

The Life Estate Deed—one home protection option

Gina M. Barry, Esq.



The most cherished asset in most families is the family home. In many cases, the family home is also the largest asset. Typically,

protecting that home from nursing home costs is a high priority concern as most families would choose to protect the home instead of selling the home to pay for nursing home care. For those who desire to protect the home, it may be possible to do so, especially when planning begins early.

How it works

When there is no nursing home admission in sight, a very common technique for protecting the home is a deed reserving a life estate. This is a deed in which you transfer your home (or other real estate) to the persons whom you want to have it after you pass away (remaindermen), but reserve unto yourself the right to live in your home until you pass away. Typically, the remaindermen are your children. The life estate is held by you (life tenant) and carries with it the responsibility of paying the ongoing expenses of the home, such as taxes and maintenance costs. The life estate interest guarantees you the right to exclusive possession of the property, even to the extent of being able to exclude the remaindermen during your lifetime. This exclusivity also allows you to retain any applicable tax

abatements.

Potential pitfalls

After signing a deed reserving a life estate, you will have given an actual interest in the property to the remaindermen. Thereafter, should you ever wish to sell or mortgage the property, you and all of the remaindermen would have to agree to do so, and all of you would need to sign the necessary paperwork. In addition, should any of the remaindermen experience financial or legal difficulties, such as bankruptcy or divorce, their interest in your property will be considered their asset. As such, you should assess the risk for said difficulties prior to transferring your property.

And benefits

There are several benefits to a life estate, including that when you pass away, the property will pass to the remaindermen without the necessity of probate. The property will be in your estate for estate tax purposes, but estate taxes will only be due if your estate exceeds the state or federal thresholds in effect at the time of your passing. 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 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 – unless, of course, the property appreciates to a value

greater than the date of death value prior to the sale.

The other considerations

A deed reserving a life estate is a gift that triggers a five (5) year waiting period for Medicaid benefits. Medicaid pays for nursing home care for those who qualify by meeting both clinical and financial eligibility requirements. If you require nursing home care within five (5) years of signing a deed reserving a life estate, you would have to privately pay for your care until the remaining penalty period ended or the remaindermen would have to deed the property back to you in order to “cure” the gift. Five (5) years after the transfer, the penalty period expires, and Medicaid benefits may be obtained so long as you meet the remaining eligibility requirements at that time.

If you are later admitted to a nursing home and receive Medicaid benefits, the Medicaid office will place a lien on the life estate for the value of services rendered. This lien is released upon your death leaving 100% of the property to the remaindermen. If the home is sold prior to your death, the value of the life estate will become accessible for nursing home costs and some of the remaindermen’s proceeds will likely be lost to capital gains tax. It should also be noted that the property would have to be maintained by the

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remaindermen during any period that you may be in a nursing home and qualified for Medicaid as Medicaid will not provide any allowance to maintain the property.

A deed reserving a life estate is not an option to be undertaken without serious consideration. In addition, there are other options available; therefore, a deed reserving life estate is not right for everyone. When determining your best course of action, it is highly recommended that you consult an elder law attorney so that you may choose from all of your options for protecting the family home.

Gina M. Barry is a Partner in the regional law firm of Bacon Wilson, P.C., Attorneys at Law. She is a member of the National Association of Elder Law Attorneys, the Estate Planning Council, and the Western Massachusetts Elder Care Professionals Association. She concentrates her practice in the areas of estate and asset protection planning, probate administration and litigation, guardianships, conservatorships and residential real estate. She may be reached at 413 - 781-0560 or gbarry@baconwilson.com.