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PROPER PLANNING MAY CREATE PEACE OF MIND



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PRENUPTIAL AGREEMENTS FOR ELDERS

More older clients are entering into marriages later in life. Individuals do not always enter the relationship with equal assets or income. Moreover, they are not aware of their legal rights in the event of illness, incapacity, divorce or death. These issues should be addressed in a prenuptial agreement that creates a clear framework for how to resolve these issues.

The Tale:

Fred, age 73, was a handsome eligible widower. During a charitable social event he met Natalie, age 70, who was an attractive widow. Each had accumulated assets from their prior marriages. After Fred proposed, the couple consulted with an attorney to prepare a pre-nuptial agreement. Later, problems arose when one spouse became ill and at the time of death.

The Tip:

Prior to marrying, older individuals should consult with separate counsel to be informed of their rights. Consideration should be given to the following:

(1) Pre-nuptial agreements don't protect property of the owner when the other spouse applies for Medi-

caid. Under Medicaid law both spouses' assets are reviewed. The non-applicant spouse can keep a limited amount of assets despite a pre-nuptial agreement that states the assets will not be used for the care of the other spouse.

(2) Under Florida guardianship law if one spouse becomes incapacitated the other spouse is given preference to serve as guardian unless the incapacitated spouse has designated another person in a Durable Power of Attorney.

(3) Florida has abolished the common law doctrine of necessities. A spouse is not responsible for the debts of the other spouse nor, is there a duty of support.

(4) If a spouse designated the other spouse as a beneficiary of life insurance or, as a joint owner of accounts that will override what is agreed to in the prenuptial agreement.

“Prenuptial agreements don't protect property of the owner when one spouse applies for Medicaid . . . The non-applicant spouse can keep a limited amount of assets.”

(5) Florida's elective share law has been revised to require that the surviving spouse receive 30% of all property (not just probate property). This is in addition to homestead and other assets. Explicit conditions must be met to waive this right.

Firm Facts:

Stephanie is the Former Chair of The Florida Bar Elder Law Section.

Our firm is a proud Business Patron of the AFLTL Eagle Program.

Meet The Staff

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