



Life Estate

Definition – An estate measured in duration by the lifetime of a natural person.

Why do life estates matter?

Often life estates are used for simple estate planning purposes, so the entire fee automatically vests in a child, or other beneficiary, after a parent dies without the need for probate. With life estates, it is important to remember that it is a form of joint ownership. The life estate holder and the individuals who will obtain the entire fee after the life estate holder passes both have interests in the property that may require signature of both if the property is being sold or a new mortgage placed upon it.

Are there different types of life estate scenarios?

Yes. You will want to consult with local underwriting counsel to see whether these life estates are available in your state.

Basic Life Estate with Remainder: The most common life estate scenario is where a grantor grants a life estate to a person (or co-owners) and the remainder interest in a different person (or co-owners).

Life Estate with Reversion: A grantor may also grant a life estate to a person but retain a reversionary interest. When the life estate holder passes, the interest reverts back to the grantor.

Life Estate Pur Autre Vie: This is a life estate where the duration of the life estate is measured in a person who is not the life estate holder.

Enhanced Life Estate or Lady Bird Deed: A type of life estate that is used in some jurisdiction where the life estate holder retains the right to convey the property (among other powers) without the consent of the remaindermen.

How are life estates created?

They will be created via a deed of conveyance or through a will where the testator has decided how his or her property should be vested after probate proceedings. Life estates have special language that informs the reader the grantor or testator intended a life estate including, but not limited to t “A for life,” “A during his/her life,” “A during the life of B,” etc.

Can a life estate holder or remainderman transfer or encumber his or her interest?

Yes, however, this is unusual because the new owner would not own, and the lender would not have a mortgage on the entire fee simple interest. If you are asked to transfer or encumber only a life estate interest or remainder, you should contact your local underwriter to discuss.

Merger?

If a person obtains ownership of a life estate and remainder or reversion, the interests merge into one interest and the life estate ceases to exist.

The person whose life the life estate was based upon has passed. What happens now?

The life estate is terminated, and the interest passes as a matter of law to the reversioner or remainderman. To reflect this in the public record, an affidavit, death certificate, or statement in an instrument should be recorded to show the termination of the life estate.