

by Ilyce_Glink

Q: Is it possible for a person with power of attorney over the financial matters of a person with Alzheimer's to regain title to a property that person quitclaimed to four relatives (I'm one of the relatives)? We want the patient to sell the property to have cash to pay for her care. She is not eligible for Medicare for another two years, and her financial resources are coming to an end. Although she quitclaimed the property, she retains a life estate in the home.

A: If your relative transferred title of her home to you and three other relatives, and you are all in agreement that she should be entitled to get the proceeds of the sale of the home, you should sit down with an accountant. Since the four of you received title to the home, you need to find out how the four of you took title and whether there was an income tax consequence to the original transfer to each of you. If you find out that there was no tax consequence of the transfer when you received the property, each of you can transfer your title back to the relative with Alzheimer's. Any real estate attorney can draft the quitclaim deed for all of you. The document can be drafted in such a way that the four of you can sign it without all being together. If one of you lives far away, the document can be sent to that person for signature and the document can be sent to all of you until it is all signed. Once the document is signed, it will need to be recorded with the local recorder of deed's office or where real estate documents are recorded in your local jurisdiction. If there are tax consequences to having owned the property for the last several years, you will need to consult an accountant to find out how you are affected and what you should do. If you find a buyer for the home, you can each sell your interest to that buyer, and each of you will have to deal with the tax consequences of the sale. Once you have sold the home, you will have money you can use for the care of the relative. Finally, the person with the power of attorney should be able to convey the home to a purchaser if the relative with Alzheimer's winds up owning the whole interest in the home. If each of you has to deed the property to a subsequent owner, that same person with the power of attorney can transfer your relative's life estate by deed. Because there are so many complex issues involved in the ownership of the home (including the life estate), you'd be wise to consult with an estate planner to see if what you are doing makes sense. In addition to your tax accounting issues, you should seek the help of a real estate attorney.

Q: I bought a home and an easement at the same time. The easement was recorded. The easement allows us ingress and egress to our property. The other owner of the property told us he wants to park on the easement. We opposed having him park there and had to call the police to have him move his car. He has decided to sue us and believes the court will give him permission to park on the easement. He wants the right to park anytime for as long as he wants on the easement. When the easement was recorded the full dimensions of the easement were part of the recording. Can we win in the lawsuit? The easement agreement states that the winning side in any easement dispute can collect legal fees from the loser. Since he is very wealthy he is using that to scare us off from defending our position in a lawsuit.

A: If the easement agreement was drafted properly, you might have a good chance at prevailing against your neighbor. Your easement agreement must specify that you have the exclusive right of ingress and egress over the easement area. If your neighbor interferes with the rights granted to you in the easement agreement, you should be able to get the neighbor to stop the infringement on your easement right. But before you think you can win this case, you should talk to an attorney who has had quite a bit of experience litigating real estate cases including easements. You might even consult with a litigator in a law firm that has other attorneys knowledgeable about easements. They should go over your documents and be able to tell you what is the likely outcome of a trial.

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