

# Elder Law Matters

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## Second Marriages . . . A Delicate Subject for Estate Planning & Long Term Care

**Bob was so lonely** until he met Mary. They were introduced by a mutual friend at their Church. Both had been widowed for years and never seriously considered the prospect of marrying again. Bob and Mary enjoyed spending time together and their friendship blossomed into love. Bob's adult children grew to love Mary too and appreciated the fact that with Mary around . . . Bob was happy again. Mary's family reciprocated those same feelings for Bob. Both were healthy-vigorous seniors and planned to spend many years together. Bob proposed marriage and Mary accepted.

Love is wonderful, but second marriages, especially those that occur later in life, raise very different issues than tying the knot at a youthful age. Often, second marriages involve adult children from the previous marriage. Then comes the delicate subject of dollars . . . and "what happens to the money, the house, the farm, the family heirlooms, etc." when one spouse dies? Do the assets get mixed during marriage or are they designated and kept separate as "His, Hers and Ours"?

Upon the death of the first spouse, will assets be available for the care and support of the surviving spouse or does the money by-pass the surviving spouse and go directly to the biological children of the deceased spouse?

Before moms and dads get re-married, it is important that they come to an agreement as to what happens upon disability or the death of the first spouse. When we discuss the scenarios of one spouse dying or becoming disabled, it is rare for the spouses to be comfortable with the surviving or well-spouse having 100% control over what happens to all the assets. If that is the case, the step-kids of the second spouse to die can get left out. To that end, many second-marriage couples use pre-nuptial contracts, trust arrangements, or both to provide that they keep certain assets brought to the marriage separate. Upon death, the specified assets brought to the marriage go to "my kids or grand-kids," which requires the surviving spouse to give up any legal interest or claim in the spouse's assets upon death.

Death, however, cannot be the only concern. Just this week, I was asked to clarify the current status of the law in a second marriage situation when one spouse's health fails and needs nursing home care. Even if there is a pre-nuptial agreement in place, the law deems the assets of both spouses available to pay for the care of the ill spouse. This result is due to changes in the long term care Medicaid law. The existence of a trust or pre-nuptial agreement does not necessarily protect the separate assets of one spouse from being drained to pay for

an ill spouse's medical costs, including nursing home care costs.

Prior to the latest law change, couples like Bob and Mary (who kept their assets separate) would have the option not to expose their individual assets to the care costs of the ill spouse if one of them needed nursing home care. For example, before this law change, if Bob needed to go to a nursing home, had an extended stay, and his assets were depleted to a point where he would be eligible for Medicaid, Mary would not have to disclose her individual assets on Bob's Medicaid application so long as the assets had remained in her name only (not in Bob's name or control).



Seniors in Love

One of the public policy reasons for permitting non-disclosure by Mary was so that Mary could avoid having to divorce Bob (a nursing home resident) and "enforce" their pre-nuptial agreement in order to preserve her individually owned assets from Bob's nursing home/medical costs.

To protect themselves from this potential drain on a lifetime of savings, healthy vigorous seniors like Bob and Mary who are considering getting "hitched" must consider the wisdom of purchasing long-term care insurance and perhaps working with an elder law attorney to assist them with longevity and disability planning. The analysis should take place before the marriage, so that all involved understand the options. Legal solutions that go beyond traditional estate planning may be needed.

If you are considering saying "I do," please recognize that you are also likely promising to pay for your new spouse's future long-term care medical expenses. "In sickness and in health" is a standard line in most wedding vows, and most states (Illinois included), have made that vow the law.

In our area, the cost for skilled nursing home care is \$6,000+ per month. With these numbers in mind, it's good to remember that when you say "I do" what you also may be saying is "Sweetheart . . . I'll help pay your nursing home bill."