



THE ENFORCER

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Papa Was a Rolling Stone, Wherever He Laid His Hat Was His Home

But when he died, all he left me was alone. Your client wants more from the father than just to be left alone. Your client wants child support from the decedent. Does Michigan law provide for child support after the death of a support payer?

Following the death of a child support payer, what happens to current child support? Arrearages? Under MCL §700.3705(6), a personal representative must provide the identity of the heirs of an intestate estate, and the devisees of a testate estate, to the Friend of the Court. The notice is provided to the Friend of the Court in the county where the estate is being administered, and at the same time the notice of the appointment is provided under MCL §700.3705(1). Effective October 1, 2005, MCL §700.3705(6) requires:

... at the same time the notice required by subsection (1) is given, the personal representative shall give notice to the Friend of the Court for the county in which the estate is being administered, which notice identifies the decedent's surviving spouse and the individuals who are, for a testate estate, the devisees or, for an intestate estate, the heirs. The personal representative is not required to notify the friend of the court of a devise to a trustee of an existing trust or to a trustee under a will. A personal representative incurs no obligation or liability to the friend of the court or to another person for an error or omission made in good faith compliance with this subsection.

Arrearages for unpaid support constitute a lien on the payer's estate for the amount of child support which is past due. Accordingly, MCL §552.625a(1) states:

The amount of past due support that accrues under a judgment as provided in section 3 or under the law of another state constitutes a lien in favor of the recipient of support against the real and personal property of a payer, including, but not limited to, money paid as a distribution from a decedent's estate; as the result of a claim of negligence, personal injury, or death . . . The lien is effective at the time that the support is due and

unpaid and shall continue until the amount of past due support is paid in full or the lien is terminated by the title IV-D agency.

Consequently, the unpaid support may be satisfied from the estate's proceeds or assets.

The court also has the authority to secure the payment of future support. The court may impose a lien on the payor's personal and real property for the amount of child support which is past due and to "require security for payment of support that is . . . due in the future." *Milligan v. Milligan*, 197 Mich. App. 665, 670 N.W.2d 394 (1992). (See also MCL §552.27(c) for the court's authority to sequester the payor's property for future support).

It should be noted that the granting of a lien does not insure payment. The estate's assets may be secured by other obligations, the property's value may be de minimis, and there may be other estate claims. Furthermore, the granting of a lien is different than the perfection of a lien. It would still be necessary for the Personal Representative or the support claimant to perfect the lien after it is granted.

The personal representative does not necessarily have a fiduciary duty to ensure that a support obligation is actually paid by the estate. If the Friend of the Court, the support claimant, or the court do not take steps to effectuate the granting of a lien, then no obligation will inure to the Personal Representative. In the event that proper notification is not provided, it remains up to the payee to notify the court and to seek distribution from the decedent's estate or to make a claim against the Personal Representative for a breach under MCL 700.3715(6).

Finally, in certain circumstances a lien is not applicable for unpaid support payments. For instance, a lien against a decedent's estate is not applicable toward the homestead, other exempt property, family allowances or trusts.¹ Moreover, a lien is not applicable toward any money paid to the estate to the extent that such money is owed for attorney fees or litigation expenses.² It also does not apply toward Medicaid, medical services, medical reimbursements, or Medicare. Additionally, inheritance and estate assets are not items subject to the lien.³ Although the lien may be

placed against an inheritance distribution it may not be placed against the estate itself.

Endnotes

1. M.C.L. 552.625a(6)(c)
2. M.C.L. 552.625a(6)(e)
3. M.C.L. 552.625c(2)



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