

Can We Allow Our Father's Wife To Have Condo If He Didn't Have A Will?

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Dear Ask the Attorney:

My dad passed away without a Will. He just has a condo that his wife lives in. Can she simply get the condo if she can assume the mortgage? My dad has five kids and most of us do not want the condo.

T.B.

Hi T.B.:

I am sorry to hear about your father. Your question has a few different layers that I will address below, but as long as you and your siblings are all in agreement about not wanting the condo, it should not be a problem to transfer it to your father's wife.

When a person dies, there are certain assets that pass to his heirs as a function of how the asset is titled. A few examples of these types of assets are joint bank accounts, assets with a beneficiary designation and, of relevance to you, real property titled as "tenants by the entirety." Real property titled as "tenants by the entirety" is the typical way in which a husband and wife will take ownership of real property in New Jersey. If you look at the deed for the condo, it would state the married couple's names followed by "as husband and wife" or "tenants by the entirety." What this type of ownership means is that the property passes to the surviving spouse as a matter of law on the death of the first spouse. If your father and his wife owned the condo in this way, then it would pass to his wife as a

matter of law upon his death.

However, if your father owned the condo in his name alone, then the laws of intestacy will govern who receives the condo. The intestacy laws govern the disposition of a person's property when he dies without a Will. Because of the way you phrased your question, I assume that your father's wife is neither your mother nor the mother of your father's children. Under the intestacy laws, his wife is entitled to the first 25% percent of his estate, but not less than \$50,000 and not more than \$200,000, plus ½ of the balance of his estate. All other amounts pass to your father's children in equal shares.

If your father's children have an interest in the condo as a result of the intestacy laws, then the question becomes whether or not the children are willing to consent to the condo passing to your father's wife without compensation. If you are all in agreement that your father's wife should receive the house, then N.J.S.A. 3B: 23-9 allows you and your siblings to enter into an agreement to transfer the house to your father's wife. If not all of his children agree (and you mention in your question that "most" of you agree), then your father's wife may have to compensate any child requesting payment for his or her share of the condo.

If an estate settlement agreement must be drafted or if compensation is to be paid to one of your father's children, then I recommend that you see an attorney to counsel you through the process.