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A Professional Association

LIFE ESTATE RESERVATIONS

Advantages and Disadvantages

If you transfer property to your children, reserving the right to use the property until you die, you are known as the <u>life tenant</u> and your children are known as <u>remaindermen.</u>

ADVANTAGES

1. If you do this and do not need to apply for medical assistance for a period of 60 months, most but not all of the remainder interest in the residence will be preserved from the reach of the medical assistance laws. Pursuant to a law passed by the Minnesota legislature in 2003, the State of Minnesota will now claim a lien on the remainder interest in the land based on a medical recipient's age at the date of death.

2. Transferring your residential real estate and reserving a life estate will eliminate the need for a probate proceeding upon the death of the life tenants as to that real estate. If there are other probate assets held in your name alone, probate will not be entirely eliminated. However, real estate is the most common type of asset which requires probate proceedings and there are easy and inexpensive ways to avoid probate for non real estate assets.

3. So long as you reserve a life estate in the property you transfer and continue to occupy the property, your real estate taxes will not go up because of the transfer. Your real estate taxes may go up if everyone's real estate taxes go up, but under current law it will not go up because of transferring the property and reserving a life estate.

4. When you reserve a life estate, there is no way that the remaindermen or their creditors can force the sale of the life estate under Minnesota law.

5. When a life estate is reserved, there will be no capital gains taxes if the real estate is sold shortly after the life estate ends.

DISADVANTAGES

1. If you wish to sell or mortgage your property, it may be awkward because all of your children <u>and their spouses</u>, must sign the deed or mortgage.

2. If any of your children have a judgment or tax lien it will attach to their remainder interest. This will usually mean that it must be satisfied before the property can be sold or mortgaged, resulting in a loss to your child. If a child later develops financial problems and files bankruptcy, he or she will lose their remainder interest. In the event your child needs to apply for medical assistance, the child's remainder interest will have to be sold or transferred before the child will be eligible for medical assistance.

3. If any of your children have marital problems which end in divorce, their remainder interest will figure in your child's property settlement and may pose a problem.

4. In the event of a sale of the property before your death, if there is a taxable gain, your children may have to pay capital gains income tax on a portion of the gain.

5. In the event of a sale of the property during your lifetime, your children will receive part of the sale proceeds and they will have no legal obligation to return their portion of it to you.

6. If upon entering a nursing home, the property is sold, it will be necessary to use a portion of the sale proceeds to pay for your nursing care expense. The percentage is determined by actuarial tables used by the Minnesota Department of Human Services.

7. If the deed conveys your property to your children as tenants in common and any of your children die before you, it will be necessary to probate that child's estate. Usually, a remainder interest owned by a deceased child will go to his or her spouse, if they are married. If you have conveyed the property to your children as joint tenants and one of your children dies, that deceased child's share will go to your surviving children as surviving joint tenants. This will not require a probate proceeding.

8. The property will be included in your taxable estate for estate tax purposes.

9 When you create a life estate, a gift is automatically made to your children. The gift is known as the "remainder interest". This gift disqualifies you for medical assistance (help with nursing home bills) for a period of time up to 60 months. Sufficient cash assets must be reserved to pay for nursing care during that time.