



ELDER LAW AND ESTATE PLANNING

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Daughter expected to inherit condo, discovers her brother is on deed. Can she sell the unit?

Question: When my brother lost his job last year, he moved in with our father. Shortly after that, Dad died from cancer. It's now a few months later and my brother is still living in the condo and still not working. Dad left me the condo under his will, and I want to sell it because I need the money. Besides having my brother there with no apparent plans to move, I have just discovered that prior to his death, my father put my brother on the deed, as a tenant in common. I am at wit's end. Does my brother have the right to remain in the house indefinitely? Does the property still go to me?

Answer: Obviously a conflict exists between your father's will and the deed. Assuming the deed is legitimate, the deed takes precedence. That means your brother now owns half the condo. The half that your father owned will pass to you once his estate goes through probate. This is indeed a touchy situation. You would be wise to start off by meeting with your brother in a neutral environment to share your dilemma and discuss possible solutions.

You have several options. You could offer to buy him out of his half, or he could buy you out of your half. However, from your letter it sounds

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like both of you may lack the financial resources to do that. Alternatively, you and he may be able to come to an agreement to sell the condo and split the sale proceeds.

If these options can't be agreed on, you could file a lawsuit to get a partition. A partition means that the court would order the sale of the condo and the division of the proceeds between you and your brother. You should consult with a Florida probate lawyer for detailed guidance on how to proceed. Good luck.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.