

The most recent edition of Newsweek magazine discusses an often overlooked phenomenon-divorcing while dying. Specifically, the article looks at actor Dennis Hopper and political wife Elizabeth Edwards. This, however, is not just an issue for the rich and/or famous. The spouse is the one person you cannot disinherit. Especially if you have children from another mother or father, this may be a major issue.

In Virginia, there is the Augmented Estate Act which provides that no matter what provision, if any, that you make for your spouse in your Will that he/she can elect not to take what you gave and instead to get one-third of your estate. Most people don't know this and think they can exclude their spouse in the Will or leave them \$1.00.

If the parties are separated, the spouse can be barred from claiming their elective share, but this often leads to litigation. The spouse has a right to have a jury decide if the parties were separated-and remember the other spouse is dead now and can't testify. I have had those trials. It is not a good legacy to leave to your children. For this reason, many people facing death decide to divorce to avoid the issue for their heirs.