

# Deed with Life Estate

## Understanding the Pros and Cons of This Handy Estate-planning Tool

By TODD C. RATNER, Esq.

**Y**our home is typically the most valuable asset that you own. Estate-planning and elder-law attorneys are frequently asked how one's home can ultimately be transferred to a client's children without the necessity of probate or exposure to long-term care expenses.

One particularly useful and common document for this is called a deed with life estate. It has many advantages; however, there are some issues that must be discussed and resolved prior to the transfer to ensure that it will be in the best interests of all those involved.

### Demystifying the Deed

A deed with a reserved life estate is used when you wish to both pass your real property to someone upon your death and also protect the property from nursing-home liens. This document may also make it possible for you to live in and maintain control of the property until your death.

The individual or individuals reserving the life estate are referred to as life tenants. The individual or individuals that receive a future interest in the property are referred to as remaindermen. The procedure to complete this transaction involves the execution of a deed, which is recorded in the appropriate Registry of Deeds.

The life tenant has certain duties and obligations to fulfill, including responsibility for paying real-estate taxes and homeowner's insurance, and making all repairs and performing all maintenance required to keep the property in good working order.

### Potential Benefits

There are significant potential benefits when utilizing a deed with life estate.

- **Probate avoidance:** Upon the death of the life tenant, the life estate is extinguished. The remaindermen become the

full owner(s) of the property, thereby avoiding probate. Avoiding probate saves the estate the expense, time, and publicity of the probate process.

- **Protection from nursing home liens:** A deed reserving



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a life estate is a gift that triggers a five-year waiting period for Medicaid benefits. Five years after the transfer, the penalty period expires, and Medicaid benefits can be obtained without having to sell the home. Therefore, this technique is best-utilized when it is unlikely that you would be admitted to a nursing home within five years.

- **Stepped-up basis:** Since your home remains an asset in your estate for estate-tax purposes, at the time of your death, the remaindermen will receive a 'stepped-up' basis in the real estate that is equal to the fair market value of the real estate at the time of your death. This means that, when the remaindermen sell the property, they should be able to avoid capital-gains tax if the property does not appreciate in value prior to the sale. This typically helps reduce or eliminate your heirs' potential tax liability.

### Inherent Risks

As attractive as this transaction sounds, there are some potential pitfalls and risks that you should carefully consider prior to executing a deed with life estate. When you

sign this document, you give an actual interest in your property to the remaindermen. From that point onward, should you ever wish to sell or mortgage the property, you and all of the remaindermen must agree to do so, and all of you would need to sign the necessary documents.

In addition, in the event that any of the remaindermen experience financial or legal difficulties, such as divorce or bankruptcy,

their interest in your property will be considered an asset in the proceedings. As such, you should assess the risk for these potential difficulties prior to transferring your property.

A deed reserving a life estate is not an option to be undertaken without serious consideration. There are other options available when it comes to protecting your home from nursing-home costs or avoiding probate. When determining your best course of action, it is highly recommended that you consult an experienced estate-planning or elder-law attorney so that you understand all considerations, options, and alternatives. ❖

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