



What is a life estate or life interest in a Will?

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A life estate is a term used to describe a type of “ownership” or use of property (or other assets) for the duration of a person’s life. It is commonly referred to as a life interest. The general concept is that the home is held for the benefit of another person to live in for their lifetime subject to certain conditions, particularly that the beneficiary to the life estate does not have any entitlement to sell, gift or bequeath the property to another person.

When are life estates commonly used?

Life estates are often used as a wealth protection measure particularly in the circumstances of blended families.

Consider this scenario

A very common scenario is where the husband has children from a former relationship, his second wife has children from her former relationship and each of them wants to ensure that their assets are inherited by their respective children.

In that situation, it might be that the husband provides, in [his Will](#), that his interest in the matrimonial home be held by his executors on the basis that his wife has a right to enjoy the benefit of his interest in the home during her lifetime and upon her death the home would be sold and the late husband's interest in the home would pass to his children.

In order to achieve this the title to the property must be held as tenants in common rather than as joint tenants.

How do I set up a life estate?

The life estate is created by the Will and needs to be carefully drafted. There is nothing in place until the person dies. But upon their death the life estate is created and is then generally administered by the Executors of the Will according to the terms that are set out in the Will.

Are there conditions which might apply to the life estate?

A person who is granted a life estate or life interest, is known as a life tenant. The main provision in a life estate is that the right is there for the lifetime of the life tenant.

But consideration also has to be given to some very practical issues:

- Who pays the council rates, the water rates and the insurance premiums?
- Who maintains the home such as keeping the gardens in order, painting the exterior of the home and so on?
- What if the life tenant does not maintain the home?
- What if the life tenant does not want to live in the home?
- Can the life tenant rent out the home and receive the income?
- What if the home becomes too big for the life tenant and the life tenant wants to downsize?
- If the property is sold for the life tenant to downsize, are all the funds from the sale to be applied to the purchase? And what happens if there are excess funds left over after the purchase?

All of these issues ought to be considered and where appropriate, included in the terms of the life estate.

What is the benefit of having a life estate?

From the point of view of the Will maker creating the life estate, the life estate potentially gives some protection about where the asset passes when the life tenant dies.

From the point of view of the life tenant, where they are a vulnerable beneficiary (such as a professional person or a director of a company and they would prefer not to hold assets in their own name for fear that those assets might be exposed to a claim for negligence or a claim of a breach of duty as a director), then there is some wealth protection for the life tenant.

Are there disadvantages in providing a life estate?

A spouse left with the provision of a life estate in respect of the matrimonial home may feel that the rights under the life estate are restrictive. The life tenant may feel that they are not in control of their accommodation (in respect of their use and enjoyment of the home) and remain answerable to the executors of the deceased estate which created the life estate.

Although the life estate might allow for the home to be sold and a substitute property purchased to which the same life interest arrangements would apply, there are some negative tax impacts. Generally, any capital gains tax or land tax exemptions in respect of the principal place of residence would apply to the home for which the life estate has been granted but those exemptions will not necessarily apply in respect of any substitute property.

Get help from a Wills and Estates lawyer

There can be complexities which need to be addressed when creating a life estate. Our estate planning lawyers are highly skilled in this area of law. They can discuss with you, your specific needs or wishes and ensure that the best option is provided to you.

For more information to arrange a consultation with a lawyer, you can call or email us.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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