



ELDER LAW AND ESTATE PLANNING

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Widow retains life estate even if not living in deceased spouse's home

Question: Ten years ago our father remarried a woman 20 years his junior. Until his death last year, they both lived in the home that he owned. Dad gave her a life estate in the house so she would have a place to live if he predeceased her, which was expected because of the age difference. My sister and I were supposed to inherit the house when she passes away. But now she is not even living there. She has moved in with her daughter in a different city, and she's letting her son live in our dad's house. Does she have the right to do this? We want to get control of the house and then we will either sell or rent it. What can we do about this situation?

Answer: Assuming this is a standard life estate, your stepmother has fairly wide latitude. Although she has the right to live in the home for the rest of her life, she is not obligated to. Not living there does not eliminate her right to the life estate. She is entitled to allow her son to live there. She could even rent the property, and you would not be entitled to the rental income. She could also transfer her life estate to anyone she wishes, although the life estate would still terminate at her death, not at the death of the individual to whom she gave the life estate. The one thing she cannot

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do, at least not without your permission, is sell or mortgage the property.

It is possible that your father believed he was giving her only an occupancy right, not a life estate. A life estate has a very specific meaning, which exceeds an occupancy right. While things may not be turning out as he or you expected, based on what you've written, she is acting within her rights.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.