

## Unholy Matrimony: How to Fight Back

By **KELLY GREENE**

It is difficult enough to entrust an elderly parent's care to someone you hire. But what do you do when that worker secretly marries their charge—and claims a chunk of your inheritance?

Although no one tracks the numbers of such marriages, lawyers who handle estate-related litigation say they are seeing increasing numbers of "predatory unions," as life spans increase and dementia becomes more common.

"Let's face it—baby boomers are heading into old age," says Susan Slater-Jansen, an estate-planning attorney at Kurzman Eisenberg Corbin & Lever in White Plains, N.Y. "It's going to be an increasing problem."



Chris Gash

What's worse, it is virtually impossible for children to challenge the property consequences of a parent getting married once the parent dies, says Terry Turnipseed, an associate law professor at Syracuse University, who has studied "deathbed marriages" and analyzed state laws.

How could families be duped into not knowing their own parents had married? In one case, an adult daughter left her elderly father in the care of a longtime friend while she took a short vacation. In one week, the friend married the father, started transferring assets into joint accounts and named herself his pension beneficiary. The children learned of the marriage a month later. When they confronted their father, he recalled nothing about it.

In another case, a hired caretaker secretly married her charge of nine years about a year before his death. She told his children about it the day before his funeral.

In most states, the inheritance rights of widows and widowers trump any estate plan—even if the new spouse wasn't named in the will, and even if the marriage took place shortly before the death of someone unable to recall a few days later that they said "I do."

The only way many state courts can fix things is to annul a marriage after death. Typically the only person who has legal standing to sue is the surviving spouse, "who of course has no incentive whatsoever to annul the marriage," Mr. Turnipseed says.

But in a few states, courts and lawmakers are starting to make it easier to unwind a twilight union. Florida closed a loophole last year by enacting a law that gives heirs and others the legal standing to challenge any marriage—even after a spouse's death—on the grounds of fraud, duress or undue influence.

Florida's statute found a way around the big legal concern: that state laws could be challenged as messing with the constitutional right to marriage, says Samantha Weissbluth, an estate litigator with Foley & Lardner in Chicago. "It doesn't narrow any existing right to marry; it severs marriage from its usual property consequences in certain circumstances," she says.

In New York, an appeals court last year ruled in favor of the families of two men with dementia who had secretly married outside caregivers before their deaths, by denying their surviving spouses a share of the dead men's assets.

"The spouses were deemed to be committing fraud because the decedents didn't have the capacity to know what they were doing," Ms. Slater-Jansen says.

But until more state legislatures and courts take action, families need to watch out when employing caregivers.

Distance often exacerbates the problem. It is tough to supervise workers in a parent's home from afar. Before you hire anyone, extensive background checks are crucial, along with making sure any paid caregivers are bonded and insured, says Patricia Maisano, chief executive of Ikor USA in Kennett Square, Pa., which provides case-management and advocacy services for elderly and disabled clients.

Ask the aide to consent to a background check and provide a Social Security number if he or she hasn't been screened or formally trained, she says. Don't hire anyone who refuses. You may want to hire a geriatric-care manager to keep an eye on home health-care aides.

If you do sense that your parent is developing a relationship with an aide, don't keep it to yourself. Tell your family, and your parent, about your concerns. The worst thing the child and parent could do is to quit speaking to each other, says John Morken, a partner at Farrell Fritz in Uniondale, N.Y.

If your parent is diagnosed with dementia, one defense against fraud is a durable power of attorney—a legal arrangement that helps older people turn over management of their finances to a family member or others—assuming he or she can still execute one. If used, it is a good idea to require all of the adult children's consent for transactions over a certain dollar amount. That way, you can make sure that no one in the family falls sway to the hired help—or takes advantage of the situation himself, says Ms. Slater-Jansen.

Another defense: having your parent put their assets in a trust. If the assets involved are worth less than \$5 million—and you set it up this year or next, when there is no gift tax on that amount—make the trust irrevocable, meaning it can't be unwound during the parent's lifetime. If you use a revocable trust, make sure the paid caregiver doesn't know about it, she says.

Many parents, though, are suspicious of their own children's attempts to help them. If your parents refused to shield their assets in advance, and you worry that a deathbed marriage is looming, there is one more step that may make sense: Going to court to have a parent ruled as lacking the capacity to tie the knot.

**Write to** Kelly Greene at [familyvalue@wsj.com](mailto:familyvalue@wsj.com)