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*Estate Planning*  
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*Living Trusts*  
*Age Discrimination*  
*Special Needs Planning & Trusts*  
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## **Life Estates or How to Deed Your House and Live There Too**



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## ***Life Estates or How To Deed Your House and Live There Too***

### ***1. What is a Life Estate?***

A life estate is an interest in property with a duration that is limited to a person's lifetime. The person (s) who has a life estate is called the life tenant. The person who will own the property following the death of the life tenant is called the remainderman.

### ***2. If Someone Has a Life Estate, Who Owns the Property?***

In short, the life tenant and the remainderman each retain certain rights in the property. The life tenant has the exclusive right of ownership and occupancy of the property during the course of his or her lifetime. When the life tenant dies, this right automatically belongs to the remainderman.

### ***3. What Are the Rights of the Life Tenant and Remainderman?***

The life tenant can live in or rent the property. He or she is responsible for maintaining the property, and paying the utilities, taxes and insurance. The life tenant is entitled to any rental income. During the life of the life tenant, the

remainderman may protect his or her interest by inspecting the property for waste or to make repairs, but the remainderman cannot force the life tenant to give access to the property for any other reason.

### ***4. How Do I Create a Life Estate?***

You create a life estate by deed or by will. You may execute a deed that conveys your property to someone else "for life". More commonly, you may execute a deed that conveys your property to the remainderman, yourself.

### ***5. What Are the Gift Tax Consequences of a Life Estate?***

If you convey your home while retaining a life estate, you have made a completed gift of the remainder interest. A federal gift tax return may be required. Gift tax may or may not be due, depending upon the value of the remainder interest and the amount of any of your previous gifts. However, if you have also retained a special power of appointment in the deed, you do not need to file a gift tax return because the gift is considered incomplete.

### ***6. What Happens if I Have to Enter a Nursing Home?***

If you are a life tenant and enter a nursing home, you can protect your life

estate or provide for your cost of care in several ways. For example, you can sign an intent to return home and have your family pay the taxes and insurance in the interim. Alternatively, you can rent your home to generate income to pay such expenses and go toward your cost of care. Lastly, you and the remainderman can sell your home and your share of the sale proceeds will go toward your cost of care.

### ***7. What Are the Medicaid Consequences of a Life Estate?***

Medicaid is a joint federal and state program which provides medical benefits as the payor of last resort. That means that you must "spend down" your assets to certain levels before Medicaid will begin to pay. Currently, a life estate will not affect eligibility as long as either your spouse resides in the home or you have signed an intent to return home. The Department of Social Services cannot place a lien on either your life estate or the remainder interest.

### ***8. How Can I Sell My Home if I Have a Life Estate?***

When you have a life estate, both you and the remainderman must sign a deed in order to sell your home. The Internal Revenue Service actuarial tables are used to determine the amount of proceeds that you and the remainderman must each receive from the sale.