To pass down property to specific people, you need a written will

Q: My father told my dying sister her husband would receive her portion of his estate, including his house, in the presence of all of my siblings. Unfortunately, when my sister died, my father failed to change his will to actually name her spouse; now one sister refuses to allow him to receive her portion. This sister says that since he has remarried, he does not still inherit my sister's portion (even after 34 years of marriage and nursing her through almost eight years of cancer). Please let me know your opinion on this matter. I truly don't want to cause a split between our close knit family!

A: The rules relating to wills and estates are generally precise: to pass down property to specific people, you need a written will. The written document frequently must be signed in the presence of two or more witnesses and a notary. (States have differing requirements. For example, one state may require two witnesses and another might require three.)

These rules are in place to prevent people from showing up and claiming that he or she was entitled to something from the deceased owner. Let's take your situation. If your father truly intended to give your dying sister's husband her share of his estate, he would have mentioned that in his will. Was his omission to include that change in the will on purpose or an oversight?

We don't know what his true intentions were, and neither do you. Frequently people say things while they are living, but their intent is different in their written document.

Having said that, we were wondering if your sister had any children. If your father's will was drafted that she would get your dad's share of his estate and it went on further to state that her children would be entitled to her share, effectively, your nieces and nephews would inherit your sister's share. On the other hand, if she and your former brother-in-law had no kids, he may not have a legal right to any part of your father's estate.

You'll need to talk to an estate attorney to figure out if there are any other exceptions or other circumstances that might give your former brother-in-law an interest in your father's estate. If he paid for your father's care, paid some of the housing expenses, or paid for repairs to the home while he was ill, he might be entitled to be repaid for some of those expenses. But he doesn't automatically get rewarded for paying for your sister's care during her illness.

Unfortunately, the general rule would be that any gift to your former brother-in-law would need to be in writing and comply with your state's rules regarding wills. We hope you can avoid a family dispute with your sister and perhaps you can come up with some compromise if all of the siblings (except that one sister) agree he should get something.

In the end, if he's not legally entitled to a share of the estate and your sister won't give in, you and your other siblings might be able to contribute from your shares to give to him what may be a fair share. Because some things are more important than money. Good luck.

© 2018 ILYCE R. GLINK AND SAMUEL J. TAMKIN.
DISTRIBUTED BY TRIBUNE CONTENT AGENCY, LLC.