The Life Estate Deed – One Option for Protecting Your Home



The most cherished, and often the largest, asset in most families is the family home. Typically, protecting that home from nursing home costs is a high priority as most families would choose to protect the home rather than sell the home to pay for nursing home care. Protecting the home may be possible, especially when planning begins early. This article will address one option for protecting your home.

When there is no nursing home admission on the horizon, 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 to the person(s) you would want to have it after you pass away (remaindermen), but reserve unto yourself the right to live in the 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, 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.

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. Thus, you should assess the risk for said difficulties prior to transferring your property.

There are several benefits to a life estate, including that when you pass away, the property will pass to the remaindermen without probate. The property will be in your estate for estate tax purposes, but estate taxes will only be due if your total gross estate value 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 its fair market value at the time of your death. Thus, when the remaindermen later 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.

A deed reserving a life estate is a gift that triggers a five (5) year waiting period for MassHealth (Medicaid) long-term care benefits. MassHealth pays for nursing home

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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 MassHealth 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 MassHealth benefits, MassHealth will place a lien on the life estate for the value of services rendered. If all you own is a life estate, this lien will be released upon your death leaving 100% of the property to the remaindermen. It should also be noted that the property would have to be maintained by the remaindermen during any period that you may be in a nursing home and qualified for MassHealth as MassHealth will not provide an allowance to maintain the property. Also, if the home is sold prior to your death, the life estate value will become accessible for nursing home costs and some of the remaindermen's proceeds will likely be lost to capital gains tax.

A deed reserving a life estate is not right for everyone and is not an option to be undertaken without serious consideration. In addition, there are other options available. 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.

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