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Insights

Florida's Elective Share: Just What the Disinherited Spouse Needed

Article
05.25.2021

It happens more often than you think: A surviving spouse is unknowingly excised from their predeceased spouse's last will and testament to ostensibly be left with nothing. For instance, The Cars front man, Ric Ocasek, removed his wife of thirty years, Paulina Porizkov, from his last will and testament prior to his death and unbeknownst to his wife.

Mr. Ocasek and Ms. Porizkov were in the midst of a divorce that was reputedly amicable. However, before their divorce was finalized, Mr. Ocasek died unexpectedly. The blindside to Ms. Porizkov was twofold: the unexpected loss of her children's father; and the discovery that Mr. Ocasek had cut her out of his will. Ms. Porizkov petitioned a New York probate court for entitlement to a right of election, which is known in Florida as a surviving spouse's elective share.

As a surviving spouse, Florida statutes entitle you to an elective share of your predeceased spouse's elective estate. Entitlement to the elective share is statutory; that is, even if your spouse cut you out of his/her last will and testament, you are still entitled to an elective share of your predeceased spouse's elective estate.

According to Florida law, the elective share is up to 30% of your predeceased spouse's elective estate. The elective estate includes not only the entirety of your predeceased spouse's probate estate, but it also includes (among other things) certain property transferred by your spouse during the year prior to his/her death that would have been included in the predeceased spouse's probate estate.

Surviving spouses faced with excision from their predeceased spouse's last will and testament must be vigilant of the strict time deadlines to petition for entitlement to their elective share. Generally, a petition must be filed within six months of receiving notice of administration of your spouse's estate or within two years of your spouse's date of death, whichever occurs first. Failure to adhere to such deadlines may result in waiving entitlement to the elective share, which, in some cases, is the only avenue of recovery from your spouse's probate estate.

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Navigating elective share issues are particularly nuanced given the extraordinary amount of statutes and procedural rules governing entitlement to the elective share. Moreover, the issues of discovering and determining the total amount of assets that comprise your predeceased spouse's elective estate are often complicated.

If you are a surviving spouse in the unfortunate position of being excised from your predeceased spouse's last will and testament, you should consult with a Florida probate attorney to protect and exercise your rights and entitlement to an elective share.

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