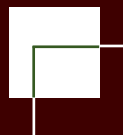


Life Estates

Estate Planning & Trusts

Life Estates

A brief introduction



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WHAT IS A LIFE ESTATE?

A Life Estate may be created in real property or in personal property. It is a term used to describe ownership of an asset for the duration of the person's life. The owner of a Life Estate is called a 'life tenant'.

The life tenant has the right to possession and enjoyment of the asset and its income until their death. Once the life tenant dies, ownership of the asset goes to the 'remainderman'. The remainderman is the person or persons entitled to take the asset upon the termination of a Life Estate.

If no remainderman is designated, ownership of the asset reverts back to the grantor, if it is a life estate created during the grantor's life or it would be dealt with under the laws of intestacy if it was created in a will.

HOW IS A LIFE ESTATE CREATED?

A life interest or life tenancy can be created by a deed or a will. In the case of property, if you grant someone a life estate by deed or under a will, the life estate will be registered with the Land Titles Office and the life tenant then has the right to occupy and use the property.

You can also create a determinable Life Estate. This means that a Life Estate will be granted or bequeathed to a life tenant on a condition. If the condition is breached, the life tenant will lose ownership of the land and it will go to the remainderman or back to the grantor.

It is also possible to give a Life Estate to one person to hold during the lifetime of another person. This is called an *estate pur autre vie*, although this is far less common than the other uses.

HOW IS A LIFE ESTATE TERMINATED?

A Life Estate terminates automatically when the life tenant dies. If a Life Estate is granted on a condition, the Life Estate may terminate if the life tenant violates that condition.

Alternatively, if the life tenant and remainderman are both *sui juris* (have the capacity to manage one's own affairs) and agree, they can either sell the asset to a third party or to each other. If they cannot agree or are not *sui juris*, the Supreme Court can authorise a sale of the asset, whole or in part, under Section 48 of the *Conveyancing and Law and Property Act 1898*. This can have stamp duty and other revenue consequences.

WHAT RIGHTS AND DUTIES DOES A LIFE ESTATE CONFER ON THE LIFE TENANT?

If it is a life tenancy in respect of land the life tenant has the right to occupy the land during the life tenancy. A life tenant may lease the land for short periods without applying to the Court. During the life tenancy, the life tenant may remove fixtures attached to the land by the life tenant 'for the purpose of trade, ornament or domestic convenience'. The executors of the life tenant's estate may do so within a reasonable time after the life tenant's death.

The life tenant is responsible for maintaining the asset during their life tenancy. A life tenant has an obligation to protect the interests of the remainderman and cannot do anything that will diminish the value of the asset. However, without an obligation to repair, the life tenant is not liable for permissive waste. Permissive waste is a failure or omission to keep the asset in good condition or working order.

The life tenant does not need to keep the asset in repair or buy insurance unless the deed or will provides otherwise, but must pay council and water rates. If the life tenant fails to protect the asset by committing voluntary waste, the remainderman can bring an action for damages or an injunction. Voluntary waste is an act that makes the asset less valuable, such as pulling down a house.

WHAT ARE THE ADVANTAGES OF A LIFE ESTATE?

A Life Estate is a convenient way to apportion the benefit in land by ensuring that one beneficiary has the use of the land for the duration of the beneficiary's life and that the capital is preserved for another (often younger) beneficiary.

For example, a Life Estate in property granted to a spouse will enable him or her to have the use of the property during his or her life time. The grantor can then ensure that his or her child (or children) is the beneficiary of the asset upon the spouse's death. This is particularly advantageous where there has been a second marriage and the grantor has children from a previous marriage.

A Life Estate can also ensure that the asset remains in the family for the next generation. However, this can be defeated if the life tenant and remainderman agree to sell the land.

WHAT ARE THE DISADVANTAGES OF A LIFE ESTATE?

It is easy to create a Life Estate but many difficulties arise when the life tenant wants to deal with the asset. A Life Estate can unnecessarily tie up large amounts of capital and it can become burdensome.

The major disadvantages are:

- It is awkward to own. The life tenant may have difficulty leasing the asset or securing a loan against the asset. However, if the life tenant and the remainderman both enter into a dealing to secure a mortgage over the asset or to lease the asset, the interest created by the dealing will not be affected by termination of the Life Estate. This requires agreement between the life tenant and remainderman. Without agreement it is almost impossible to deal with the asset or to sell it to someone else other than the remainderman.
- It can cause unnecessary conflict between the life tenant and the remainderman. The life tenant has no motive to improve the asset. Where the asset is land, the life tenant may fail to keep the asset in repair. Where the life estate is in money, the life tenant may only be interested in maximising the interest he or she can receive and may not be concerned with any capital gain. It may prove difficult for a life tenant and remainderman to come to an agreement about how the life tenant will maintain the asset.
- It may provide inadequate provision for a surviving partner's proper maintenance and support. A life tenant may contest the Life Estate by bringing a family provision claim under the Succession Act 2006. For example, a Life Estate may be inadequate for a younger beneficiary who wants to manage his or her own economic affairs or decide where he or she wants to live. Alternatively, the responsibilities of upkeep and maintenance might be inconvenient.
- A Life Estate created in a will encounters the added complication of selecting a satisfactory trustee. Administering a Life Estate over what often becomes many years, increases the costs of administering the estate and is an enduring burden.

HOW CAN TEECE HODGSON & WARD ASSIST?

If you require further information or advice concerning the above please contact Richard Neal, Deborah Linwood or John Maitland using the following contact details.

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This Information sheet is intended to provide general information about current law relating to Life Estates. It is not intended to be comprehensive or to provide any specific legal and / or tax advice and should not be acted or relied upon as doing so. Professional advice appropriate to a specific situation should always be obtained.