

## Life Estates & Medicaid Secret # 1

### What Every Non-Elder-Law Attorney Needs to Know

Estate planning professionals know that Life Estates “evaporate” upon death...and that title to the real estate then vests in the names of those persons who hold the remaining title, i.e., the other person or persons whose names are on the deed. This is fundamental property law, which all law students learn the first year of law school. Knowledgeable financial professionals also know about this basic estate planning technique. It is often called the “poor person’s estate plan”.

What is a life estate? It is a form of transferring real estate which allows you to keep it during your life time. For example, it is one method of transferring title to your home to your child, but retaining the use of your home throughout your life time. That way you can’t be forced out of your home by a creditor of your child, or because of a divorce, bankruptcy, law suit, etc. Upon your death, the title to the house passes automatically to your child without the need for a court proceeding (called probate) to pass title to your home to your child. So, during your life time, you retain a “life estate”, while your child has what is called a “remainder interest” in your home.

So far, it would seem logical to most attorneys and financial professionals – based on what they know about basic estate planning law – that it would be safe to advise their clients to transfer their homes by way of “life estate deeds” in order to avoid the “Medicaid Traps” most have heard about. Unfortunately, they would be wrong. Nothing is logical about Medicaid law.

While “life estate deeds” often are part of what an attorney or financial professional might recommend when designing a “traditional” estate plan, extreme caution is needed when the possible need for long-term care is on the horizon. Because the vast majority of long-term care in southern Illinois is paid for by Medicaid, use of a “life estate deed” in Illinois generally leads to a huge loss for the client and their loved ones. “Life estate deeds” and Illinois Medicaid do not mix; they are like water and oil.

If you are an older person and are inclined to do your own deeds without consulting with knowledgeable counsel, perhaps because that is the way your father passed on the family home or farm to you, then you need to know that you are playing with a “ticking time bomb” if you do not consult with a knowledgeable elder law attorney. As an older person, the odds are greater than 50/50 that you will require nursing home care at some point in your life. If you do not beat those odds, you very well could lose your home or farm if a “life estate deed” has been used.

On the other hand, if you are a trusted advisor of older persons, that is, one who advises persons who may eventually need long-term care at any time in the future, even after five years – whether it be at home, in an assisted or supportive living facility, or in a nursing home – then you need to know that life estates do not totally evaporate at death *under Medicaid law* in Illinois.

Federal Social Security law mandates that each state’s Medicaid law seek recovery from the “estate” of a deceased person for all benefits paid out by the Medicaid program for that person’s nursing home and other long-term care expenses. The term “estate’ is defined as the probate estate and may include:

“... any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, **life estate**, living trust, or other arrangement.” 42 U.S.C. § 1396p.

Illinois residents need to be aware that if you have transferred your home or farm to a child and retained a life estate, the state will place a lien on your life estate interest in the home or farm. At your death, your family then will need to negotiate with the estate recovery division of Illinois Medicaid regarding the lien and the amount of money the estate recovery attorney (an Illinois Assistant Attorney General) can squeeze out of your family.

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