

*Orphans Court - Life Estate - Sale of Realty*

1. Unless a life tenant is given the power to consume or sell real estate, he may convey fee simple interest only if the remainderman joins in the deed.
2. The Court will not substitute its own judgement for what the testator ought to have said or even meant to say but did not.

*Timothy S. Sponseller, Esq.*, Counsel for Petitioner  
*Lynn MacBride, Esq.*, Counsel for Respondents

ADJUDICATION AND DECREE NISI

KAYE, J., June 22, 1990:

**ADJUDICATION**

This matter is before the Court on the petition of Elizabeth H. Steiger ("petitioner"), to sell certain real estate in which she received an apparent life estate in the will of her late husband, Linn S. Steiger, and to permit her to consume the proceeds derived therefrom for her personal needs. Rose Harmon Miller and Linda Steiger ("respondents"), are the daughters of petitioner. Rose Harmon Miller opposes the petition. The matter was set for a hearing on March 1, 1990, at which time the testimony of petitioner was received. Rose Harmon Miller was not able to appear at the hearing due to illness. However, she was granted leave to file a motion with the Court by March 7, 1990 for the purpose of presenting additional testimony. No such motion was filed. On March 29, 1990, by stipulation of the parties, the inventory and appraisal filed in the above decedent's estate was admitted into evidence. In addition, the parties agreed that further testimony in the case was unnecessary, and that the evidence should be closed.

On April 19, 1990, the Court directed each of the parties to prepare a memorandum delineating their positions and citing the legal authority in support thereof. The memoranda have been received and reviewed, and the matter is ready for decision.

The petitioner is the widow of Linn S. Steiger, who died in 1966. According to the testimony of petitioner, Linn S. Steiger's will

---

# FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street P.O. Box 391  
Waynesboro, Pennsylvania 17268

(717) 762-8161

**TRUST SERVICES  
COMPETENT AND COMPLETE**



Member F. D. I. C.



---

# Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191  
(717) 762-3121  
(717) 263-8788

**Located in**

**Greencastle - Waynesboro - State Line - Chambersburg**  
Member FDIC

---

devised to her a life estate in his real property, with the remainder passing to their two daughters, (respondents herein), in equal shares upon petitioner's death.

The inventory and appraisal shows that Linn S. Steiger left an estate of real and personal property valued at \$71,485.00 in 1967. The estate included several parcels of real property in which Linn S. Steiger owned a one-half (1/2) undivided interest with Seth G. Steiger. In addition, Linn S. Steiger owned a number of different stocks, farm machinery and farm animals. The stocks were liquidated primarily to provide funds to administer the estate after Mr. Steiger's death.

Over the years, petitioner has disposed of all of the real estate listed in the inventory and appraisal except for the property on Loudon Road, the real estate currently in issue. After a property along Corner Road was sold, petitioner received one-half (1/2) of the \$85,000.00 selling price. She invested the money through a stock broker. Although she is unsure of exactly what occurred, the entire investment is by now non-existent. Petitioner was unable to recall what happened to the proceeds from the sale of several other parcels of the real estate.

Petitioner currently lives with her daughter, Linda Steiger. The residence in which they are living was deeded to Linda Steiger by petitioner as gift. The home had been purchased by petitioner, according to her testimony, with her own private funds.

Petitioner receives \$252.00 monthly in Social Security benefits, \$440.00 yearly for mineral rights, and \$325.00 yearly from her Loudon Road Property. She has no other assets other than the land she is petitioning for permission to sell. She has approximately \$50,000.00 in liabilities resulting from money she has borrowed from banks and individuals. Some \$25,000.00 of that amount owed has been borrowed by petitioner from a number of private individuals within the past year. The purpose of the loans was not clear from the testimony, except a portion of the loan proceeds was utilized to purchase a new furnace and two water heaters. She has unpaid hospital bills. Her daughter, Linda Steiger, has been paying the interest on her loans.

