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ELDER LAW MINUTE

Last week I wrote about the Estate Recovery process. Several of you responded with tales of your own. Here are a few of them.

Johnny Warren of Dublin, Georgia, represented a couple in Johnson County who in 1987 conveyed a 92 acre farm to two of their sons. The deed reserved the right to reside in the residence house to the couple and their unmarried, third son for their lifetimes. The parents died prior to 1992. The unmarried son moved out of the residence in 1993, because it became uninhabitable.

Prior to his death in 2008, the unmarried son received nursing home Medicaid. After he died, Estate Recovery sought repayment from the 92 acres claiming that the son had a life estate interest in the entire property which was worth more than \$25,000.

After much effort and through a scrivener's affidavit, Johnny Warren was able to convince ER that the son only had an interest in the residence, not all of the land. The life estate in the uninhabitable residence was worth less than \$25,000, so the son's estate was exempt from recovery.

Rodney Mathis of Calhoun, Georgia, represented a woman who inherited a life estate interest in the marital homeplace when her husband died. After her death, the Executor of her Estate claimed the under \$25,000 exemption from Recovery. In this case, no challenge was made to the claim. Mr. Mathis wonders whether a distinction is drawn between retained life estates and those conveyed by others.

Becky Kurtz, the State Long-Term Care Ombudsman, informed me that one of the 2010 priorities of the Coalition of Advocates for Georgia's Elderly (COAGE) is to expand the care-giver's exemption under the Estate Recovery Program. Currently care-giving children are entitled to certain protection under the ER regulations. COAGE wants to expand that protection to all care-givers that live with the Medicaid recipient and make it possible to avoid institutionalization for a period of time, even if they are not children of the recipient.

Thanks to all of you for sharing your experiences.

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