QUINLIVAN & HUGHES, P.A.
ATTORNEYS AT LAW

Life Estates

ADVANTAGES

⇒ Avoids probate.

⇒ Financial benefit to remainder person.
The reminder person receives a tax basis stepped up to the fair market value of the property, as of the date of the life tenant's death. This reduces the capital gain the remainder person will incur on the sale of the property after the life tenant dies.

⇒ Life tenant retains right to possession and right to income from the property during lifetime.

⇒ If interest is created by gift, penalty imposed for Medical Assistance purposes will be less than if entire fee title were transferred.

Caution: Legislation has expanded the reach of a county's claim for reimbursement for medical assistance to non-probate assets including life estates on real estate for any life tenant dying on or after August 1, 2003, even if the deed creating the life estate was executed before August 1, 2003. The state's or county's claim or lien reaches the value of the life estate from the medical assistance mortality table based on the life tenant's age at the time of death. For example, the life estate interest of a 70-year-old is about 61% and for an 85-year-old the life estate interest is about 35%

DISADVANTAGES

⇒ Loss of control.

- If property is sold during the life tenant's lifetime, both life tenant and remainder person (and spouses) must sign deed and proceeds are allocated between parties.
- If remainder person dies, probate proceedings might be required.
- If remainder person files bankruptcy, becomes divorced, or has judgments or liens filed against him or her, the remainder person's interest will be affected.

⇒ Gift of remainder interest does not qualify for annual gift tax exclusion.

⇒ A life tenant is responsible for repairs.
But the remainder person is responsible to contribute toward improvements such as remodeling. The distinction can be blurred.

⇒ Remainder person receives a carryover basis.
This is equal to a fraction of the life tenant's basis for the purpose of calculating the capital gain realized by the remainder person on a sale of the property during the life tenant's life Since the property is not likely to be the principal residence of the remainder person, the exclusion of capital gain on the sale of a principal residence will generally not be available to the remainder person.

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