

by Ilyce_Glink

Q: My husband and I are residents of Nevada and have been married for 18 years. I signed a prenuptial agreement two days prior to marriage stating that I am not to own property during our marriage unless agreed to by my husband. One year after our marriage, I was added to the deed of a Nevada home he purchased just after we were married. Now, 18 years later, I thought we were purchasing a second home in California. But my husband is now telling me that only he can be on the deed because of multiple state properties issues we have until we sell the home in Nevada. He had the contract written up that my part is "assigned." I have no idea who "assigned" is unless it is a trust that is being set up in both of our names. I am wondering if my husband is telling me the truth. Is there a reason that I cannot be on the deed at this time? Do I need to wait until we sell our Nevada home? My intuition is telling me that he is putting the house in his name to protect himself. While he may later put it into the trust (which would benefit me if he should die first), he may not and may be protecting himself now in case of a divorce settlement. We have been happily married for more than 18 years, and I can't see why he would not trust or put my name on the title to this property after I have been his wife and worked with him in his business for 10 years without taking any salary. In other words, I have trusted him to include me in his financial purchases. Have I been a fool for all these years? My heart is bleeding.

A: Your letter is quite troubling on a number of fronts. First, I don't know if you're a fool for love, but I can't understand why a woman smart enough to work with her husband in his business for free for a decade would allow herself to be shunted aside in the issue of combined personal finances. Your pre-nup sounds horrendous - did you have an attorney look at it? It may not even be enforceable. Why would you agree to let your husband dictate what you can and cannot own inside a marriage? I think you need to speak to the family attorney and accountant (or better yet, hire your own) and ask for a full explanation of all financial matters. Do you ask questions before signing your name to your tax return? Do you even see a tax return? I'm not an attorney and I don't know what kinds of financial shenanigans your husband has created to hide assets inside your marriage, if any. He may, in fact, be looking out for you, but you won't know that unless you understand what he is doing, what he and you own, and what is your and your family's true financial picture. But as far as I know, there are no laws prohibiting you from owning property in other states or owning multiple properties at the same time. Plenty of folks do it every day. You've got a lot of work to do here to unravel all of these explanations. I hope when you get to the bottom of it you like what you hear. But if not, it's always better to know now.

Q: We have a problem and we hope you can help us. Our son and daughter-in-law have been married for a little less than two years. To enable them to qualify for their house, we co-signed the note. They have been making the payments so far. We're trying to see if they qualify for a loan assumption, which would allow us to remove our names from the mortgage. What happens if they don't qualify to take over the mortgage, or if they decide to "bail" on the payments in the future? What are our rights and obligations? Please e-mail us. Looking forward to hearing from you.

A: From what you've told me, you don't have a whole lot of options. Your son and his wife would need to refinance the loan in their names alone. Only in very rare circumstances, and only with a local bank that keeps the loan in-house (as opposed to selling it on the secondary market), have I heard of a loan assumption. A loan assumption, as you call it, would allow your son and daughter-in-law to be the only borrowers under the loan and you and your spouse to be removed from the loan.

In any case, it sounds as if refinancing isn't an option right now. You're going to have to wait until they are stronger financially and then ask them to refinance the loan into their own names. The time for you and your husband to have thought about whether your son and daughter-in-law were good bets financially was before you signed on the dotted line, not now. Now, as when you took out the loan, the lender believes that you will step up and pay the mortgage if your son and daughter-in-law "bail." In fact, you are legally obligated to do just that. If you don't, your entire credit history and score are at risk. You need to have a conversation with your son about this situation to ease your mind, if nothing else. Then you need to make plans for what you and your husband will do if the worst should happen. I'm hoping your kids step up and work it out, but you don't even want to know how many letters I get each week from parents whose children have "bailed," leaving them holding the bag just as they reach their "golden years." © 2007 Real Estate Matters, TMS