

ELDER LAW REVIEW

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Continued 'Larson Case' - Protecting the Homestead, Life Estates and DHS

As equally concerning as Minnesota legislature's creation of these "zombie life estates" is the current treatment by the Department of Human Services of pre-2003 life estates owned by couples. In 2013, a case came out of Polk County involving the Larson family, a farm family who had executed a life estate deed on their farm in 1996, naming the husband and wife as the life tenants and the children as the remaindermen. The wife was diagnosed with Alzheimer's and entered a nursing home in 2011. She transferred her life estate interest to her husband, prior to entering the nursing home, a common practice for Medical Assistance planning, allowing her husband to retain the meager farm income. Polk County denied the application for MA benefits for Mrs. Larson on the grounds that the whole value of the life estate was an asset for determining MA eligibility, and as a result, Mr. Larson exceeded his community spouse resource allowance.

Under Federal and State Law, a pre-2003 life estate is not deemed an asset for determining MA eligibility. Federal law requires the state to determine medical assistance eligibility based on the "total value of resources to the extent that either the institutionalized spouse or community spouse has an ownership interest." "Resources" are defined in the Code of Federal Regulations § 1396r-5(c)(1) as:

...cash or other liquid assets or any other real or personal property than an individual (or spouse, if any) owns or could convert to cash to be used for his or her support and maintenance.If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

A life estate is an interest that cannot be sold without the consent of the remainder interest holder. Because of this, a person with a life estate interest does not have the right, authority or power to liquidate their interest in the property, therefore it does not constitute a resource, and is not included in the determination of eligibility for MA benefits.

The Larson case ended up in district court, where the judge ruled for the Larson family, finding the denial of the application, an arbitrary and capricious decision premised on an error of law. This decision was not appealed by DHS. Unfortunately, the different counties have still taken the stance that this decision *only* applies to cases that come out of that same jurisdiction. This has resulted in more misinterpretation of the law surrounding life estates.

There are cases developing that will force DHS to either follow the law, or go to court in order to try to support their own position. The lesson to be learned from these "zombie life estates" and the Larson case is that any time a person or client is thinking about executing a life estate deed on their property, careful thought should be taken. It is highly recommended that the person seek the advice of an attorney who is experienced in this area.

Pluto Legal, PLLC, offers NO-cost, NO-obligation consultations. We can help with all your Estate Planning and MA Planning needs.

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