

Deathbed marriages

Recent developments in New York and Florida have placed a spotlight on a new phenomenon, the predatory marriage to a terminally ill person shortly before the person's death in order to gain access to the person's wealth. This is not the Anna Nicole Smith situation, a May-December marriage with money as an obvious object. Rather, these really are sham marriages. The New York Court of Appeals ruled last year on two such marriages. In these cases men with dementia were wedded to their caregivers. The marriages were declared void, because the men didn't have the capacity to know what they were doing. Florida last year enacted a law granting heirs the legal standing to challenge a marriage on the grounds of fraud or undue influence.

The point isn't to discourage weddings among the elderly, but to alter the traditional property consequences associated with marriage. In most states a marriage may upend an estate, because surviving spouses have rights superior to other heirs. In many states no one but the parties to the marriage may challenge the legitimacy of marital status. There are documented cases of caregivers marrying their charges and concealing the information from the family until the day of the funeral, when it may have been too late for the children to intervene.

Heirs don't have easy solutions in preventing these situations. A durable power of attorney for financial matters may prove helpful. One common suggestion is to have all the adult children required to consent to any financial transactions in excess of a stated large dollar amount. Another approach is to employ a trust for asset management. If the trust is irrevocable, the assets may be immune to claims by a later purported spouse. Up to \$5 million may be placed into an irrevocable trust in 2011 or 2012 without the need to pay federal gift taxes.

A final strategy may be rather distasteful, and used only as a last resort. One may go to court to have a parent declared incompetent and, thus, without the capacity to enter into another marriage.

When it comes to caring for elderly parents, nothing should be taken for granted.