



## **Be Careful With Life Estates**

*Q.) What is a “life estate”?*

A.) The term “life estate” describes a kind of joint ownership of real estate, such as a house. You can sell or give your home to your children, but keep the right to live in or control the home until you die. When you do this, you keep a “life estate.” When you have a life estate, you are called the “life tenant.” Your child is called the “remainderman.” It is possible to give more than one child a remainder interest in your home.

*Q.) Why would I want a life estate?*

A.) It is a way to pass your home to your children without going through probate. If you own a home and the title is in your name alone at your death, it will have to go through probate. Probate is needed when you have assets titled in your name alone at your death. Keep in mind that having a Will does not avoid probate. A Will just tells the court how to distribute the property in your estate. If you have a life estate, you have already added your child or children’s names to the title of the property. This states who the owner of the asset will be when you die. Probate is generally not needed when there is already another owner on the title of an asset. In Minnesota you can avoid probate and pass real estate to others by completing and filing a Transfer On Death Deed (TODD.) A TODD is similar to a life insurance beneficiary designation, it does not add names to the title of your real estate while you are living.

*Q.) What are my responsibilities when I have a life estate?*

A.) When you are a life tenant you must still:

- pay the mortgage;
- pay the property taxes and insurance; and
- make repairs to the property.

You can agree that your children will pay some or all of these costs. However, if they do not pay, you must. If your children do pay for things that you are responsible for as a life tenant they could ask for reimbursement from you or your estate.

*Q.) Are there any problems with life estates?*

A.) Yes, there are many problems that you should know about before you add someone to the title of your home. While a life estate would avoid probate, the problems you could have might easily outweigh this benefit. It is very important that you talk to a lawyer so you fully understand the risks before you add a name, or names, to the title of your home. You cannot simply remove or change a name once it is on a deed to real estate like you can change the beneficiary on a life insurance policy or bank account.

*Q.) What are some of the problems with a life estate?*

A.) You cannot easily sell or mortgage the property. Your children and their spouses must all agree, and sign off, if you want to sell or borrow against the property. You cannot remove their names from the title to sell the property unless they agree. You cannot force them to agree. In addition, they own an interest in the property and could demand a share of the proceeds if you sell it. This is true even if you gave the property to them by adding their names to the title without getting any money from them for the interest. Remember that if your child is married, their spouse must also agree.

Selling the home could cause tax problems for you and your children. This is true even if your children sell the house after your death. Adding someone's name to the title of your home may be a gift under tax law. If your children sell the house after you die, they might have to pay capital gains tax on the proceeds. Talk to a tax expert before you sell the home.

Once your child is on the deed to your house they have an interest in the home and their legal problems could become yours. If your child is sued or owes taxes, a lien could be filed against your home. The lien would have to be paid if you wanted to sell or mortgage the property. Your child's interest in the home is not protected if he or she files bankruptcy. If your child gets a divorce, his or her spouse could claim all or part of your child's interest in your home. If your child dies before you do, the child's estate would have to go through probate. Your child needs to have a Will saying what should happen to his or her interest in your home in this situation.

Giving your child a life estate could prevent you from getting Medical Assistance (MA) for a long time. You cannot get MA to pay for long-term care, or care that keeps you out of a long-term care facility, if you give away your assets. Adding a child's name to the title of your home is a gift. As the law in this area is complex, and changes frequently, it is important to understand the risks you are taking before adding a child's name to the title of your home. Talk to a lawyer who knows this area of the law well. The penalty can be quite severe.

The State could have a claim against the property after your death if you received MA; Long Term Care; General Assistance Medical Care or Alternative Care. This law applies to life estates created after July 2003. The law says the state can take money from the value of a life estate after you die to pay back the money you received from the programs listed above. There are a few exceptions. The state cannot do this if certain people continue to live in the house after you die. These people include:

- a spouse;
- a child under 21 or a blind or disabled child;
- a child who lived with you for at least 2 years before you went into a nursing home and who provided care that kept you out of a nursing home;
- a sibling with an equity interest who lived with you for at least 1 year before you went into a nursing home. Updated: November 2018

*This article is funded in part by  
the Metropolitan Area Agency on Aging under the Older Americans Act.*

*SMRLS' Senior Law Projects provide free legal assistance to low-income older people living in Washington, Dakota, Ramsey, Carver, and Scott Counties as well 28 additional counties in southern Minnesota. Residents of these counties may reach SMRLS at (651) 224-4731 Monday through Friday between the hours of 9:00 A.M. and 11:45 A.M. and 1:00 P.M. and 3:00 P.M.*