

## Blog

### Preuptial Agreements and Death of a Spouse

November 20th, 2012

by Williams Family Law, P.C.

When entering into a **prenuptial agreement**, parties are generally concerned with protecting their assets in the event their marriage fails. Many people are not aware that prenuptial agreements may also protect your assets in the event of death. Such provisions can have a significant impact on the surviving spouse's future financial status. However, this portion of a prenuptial agreement may not have been fully contemplated by the parties and can result in costly litigation to the surviving spouse and the estate of the decedent (i.e, the person who has died).

Recently, a Carbon County Court in Pennsylvania considered the issue of enforcement of a prenuptial agreement, following the death of Husband ("Decedent"). In the case of *In Re: Estate of Earl M. Miller, Deceased*, Decedent and Doris E. Miller (Wife) were married in 1994. Wife initially sought to void the parties' prenuptial agreement ("Agreement") so she could take against her Husband's will.

Pursuant to the Agreement, both parties waived all rights to the other's property as a surviving spouse. The Agreement also provided that Decedent would make a provision in his will or through jointly owned property to provide Wife with the sum of \$20,000 upon his death. In exchange, Wife would not make a claim under the Probate Code for her elective share or her intestate share. By waiving her elective share or intestate share of Decedent's Estate, Wife waived her right to one-third of Decedent's Estate. See, 20 Pa.C.S.A. §2203.

In accordance with the Agreement, Decedent's February 20, 2002 Last Will and Testament, provided for Wife to receive the sum of \$20,000. The Will further provided that this sum could come from jointly owned property and/or from the assets of Decedent's estate so long as the total amount Wife received was worth \$20,000. Although, Wife received \$35,819.21 in jointly titled assets at the time of her Husband's death, she sought to void the Agreement and take against her Husband's will, presumably because one-third of the Estate would have been more the \$35,819.21 she actually received.

The court determined the Agreement was valid and then considered whether Husband had performed his obligations under the Agreement. In making this decision, the court had to review whether the source of funds used in the acquisition of jointly-owned property was from Wife, Husband or due to joint contributions. Without this information, the court could not determine if Husband had fulfilled his obligation pursuant to the Agreement.

Ultimately, the court determined that it was Wife's burden to prove the source of the funds. Wife did not provide such proof and the court concluded that Husband fulfilled his obligation. Accordingly, even though the parties were still married at the time Husband died, Wife was only entitled to receive \$20,000 from Husband and the remainder of the Estate went to his children from a prior marriage. Due to Wife's lack of understanding of the Agreement, both she and her Husband's estate spent time and money litigating Wife's receipt of \$20,000.

If you have already signed a prenuptial agreement or are considering doing so, you should carefully review your agreement and make sure you understand what you will receive in the event of your spouse's death if you are still married. Before signing a prenuptial agreement, or if you have questions about an existing one, you should consult with an experienced attorney.