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A common-sense approach to the practice of law.



I was asked by a “friend” about her step mother staying in her dad’s home after dad died. He had written a trust and in it he granted her a “life estate.” According to the terms of the trust, she was “entitled to remain and reside within our residence at 1122 Boogie Woogie Avenue, without any restriction and with exclusive right to possession.”

Also located on the property was dad’s old workshop, a place where the step mother really had no interest but my friend and her sister would like to have access.

Curious, I pondered, what does “life estate” mean. Here is what I learned.

"A life estate is an estate whose duration is limited to the life of the person holding it or of some other person." (*Estate of Nichols* (1962) 199 Cal.App.2d 783, 795.) Even though it seems like it is limited, the owner of the life estate, step mom in this case, has tremendous power of what to do with the property while she is alive. “The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.” (Civ. Code, § 818.)

Fee simple means the absolute--and exclusive--rights to possess, use, enjoy and dispose of the entire fee interest in the property without limitation or condition. (*Munkdale v. Giannini* (1995) 35 Cal.App.4th 1104, 1111.) So, the life estate has the same unqualified state, “in the absence of some special provision, a declared life estate is unqualified as to use and occupancy and is exclusive as to possession.” (*Horstmann v. Sheldon* (1962) 202 Cal.App.2d 184, 190.)

Returning to my friend’s dilemma, since dad’s wife has a life estate, she has the exclusive right to possession. This means she gets to control who comes on the property at any time. Unfortunately, my friend can be prevented from going on to the property

to her dad's old workshop. Dad could have put a qualification on the life estate, which could have allowed my friend and her sister to have certain access. It's too bad he didn't.

- David Rosenbaum, Esq.