

Marriages Between Elderly Persons.

When elderly people marry late in life, and if one of them has significant assets, the non asset elder may have more in mind than is immediately obvious.

While it may seem to be a lovely gesture, for example, for an elderly gentleman to marry an elderly lady, usually these are second marriages with one or both parties already having children from a previous marriage. The difficulties are compounded if one of the elderly persons is ill or on the verge of some debilitating disease such as dementia.

The problem is that our law provides that in the event of a marriage, any existing wills are instantly null and void (unenforceable) unless there is a specific provision in the will contemplating this marriage.

Usually elderly persons have wills from years prior and these provide that their children are executors and also beneficiaries. It does not occur to an elderly person that by marrying that will is now unenforceable and that if that person later dies first, it is as if he or she has no will at all.

Our law then provides that since there is no will legally recognized, the newly married spouse of the deceased person receives at least one half of the assets of the estate and usually more.

Therefore what has happened by this kind gesture of marriage is that one party has engineered, usually without the knowledge of the other, a major change in the estate planning of the other. That party has moved into a position where he/she will inherit at least one half of the other parties estate notwithstanding that probably that was never the intention of the now deceased person.

Unfortunately there are people out there who seek to take advantage of someone with assets and who may be in fragile physical or mental health, often befriending them, helping them, and then marrying them.

Our profession refers to those types of marriages as "predatory marriages" in that the result is a major changing of the disposition of the deceased's assets, usually without the deceased understanding or wishing these consequences.