

ELDER LAW REVIEW

September 2014 Edition

Protecting the Homestead – Life Estates and DHS

A life estate is a way of owning property that divides the ownership based on the duration of someone's life. The person whose life the ownership is based upon is called the "life tenant." This person has the right to use, occupy, possess, and receive all income from the property until they die. Upon the life tenant's death, a "remainderman" has the right to immediately inherit the property, avoiding the probate process.

Zombie Life Estates

Life estate deeds and Medical Assistance (MA) have a complex relationship in Minnesota. Life estate deeds are a tool that was a solution to MA planning for protecting real property. MA applicants who executed a life estate deed beyond the applicable gifting look back period could protect 100% of the value of their property from ever being forced into a sale, or ever being subject to a MA lien upon their deaths. However, in 2003, the Minnesota legislature passed a law which created what is irreverently referred to by legal practitioners a "zombie life estate."

Under common law, and prior to 2003, life estate interests in property terminated upon the death of the life tenant. This meant that for estate recovery claims for MA, no portion of the property could have a lien placed against it by the state, and 100% of the property passes to the remaindermen upon the death of the life tenant. Now, however, legislation changed the treatment of life estates to provide that whatever percentage of the real property was attributable to the life tenant at the time of their death may be subject to a lien for MA purposes. Thus, a zombie life estate outlives the life tenant. Life estate deeds executed prior to August 1, 2003 are still 100% protected from Medical Assistance estate recovery liens.

To illustrate how the "zombie life estate" operates, here is an example. Lisa Lifetenant executed a life estate deed on her farm in 2002, providing Regina

Remainderman with a remainder interest. Lisa then applies for Medical Assistance in 2014 after going into a nursing home, and dies in 2015. Lisa's farm passes to Regina upon her death, and the state cannot place a claim against the farm for whatever amount they paid out for Lisa's cost of care. However, if the same facts existed with Lisa executing the life estate deed in 2008, applied for MA in 2014, died in 2015, then a percentage of her farm may have a lien placed upon it to the extent that the state paid for her cost of care at the nursing home.

In next month's issue of the Elder Law Review, we will discuss the 'Larson Case' and the Minnesota Dept of Human Services treatment of pre-2003 life estates owned by couples.

Pluto Legal, PLLC, offers NO cost, NO obligation consultations. This is a great opportunity to learn about changes and options available to you for all your Estate Planning and Medical Assistance Planning needs.

To learn more about Pluto Legal, visit:

<http://vimeo.com/102883765>

Mark your calendars!

The 5th Annual Estate Planning Forum & Update, presented by the Southern Minnesota Estate Planning Council (SMEC), will be **Thursday, September 18, 2014.**

This year's event will be held at the **Hutchinson Event Center** from 8:30 am to 4:30 pm. RSVP is required by September 15, 2014. Contact Natalie Sellner at 866-534-2577, or email: natalies@thelegalprofessionals.com to reserve your spot! Application has been made for 6.5 CFP and CE credits. Cost to attend is \$25.00.

We would love to see you there!

Visit our website: www.PlutoLegal.com.

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