

Maine's Improvident Transfers of Title Act

March 24, 2017

I am Jill Randall, the Helpline & Medicare Advocacy Services Director at Legal Services for the Elderly in Maine. I joined Legal Services for the Elderly in 2009 first as a Helpline attorney and then as a staff attorney, before transitioning to my current position.

Legal Services for the Elderly is a private, nonprofit agency that was formed in 1974 and provides free legal help to Maine's seniors when their basic human needs are at stake. LSE has an over four decade long history of representing victims of elder abuse in an effort to restore safety and recover assets through civil legal action. A significant part of my practice as a staff attorney involved representing seniors who were victims of elder abuse and financial exploitation.

In states like Maine where the rate of home ownership among seniors is high and the only valuable asset many seniors have is their home, the theft of the senior's home is an all too common form of exploitation.

The sad reality is that thefts of home are committed by family members. It is common for these cases to involve someone facing either 1) medical problems/challenges or 2) the recent death of a spouse, and resulting dependency on someone else for help.

LSE was actively involved in the passage of Maine's Improvident Transfers of Title Act and staff attorneys at LSE have been making use of Act since it was first passed. The Act was important when it was first passed but it has become a lynch pin in the ongoing fight to protect vulnerable Maine seniors from financial exploitation. LSE has not experienced and is not aware of any adverse, unintended consequences as a result of the Act.

LSE sees 8 to 10 cases per year involving the theft of a senior's home in a circumstance where recovery of the home is possible using Maine's Improvident Transfers of Title Act. Because of the presumption created by the Act, we are successful in the majority of these cases.

The number of cases may seem small, but it is important to remember that attorneys in the private bar in Maine make frequent use of this statute in cases where much more has probably been taken than just the home, and the values of the homes are much higher.

Here is one typical theft of home case that ended up at the Law Court, Maine's highest court:

Frederick and Patricia were exploited by their son, John, after Frederick became terminally ill. One month after his father's diagnosis, John insisted that his mother go with him to a title company and transfer the home to him to protect it from MaineCare (Maine's Medicaid program). She was exhausted from taking care of her husband and needed her son's help. She did as she was told. Soon after, John padlocked several rooms in the house, alleging his mother had been selling off his

father's property. When Frederick died it came to light that John had obtained a POA from his father and used the POA to transfer all the money from Frederick's accounts to a new joint account. As soon as his father died, John had withdrawn all the funds.

The Law Court stated that there was ample evidence that Patricia was at least partially dependent upon John. ¶ 14. The lower court "found credible Patricia's testimony that she suffered from considerable stress and a 'rollercoaster' emotional state during the course of Frederick's illness. That she attempted in vain to obtain information from John about Frederick's health care, and that she depended on John for emotional support, advice, and assistance in taking care of Frederick." ¶14.

The lower court found and the Law Court affirmed that the real estate transfer was a result of undue influence and ordered that the real property be held in constructive trust for the benefit of Frederick's estate, and that John reimburse the estate for the money he transferred. ¶8, 9.

Patricia A. McCollor v. Frederick J. McCollor Jr., et al, 2014 ME 39.

The Improvident Transfers of Title Act accomplishes what seniors in these terrible situations want and need most of all—the return of their home.

Thank you for inviting me to speak here today.

Jill Randall
Legal Services for the Elderly
March 24, 2017