

Prenuptial Prognosis: The Perils of Probate and Pretermitted Step-Parents

Timeline

July 1997	Mike Brady's first wife dies. Mike starts seeing Carol Jones.
December 1997	Mike presents Carol with a prenuptial agreement that Carol signs a few days later.
January 1998	Mike and Carol marry.
May 1999	Mike dissolves Sky High Hopes, LLC (no value).
May 2002	Mike sells property at 3131 Maple Street, Miami Beach, FL.
October 2016	Mike's physical health declines.
June 2017	Mike and Carol purchase property at 2020 Prospect Lane, Miami, FL, but rent another home to renovate new property.
March 2018	Carol files for divorce and moves out of rental home.
April 2018	Mike amends his Trust and disinherits Carol. Leaves everything to his sons: Greg, Peter, and Bobby.
May 2018	Mike's counsel advises Carol's counsel that he elects ownership of the home at 2020 Prospect Lane.
July 2018	Mike dies before any judgment of dissolution of marriage is entered.

Prenuptial Agreement

1. General Terms

- a. Husband and Wife enter into the agreement acknowledging that they are waiving rights in the separate property and estate of one another that they might otherwise have as spouses.

2. Divorce or Termination Action.

- a. A "Termination Action" is commencement by either party for dissolution of marriage or to request a legal separation.
- b. Upon entry of a judgment of dissolution of marriage, Wife entitled to:
 - i. \$75,000 for four years, paid monthly.
 - ii. Interest in Sky High Hopes, LLC.
 - iii. One-half interest in any jointly held property.
- c. In the event of any Termination Action, Husband shall retain ownership of the marital home, if he so elects.
- d. In the event of any Termination Action, Husband and Wife waive any rights in the separate estate and property of the other.

3. Claim Upon Death.

- a. Wife entitled to any gift left to Wife in Husband's Last Will or Trust.
- b. In the event that either party dies intestate, the distribution of his or her estate shall be made under the applicable laws of descent as though no marriage had taken place.
- c. Wife entitled to proceeds from a \$1,000,000 life insurance policy to be maintained by the Husband, or a combination of life insurance and property, provided that Husband and Wife were married to each other and living together as of Husband's death.
- d. Wife shall receive the home at 3131 Maple Street, Miami Beach, FL, provided that Husband still owns that property at the time of his death.
- e. In consideration of these agreements, Wife relinquishes and waives any right of election against Husband's Estate or Trust.

4. Financial Disclosure

- a. Husband has \$5,000,000 in assets, including real property and interests in multiple listed companies.
 - i. Sky High Hopes, LLC is not listed.

732.702 Waiver of spousal rights.—

(1) The rights of a surviving spouse to an elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses. The requirement of witnesses shall be applicable only to contracts, agreements, or waivers signed by Florida residents after the effective date of this law. Any contract, agreement, or waiver executed by a nonresident of Florida, either before or after this law takes effect, is valid in this state if valid when executed under the laws of the state or country where it was executed, whether or not he or she is a Florida resident at the time of death. Unless the waiver provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate, by the waiving party in the property of the other and a renunciation by the waiving party of all benefits that would otherwise pass to the waiving party from the other by intestate succession or by the provisions of any will executed before the written contract, agreement, or waiver.

(2) Each spouse shall make a fair disclosure to the other of that spouse's estate if the agreement, contract, or waiver is executed after marriage. No disclosure shall be required for an agreement, contract, or waiver executed before marriage.

(3) No consideration other than the execution of the agreement, contract, or waiver shall be necessary to its validity, whether executed before or after marriage.

History.—s. 1, ch. 74-106; s. 39, ch. 75-220; s. 14, ch. 77-87; s. 56, ch. 2001-226.