

Second Marriages - Estate Planning Concerns

Contributed by Phil Craig
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One of the biggest areas of dispute in estate planning is with second marriages. Here is a question I received. I've changed the facts around so that I am not giving specific legal advice.

Phil,

My dad, age 87, is getting married soon so that his new wife will be eligible for social security benefits on his earnings. In his living trust he had made arrangements for me, my sister, and his lady friend. What changes for us, his kids, when he marries this lady? What do we need to know?

Wow, what a predicament.

My first reaction is to ask if his father was entering into a marital agreement (a pre-nuptial agreement, or pre-nup) before the marriage. What a pre-nuptial agreement will allow is for his father to maintain control over the use and disposition of his estate.

Without a pre-nuptial agreement, the laws of their state concerning marital property will control.

What this means is that if his father dies after he re-marries and fails to modify his estate plan, his new wife may receive statutory claims or benefits from the father's estate (each state is different, so it is critical to receive local advice).

Another area of concern is what happens if the father re-marries and then the wife becomes incompetent? By getting married, the father has opened up his net worth to the medical claims and needs of his new wife.

When I was in active practice and was consulted by a widowed client who wanted to re-marry, I reviewed the rules concerning long term health (nursing home rules and costs) with him. I showed him what he would be responsible for if they were to re-marry. I'd say 8 out of 10 people I saw and went over this with decided not to re-marry after learning the rules. They decided to "live in sin."

Another area of dispute I often saw was when the re-marrying parent wanted to change his or her estate plan to provide for the new spouse. This caused a lot of hard feelings. The children often felt that they were entitled to the estate of the first parent to die and that it should not be held for the new spouse.

By providing for the new spouse, the re-marrying parent is putting his children in a position where they are waiting for their "step-parent" to die before receiving what they felt is rightfully theirs.

So, think twice before re-marrying in your later years. Consult with competent legal counsel and consider, at a minimum using a pre-nuptial agreement. Consider the impact the new marriage will have on your revocable living trust and whether any changes are needed to your estate plan for Medicaid or estate tax reasons.

Phil Craig is a licensed attorney and entrepreneur. He started practicing law at age 25 in 1979. He does not take on any more clients, but is advisor to some of the biggest names in the internet world. He shares his knowledge gained over the last 25 years at his Living Trust Secrets newsletter site: <http://www.LivingTrustSecrets.com>