

Protecting your future



ESTATE PLANNING FOR SENIORS

SENIOR MARRIAGES, UNINTENDED CONSEQUENCES

PRESENTED BY
THE GRAHAM NUCKOLLS CONNER LAW FIRM

gnclawfirm.com

Estate Planning for Seniors

SENIOR MARRIAGES, UNINTENDED CONSEQUENCES

by David Silver

Mom is in her 80's and suddenly announces that she is going to get married. Even if you like her fiancé and are pleased that she has found happiness and companionship in her later years, it is natural to be worried about the potential consequences of the marriage. If you are the “mom” in this scenario, you should be aware of the legal ramifications of this decision and be open with your new spouse and kids about the ramifications in order to hopefully avoid distrust, resentment or unintended consequences.

People who get married later in life usually already have separate families, fixed incomes, and separate assets. Many couples agree that “what’s mine will go to my kids and what’s yours will go to your kids.” While this might be the intention of both parties, it might not be the result.

Unless the couple has a prenuptial agreement (or a post nuptial agreement if the marriage has already occurred), then upon the death of one spouse the surviving spouse has the right to file for a

[Spousal Allowance](#) and an Elective Share against the estate of the deceased spouse. The Spousal Allowance gives the surviving spouse the right to the first \$60,000 of the deceased spouse’s personal property, which could include such things as vehicles, cash in the bank, Christmas decorations, and antique furniture. The Elective Share gives the surviving spouse the right to a percentage (from 15% to 50% based upon the length of the marriage) of the deceased spouse’s total assets. A Last Will and Testament or a verbal understanding does nothing to prevent a surviving spouse from being able to file these claims against an estate. While a surviving spouse could voluntarily live up to an agreement and refuse to file these claims against the deceased spouse’s estate, if that spouse is no longer competent but had given a Power of Attorney to a child, would that child be as honorable as the surviving spouse?

There are also issues that arise while both spouses are still alive. If “mom” has a health incident and is unable to make health care decisions, then it will be the new spouse who has the authority to consent to medical treatment unless there is a [Health Care Power of Attorney](#) in place that states otherwise. Also, if the spouse needs medical treatment or skilled nursing care, North Carolina’s Doctrine of Necessaries and Medicaid’s regulations might require the use of “mom’s” assets to pay for the spouse despite their agreed-upon desires and intentions.

Marriages later in life have the potential to be a blessing to everyone. However, couples entering into a second marriage later in life would be wise to discuss their mutual expectations with each other and with their families, and they should seek legal help to create a plan to try to obtain protections from unintended consequences.

David Silver teaches The Legal Environment of Business in ECU's Department of Finance. Dave is also a Partner with The Graham, Nuckolls, Conner Law Firm in Greenville, NC, concentrating in Elder Law.