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The Omitted Spouse Claim Against an Estate

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Despite an intention to add a spouse or domestic partner to their Will, at times a decedent may neglect to do so prior to his/her death. Under such circumstances, however, a surviving spouse or domestic partner may be entitled to a share of the decedent's estate pursuant to the omitted spouse statute. This statute directly addresses scenarios where the marriage or domestic partnership occurs after the decedent had previously executed a Will, however, did not amend his/her Will after marriage to the surviving spouse or the formation of the domestic partnership.

This New Jersey statute is codified under N.J.S.A. 3B:5-15. In order to be entitled to take as an omitted spouse or a surviving domestic partner, the surviving spouse or domestic partner must have either formed the domestic partnership or married the decedent after the decedent had executed their Will. Provided that threshold issue is met, then the surviving spouse or domestic partner would be entitled to a share of the decedent's estate as if the decedent had died without a Will.

The relevant New Jersey statute which governs the surviving domestic partner's or the surviving spouse's share is N.J.S.A. 3B:5-3. This statute is highly technical in determining the precise share that the surviving domestic partner or surviving spouse is entitled to receive. In general, the statute looks at whether the surviving domestic partner or surviving spouse had children with the decedent, whether the decedent had his/her own children, and finally, whether the decedent has surviving parents. As such, it is suggested that if you are a surviving domestic partner or surviving spouse that you retain counsel to assist you with this technical calculation.

Pursuant to the omitted spouse statute, however, there are exceptions where the surviving domestic partner or surviving spouse may not be entitled to receive a portion of the decedent's estate. These exceptions are as follows. The first exception is if it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse or in contemplation of the testator's formation of a domestic partnership with the domestic partner. The next exception would be if the will expresses the intention that it is to be effective notwithstanding any subsequent marriage or domestic partnership. The final exception that would disqualify a surviving domestic partner or spouse from taking would be if the testator provided for the spouse or domestic partner by transfer outside the will and with the intent that the transfer be in lieu of a testamentary provision which is evidenced by the decedent's statements or intent. All of these scenarios would disqualify a surviving domestic partner or spouse from taking under this statute, however, there may be another resolution under the NJ Elective Share Statute which is discussed in my other recent blog.

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