Petitioner has requested, by way of relief, that the Court permit

---

# FIRST NATIONAL BANK AND TRUST CO.



13 West Main Street P.O. Box 391  
Waynesboro, Pennsylvania 17268

(717) 762-8161

**TRUST SERVICES  
COMPETENT AND COMPLETE**



Member F. D. I. C.



---

# Citizens

NATIONAL BANK OF SOUTHERN PENNSYLVANIA

(717) 597-2191  
(717) 762-3121  
(717) 263-8788

**Located in**  
**Greencastle - Waynesboro - State Line - Chambersburg**  
Member FDIC

---

her to sell, in her capacity as Executrix of her late husband's estate, the real estate in question, without the joinder of the remaindermen, her daughters. Although not set forth in her petition, without objection from respondents, petitioner also seeks a ruling from the Court in effect, to permit her to consume the proceeds derived from the requested sale of the real estate.

After reviewing the evidence admitted in this case, we note that the will petitioner is asking us to interpret was not admitted into evidence, although a copy of the will was attached to the original petition. Therefore, the only evidence which we may properly consider is the testimony of petitioner, and the inventory and appraisal (Respondent's Exhibit 1). According to her testimony, petitioner is a life tenant in the real estate previously owned by Linn S. Steiger, with the remainder passing to their daughters upon petitioner's death.

"A life estate is a freehold interest in property, the duration of which is confined to the life...of some particular person...". P.L.E. Estates in Property §61."...[T]he life tenant of real property is entitled to its possession and enjoyment, to the exclusion of the remaindermen". P.L.E. Estates in Property §64.

A life tenant may ordinarily convey her interest in the life estate. *Dingee's Estate*, 109 Pa.Super. 455, 167A.2d 369(1933). However, a life tenant acting alone may not convey a property interest in fee simple unless the life tenant has a power of sale or a power of consumption. *Allen v. Hirlinger*, 219 Pa. 56, 87 A.2d 907 (1907). When the life tenant does not have a power to consume or sell, the life tenant may convey a fee simple interest if the remaindermen join in the deed. *Dorsey v. Fox*, 2 Dent. 591, 2 Sadler 207 3 A.2d 242 (1986).

In the case at bar, there is no evidence before us to indicate that petitioner was granted in the creating instrument the power to consume or sell the real estate in which she holds a life estate without the joinder of the remaindermen.

The limited evidence properly before the Court provides no basis for the Court to determine that the testator intended to grant to petitioner a power of consumption of the life estate granted to

petitioner. In construing a will, the scope of the inquiry for the Court to make is limited to the actual meaning of the words utilized by the testator, and the Court may not substitute its own judgment for what the testator ought to have said or even meant to say, but failed to say. *Re Ferren's Estate*, 365 Pa. 490, 76 A.2d 759 (1950). Testator herein granted to petitioner a life estate, and no more. The decedent made it quite clear that he intended for the remainder to pass to his daughters upon the death of petitioner, and this testamentary plan would be defeated if we were to grant the relief sought.

Accordingly, we are compelled to deny relief to petitioner.

### DECREE NISI

NOW, June 22, 1990, the petition of Elizabeth H. Steiger is DENIED.

The Clerk of Courts shall notify the parties hereto of the entry of this decree nisi.

This decree nisi shall become a final decree upon motion of any party unless post-trial motions are filed within the time limits set forth in Pa.R.C.P. 227.1(c) (2).

Costs to be paid by petitioner.

KEGERREIS VS. LINCOLN INTERMEDIATE UNIT NO. 11,  
ET AL., C.P. Franklin County Branch, No. A.D. 93 of 1990

*Demurrer - Governmental Immunity - Negligent Care of Real Property*

1. Governmental immunity is an affirmative defense which is properly raised as new matter rather than by preliminary objection.
2. Where plaintiffs failed to file preliminary objections to defendants' preliminary objections raising the issue of governmental immunity, the defendants' objections will not be stricken.
3. The real estate exception to a claim of governmental immunity is unavailable where the claim of negligence consists of a failure to adequately supervise the conduct of students.