads to divorce proceedings, she said.

"People disagree at such a fundamental level that the postnuptial negotiations become the divorce negotiations," she said.

The poll showed that 36 percent of the respondents noticed an increase in women



Meighan A. Harmon

seeking such agreements.

"Usually it is the women who seek the protection (provided by a postnuptial agreement based on) the fact that there is a need," said Floyd N. Nadler, a partner at Beermann, Pritikin, Mirabelli & Swerdlove LLP and a past president of the academy's Illinois chapter.

"A lot of this has to do with the economy. You realize your assets are shrinking," he said.

The number of prenuptial agreements currently far outpaces the use of postnuptial agreements, he said.

"It's still not a big thing, at least in this part of the country," he said.