



## ELDER LAW AND ESTATE PLANNING

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# Surviving spouse thinks she's entitled to more of deceased husband's estate

**Question:** My husband died two months ago. It was a second marriage for both of us. We were married for 10 years, and I was his caregiver for the last year of his life. He has a grown daughter from a previous marriage. I have no kids. When he died, I became the sole owner of the condo that we owned together as tenants of the entireties. But I also learned he left behind a brokerage account and a large life insurance policy. I was flabbergasted to find out that he named his grown daughter the sole death beneficiary of both! What she got exceeds the value of the condo. Don't I have a right to some of that? It's already been handed over to her. Do I have any recourse?

**Answer:** Under Florida Statute 732.2075, as the surviving spouse you are entitled to an elective share of your deceased husband's estate. The elective share is defined as 30% of the deceased spouse's "augmented" estate, which includes: real estate, payable on death accounts, funds in a revocable trust and several other types of assets. The only way you would not be entitled to the elective share would be if you had waived that right with a prenuptial agreement or postnuptial agreement. That doesn't seem to be your situation, since you make no mention of it.

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If the share of your husband's estate that you received falls below the 30% to which you are entitled, you may have a cause of action. Even though those monies have already been distributed to his daughter, it would be prudent for you to speak with an estate litigation attorney. You should do this as soon as possible, because there are time limits on claiming the elective share. If you call our office we can provide you with additional guidance.

*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.*