For: LeClairRyan, Richmond, Va.
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Recent Va. Supreme Court Decision Highlights Complexities Of Trusts and Wills, Says LeClairRyan Attorney

Perplexing wording can spark legal conflict among family members, warns Brett Herbert

RICHMOND, Va. (10/25/18)— Wills often provide for specific property to pass to designated people, ensuring that the last wishes of the testator, or will-maker, are carried out consistent with their intentions. But ambiguous and unclear language in one will's residuary clause – a sort of a catch-all disposition for "the rest and remainder of the estate" not specifically addressed in the bequest — had to be sorted out by the Virginia Supreme Court. The case highlights how bringing in an experienced estate attorney early on may help to avoid this kind of issue, says Brett Herbert, an associate at LeClairRyan, based in the national law firm's Richmond and Williamsburg offices.

"Testator James Feeney had two sons from a prior marriage, Sean and James," noted Herbert, who is a member of the firm's Estate and Trust Litigation practice area team. A residuary clause provided that the residue of Testator's estate would generally pass to his wife at the time of his death, Marjorie, who was not the mother of Sean and James.

"However, the residuary clause went on to provide that Testator desired such property to be used for Marjorie's health and support, and also for the health and support of his son Sean," Herbert wrote in a post, *A Bewildering Bequest: The Supreme Court of Virginia Weighs in on the Meaning of a Will's Residuary Clause*, which appears in the firm's *Estate Conflicts* blog.

The residuary clause also provided that upon Marjorie's death, such residuary property would pass to Sean in trust. "Additionally, the clause noted that Testator desired to keep his and Marjorie's accounts separate," so when both died, any assets remaining from Feeney's estate would pass to their respective children, Herbert added.

After the elder Feeney passed, James filed suit seeking a to have the residuary clause interpreted as granting Marjorie a life estate in the residuary, as opposed to having full rights to dispose of the residuary property as she saw fit. He also sought an order removing Marjorie as trustee and executor, along with one requiring her to pay back any and all assets that she wrongfully used.

Marjorie argued that the residuary clause gave her absolute power to dispose of the residuary estate. The trial court granted summary judgment in favor of Marjorie, found that the will left the residue of the estate to her, and specifically held that the residuary clause did not create a life estate in favor of Marjorie. Sean and James objected to the decision.

In its decision in *Feeney v. Feeney*, the Supreme Court of Virginia held that while the Testator did not expressly indicate any intent to convey a life estate to Marjorie, the will as a whole indicated a clear intent to restrict Marjorie's use of the residuary property. "The Court held that Marjorie possessed merely a life estate in the residuary estate, as opposed to full rights to the residuary property," wrote Herbert. "This case provides additional clarification on the law in Virginia regarding interpretation of provisions of trusts and wills, and illustrates the reality that language in wills and trusts can sometimes mean something different than one may think."

The case also underscores how retaining the assistance of an experienced estate attorney before drawing up a will can reduce the chances of conflict later. “Disputes relating to will and trust interpretation typically necessitate the assistance of an experienced estate litigator,” Herbert concluded.

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