

USA TODAY

LAS CRUCES, N.M. – When Elizabeth "Libby" Leask, 61, listed her Las Cruces home for sale early in February, she described it as a surrender. "I don't have anything else to give up," she said. "I can't afford to fight anymore."

Since the sudden death of her husband in 2016, Leask has been seeking her late husband's pension. As a multiple sclerosis patient, she was counting on the income to take care of her for the remainder of her life, as her late husband had planned. Yet after 27 months consulting with attorneys and appealing for help from New Mexico State University, her husband's employer, and the New Mexico Educational Retirement Board, Leask is selling her home and preparing to move out of state to live with family. Despite her medical condition, she will need to return to her former occupation — painting houses — in order to live.

What kept her from collecting her husband's pension was a single missing form: Form 42, the official form designating her as her husband's beneficiary.

'You need that Form 42'

Steven Leask was 66 when he died on Nov. 1, 2016. He had been a helicopter pilot in Korea, Vietnam and Alaska with the U.S. Army, earned a Master's degree and doctorate from NMSU, and since 1997 had worked for the university in the Educational Administration department.

Libby vividly recalled coping with legal formalities in the midst of trauma over her husband's sudden death. At the FedEx store on University Avenue, her hands shook so much she needed an employee to help straighten her papers and fax them to the Educational Retirement Board ("ERB").

Initially, she said an ERB representative told her the death certificate was all they needed, but subsequently they requested more documents, including parts of her husband's will. "And then it was, 'We're not sure you're the beneficiary,'" Leask said. "I finally faxed them the whole will, everything, and then they ran out of things for me to fax."

It came down to the missing Form 42. Without it, Leask could not prove she was the designated beneficiary of her husband's pension, even though they had been lawfully married since 1985.

ERB suggested Leask go through probate and set up an estate. A few months and about \$4,000 later, the estate was established, but then ERB attorneys told her Steven Leask's will did not prove she was the beneficiary of his retirement account. A representative told her, "You need that Form 42."

'They're going to keep all that money?'

Near the end of his life, Steven Leask was planning to retire. He calculated the value of his pension at close to a million dollars, enough to provide Libby with medical care and income the rest of her life if something happened to him.

Leask's papers include records of a 2000 audit of his NMSU retirement paperwork. Included on an audit checklist was a checkmark Libby believes was acknowledgement by Human Resources that it received Form 42. However, staff at both NMSU and the ERB told Libby Leask there was no record of it and after combing through every file she could find, including her husband's personnel records, she did not locate a duplicate.

"20 years ago, people didn't make copies of all that stuff," she said. "You're working for NMSU. They take the originals, they send it all to ERB and you trust them ... I don't understand why they don't have copies."

Because of the missing form, the ERB would only reimburse Leask's estate for the amount withheld from his paycheck over nearly 20 years — a fraction of what she expected. "So they invested all these savings," Leask said, "and they're going to keep all that money?"

'It's the member's responsibility'

Jan Goodwin, the Educational Retirement Board's Executive Director, said, "It's the member's responsibility to make sure their beneficiary information is up to date and what they want."

With over 150,000 member accounts, including current and past employees and retirees of schools covered by the ERB, Goodwin said the organization relies on members to review their online accounts regularly and contact ERB about missing information or changes.

During a telephone interview with the Sun-News, Goodwin reviewed Steven Leask's account history, including paper records, and she said ERB had no record of receiving a completed Form 42.

NMSU, who declined to speak with the Sun-News for this story, reportedly told Libby Leask and ERB it had searched its archives for a copy but found none.

"If the wife is his beneficiary through his estate, she would be entitled to collecting all his contributions plus interest," Goodwin said, referring to ERB's payout to Steven Leask's estate.

Goodwin said ERB retains the original Form 42 once they receive it and make a digital copy. If a form is not completed properly, she said it is deemed invalid and returned to the school. She acknowledged that sometimes, for varying reasons, a replacement form never comes.

"The school may have a copy of it on file," Goodwin said. "We would honor that if the school could provide us with that copy. It's not usual that the form goes missing."

Libby said that when her husband died, he did not leave behind passwords to access his computer, much less any accounts that might provide clues about the missing form.

Fighting the system requires assets

Two estate planning attorneys who provided background for this story advised that forms do go missing from ERB and other institutions. Both stressed the need not only to keep hard copies but to secure legal authorization for survivors to access personal devices and online accounts where important documentation is increasingly stored. They also recommended planning ahead with professional legal advice because technology and laws pertaining to estates are changing rapidly.

Leask said she consulted several lawyers about litigating the matter, only to be told she does not have a case or that it would be too expensive to pursue her case. Leask, already forced to make painful cuts to her living expenses, said she can't afford the legal battle.

The Aftermath

Although she exercises daily, returning to her former profession as a home painter, climbing ladders and wielding paint rollers and brushes, will not be easy. Diagnosed 15 years ago with relapsing-remitting multiple sclerosis, Leask said intermittent attacks come without warning. "All of a sudden your legs just turn to limp noodles," she said. "You don't have any clue when it's going to happen. You can lose your eyesight, lose the use of your legs, your hands. A whole part of your body goes numb." Worse still, among the expenses she has had to cut are the thrice-weekly Copaxone injections that reduce the frequency of her relapses.

After selling her home, Leask plans to move to California and live with her daughter. A Leask family friend set up a GoFundMe to raise money for Libby.