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Dying Husband Wants to Give Everything to Children of First Marriage

As her husband lie dying in the hospital with cancer, one reader struggles to come to grips with what she can do to save the assets they acquired during marriage.

BY BETI BERGMAN

My husband has cancer and is dying. There is no doubt that this has been an extremely difficult and trying time for us all. But what's more shocking is when I came to find out that he has gone ahead and signed all of the assets over to his children (from his first marriage). I've tried to ask him why he is only leaving his children from his first marriage with something and not us, but he won't give me a straight answer. Is there anything I can do legally to see that we are protected and that my children and I are indeed beneficiaries to what we've acquired during the marriage? Please help!

Unfortunately, and more often than not, this type of incident can overwhelm anyone in this position and make them feel betrayed and left with many questions of not only *how*, but most importantly *why* someone would do something like this and completely cut you and your children out of any inheritance.

But that's neither here nor there at this point. You've asked a very specific and, well, good legal question that I'm guessing many people would be interested in knowing. If you live in a state such as Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin then you may have what is known as a "Community Property" dispute on your hands.

So what does community property entail? It basically explains that all assets acquired (except for gifts and inheritances) that are collected or earned during a marriage is community property, meaning each spouse may devise—give away at death—his or her "half" of the community property acquired during their time together.

Now, if the two of you did not enter an agreement whereby either one of you agreed to keep certain assets separate, then all of the assets acquired during marriage are community property and your husband cannot give away the entire community pot.

To protect yourself from this before the inevitable happens, each of you should seek

the counsel of a competent estate planning attorney. Preparing a proper trust plan that specifies your assets and the distribution of those assets is crucial. Each spouse can provide asset protection for their half of the community property by setting up a family trust (also known as a credit shelter trust or a bypass trust) and/or a marital trust (also known as a QTIP trust) to hold their half of the community property and lock in their children as beneficiaries. They can further protect their share of assets in the family trust by requiring the pre-nuptial agreement before the surviving spouse is entitled to any distributions of income from that trust or even cutting off distributions upon remarriage by the surviving spouse.

The remedies available after a spouse has started transferring away community property during the marriage are legal actions such as marital injunctions. If after you've tried everything above to no avail then you can seek the counsel of a lawyer specializing in family law.

During the end of someone's life, many shocking revelations can come to light and subjects like the one presented above can be very difficult to approach and talk about. However, you will save yourself a lot of time and money in legal fees if you deal with the situation now and square things up while the person is still living.

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