

THE BEAVERS LAW BITE

The Omitted Spouse

By Jeremy Forrest

The rate of remarriage is fairly common among adults 55 and older. Those taking nuptials at this age have already lived and experienced quite a bit. Many of them have adult children and even grandchildren. They may have significant assets they have already earned and accumulated through decades of hard work and saving. Take, for example, Bob and Linda.

Bob was introduced to Linda through a work colleague. He had been out of the dating pool for years, but when his first marriage ended in divorce at the age of 56, he knew he wanted to get out to meet new people. Bob and Linda hit it off well enough. They both would tell you that age had made them wiser about things like love and marriage, and after about two years of dating they decided to get married.

After three years of marriage, Bob was diagnosed with early-onset Dementia. His condition deteriorated rapidly and he died at the age of 62. Bob was survived by his second wife Linda and three adult children from his first marriage. Bob's probate estate consisted primarily of a house he kept through his divorce (and used as a rental property after he and Linda were married) and approximately \$120,000 of cash he recently inherited from his mother's estate.

Years ago, Bob took his attorney's advice and redid his Will shortly after his divorce. Thinking things were settled now that the will did not include his ex-wife and divided everything equally between his three adult children, Bob neglected to revisit his estate plan after marrying Linda.

Virginia Code § 64.2-422 comes into play in just this sort of situation. Known as the Omitted Spouse Statute, it provides that in cases where a decedent fails to update his or her will after getting married, the surviving spouse shall receive the same share he or she would have received if the decedent died without a will. The only exception to this is if the terms of the will itself or any marital agreement indicates that the omission was intentional.

In Linda's situation, because Bob had children that were not also Linda's children, Linda's intestate share is one-third of Bob's estate. This does not invalidate Bob's will. Instead, the remaining two-thirds of the estate gets distributed according to the terms of Bob's will.

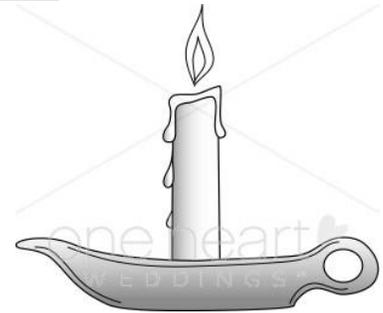
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December's Sudoku Puzzle: Medium #237

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6					7	8		9
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9								

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