

I'll Die Before I get a Divorce: What Happens when a Party Dies While a Divorce is Pending

Presented jointly by the CCCBA Probate & Estate Planning Section and the CCCBA Family Law Section

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The following tale provides us with our fact pattern for this presentation.

Our Man Arnie

Arnie (a single man) was a successful WWF wrestler. One night during a wrestling match he was thrown out of the ring onto a table. The table was a wrestling prop that was supposed to break apart upon impact. However, due to a manufacturing defect when the table broke it produced a sharp edge that went through Arnie's leg ending his wrestling career. Arnie will walk with a limp for the rest of his life.

Arnie sued and was awarded a hefty settlement of \$5,000,000.00. Soon after his wrestling career ended, Arnie decided to run for Mayor of Martinez. In 2010 during his campaign for Mayor of Martinez, he met Maggie. Maggie was a wealthy socialite who donated substantial money to Arnie's campaign. She was a successful CPA and had a promising career in front of her. They instantly fell in love and were married within a few weeks on February 14, 2010.

Arnie was successful in his bid for Mayor. Arnie and Maggie moved into the Mayor's mansion in Martinez. Arnie persuaded Maggie to give up her CPA practice and dedicate herself full time to helping him with his mayor duties and starting a family. In 2012 Maggie gave birth to twins. A boy and a girl. She quickly realized she was going to need help with the twins with Arnie's busy schedule. They hired Nancy Nanny to help out.

After starting a family, Maggie insisted on creating an estate plan. They went to see Larry Lawyer in downtown Martinez. He drafted a comprehensive estate plan for them. Each spouse was the successor trustee and primary beneficiary of the deceased spouse. Upon both their deaths it would be split equally among their children to stay in trust until the children turned 30.

During his reelection campaign in 2014, a woman came forward accusing Arnie of being the father of her 1-year old child. Arnie of course adamantly denied the allegation, but it was later revealed on an episode of Jerry Springer that HE WAS THE FATHER! The mother of the child was awarded \$5,000.00 per month in child support payable until the child turns 18 or finishes high school whichever is later.

In a weird turn of events, Arnie's popularity with the Jerry Springer audience brought him a landslide victory in his re-election. Maggie decided to stand by him, and they continued to serve the great City of Martinez on as Mayor and First Lady.

In 2019 Arnie decided he was going to run for president in the 2020 campaign. In March 2020 while attending a parade for his presidential election campaign, Arnie was injured in an accident. The driver of his float had too much drink and ran the float off the road and down an embankment. Arnie sustained serious injuries. Arnie filed suit against the float company.

While Arnie was trying to recover from his injuries, he and Maggie spent a lot of time at home. Maggie noticed that Nancy's 4-year-old son had a striking resemblance to Arnie. She bought one of those home DNA testing kits and secretly tested Nancy's son. The results came back that Arnie was the father. Maggie moved out of the house with her twins and filed for divorce June 1, 2020. In a preliminary order she was awarded \$5,000.00 for each child for support.

Arnie immediately went to Larry Lawyer to re-do his estate plan to take off Maggie. Larry explained he had a conflict of interest and referred him to Andrea Attorney. Andrea prepared a revocation of the previous trust. She also prepared a Pour Over Will for Arnie and a new trust. The Will named Arnie's new girlfriend Karen as the Executor. The new Trust named Karen as Trustee and named her as the sole beneficiary. Andrea advised Arnie that his trust could not be funded until the divorce was final. He did not fund his Trust.

In August 2020, Arnie died suddenly from complications from his float accident. His lawsuit is still in progress.

Shortly after Arnie's death Karen found out she was pregnant with his child. She is due in April 2021.

Karen comes to see you for legal advice for the following reasons:

1. Maggie is threatening to contest the Will and Trust and Karen serving as Executor.
2. Maggie claims the Will and Trust were created in violation of the family law restraining orders and therefore are void.
3. Maggie claims as his wife (the divorce is not final) she gets everything.
4. If Karen opens probate, Maggie is filing a creditor claim of \$1,200,000 (\$5,000 per month per child for the next 10 years until they turn 18)
5. If Karen opens probate, the mother of the now 6-year-old is also filing a creditor claim in the \$720,000.00 for her child support order.
6. Nancy claims her 4-year-old son is the biological son of Arnie, but he is not listed as the father on the birth certificate.
7. Karen wants to file a creditor claim on behalf of her unborn child.
8. The personal injury attorney is calling her asking what he should do with the case.