

THE SKETCHLEY LAW FIRM, P. A.

Providing Compassionate Support & Guidance Through Elder Law & Guardianship

SENIORS & (RE)MARRIAGE

May 2009

As we live longer, more active lives, it is not surprising to see more seniors want to take advantage of the love, security, and companionship marriage brings. However, many issues need to be evaluated when individuals marry later in life.

Impact on Public Benefits

Marriage can affect eligibility for many public benefit programs. If an individual receives Supplemental Security Income (SSI) and the accompanying Medicaid benefits, marriage can result in the loss of SSI and Medicaid because a spouse's income is attributed to the SSI recipient.

Individuals needing long term care may consider the need for Medicaid benefits, specifically the Institutional Care Program (ICP), to pay for the costs of care. Asset and income limits exist for both the spouse needing Medicaid benefits and the spouse living in the community. Depending on the financial status of each spouse, these rules may benefit a community spouse with limited resources or render an institutionalized spouse ineligible for benefits.

Decision-Making Authority

Under Florida law, a spouse has priority over adult children to make medical decisions if there is no other written designation and the spouse is incapacitated. If a couple has a durable power of attorney and health care surrogate, someone other than the spouse may be the one making these decisions.

Rights of the spouse upon death

To protect the surviving spouse upon the death of the other spouse, Florida prevents spouses from disinheritting one other. If a surviving spouse is left out of a will or estate

plan, he/she may elect to take a share of the deceased spouse's elective estate. The elective estate includes the value of probate assets and certain non-probate and jointly-held assets. The surviving spouse may also be entitled to certain homestead, exempt property and family allowance rights. Exercise of these rights can adversely affect the children from a prior marriage.

The right to an elective share, as well as other rights of a surviving spouse, can be waived. Couples contemplating marriage may want to consider a prenuptial waiver of the rights relating to their intestate and/or pretermitted shares, homestead, exempt property, family allowance, and preferences in appointment as personal representative. Married couples who desire to waive these rights can do so through a postnuptial waiver. While there are pitfalls to pre- and postnuptial agreements and waivers, they can be excellent tools for preservation of estate plans and protections for each spouse's children.

Vehicles for Exploitation

Because the rights associated with marriage are powerful and valuable, marriage can be used as a vehicle for exploitation by those with ill intentions. To be married, both persons must have capacity to marry. If the person lacked capacity at the time of the marriage, the marriage can be attacked as "void." A marriage to which the consent of one of the parties is obtained by undue influence is merely "voidable" and cannot be attacked after the death of either party.

If you would like to arrange for one of our attorneys to speak to your group or organization about this topic, please contact Tracy Rouse at (850) 894-0152. Past newsletters can be found at www.sketchleylaw.com.



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