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Life estates in estate planning: pros and cons

A “life estate” is a type of property ownership that gives one person, known as a “life tenant,” ownership rights in the property while they are still alive. Once that person passes away, their designated “remainderman” – often a son, daughter or other close relative – becomes owner of the property.

During the life tenant’s lifetime, he or she has the exclusive right to live in the home and is typically responsible for maintaining the property and paying property tax and insurance. If the property is sold, the proceeds are divided between the life tenant and the remainderman based on interest rates and the age of the life tenant at the time.

Why is this good to know? Because a life estate can be a very useful estate planning tool.

For one thing, creating a life estate for yourself ensures your house passes directly to the person of your choice without them having to go through the cost and hassle of probate. Additionally, the property won’t be subject to estate taxes because it’s not part of your estate.

Another consideration is that if you eventually need to go to assisted living, a nursing home or some other form of long term care, owning your home as a life estate gives you protection against having to sell your home to meet Medicaid eligibility. This is because having a life estate in your home means the property doesn’t count



against your Medicaid eligibility, unless you established the life estate within five years of applying.

Yet another advantage is that when you die, your house is valued at the date of your passing for tax purposes rather than the date you bought your house. This means if your remainderman decides to sell the house they will pay less in capital gains taxes.

Still, creating a life estate has potential pitfalls.

For example, you could be impacted by your remainderman’s financial problems. Let’s say they’re dealing with a lawsuit or collection action because they’re in debt or they owe back taxes. A lien could be filed against the property. While nobody could force you to

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Help the senior in your life avoid ‘sweetheart scams’



Being a senior can be a lonely existence, especially for those who are recently widowed or who have moved into assisted living or nursing homes. Some seniors deal with their loneliness by spending a lot of time on the internet. Unfortunately, the internet is infested with scammers and fraudsters, and seniors

are more likely than their younger counterparts to have money, lack tech-savviness and feel lonely and isolated. That makes them the perfect victim for “sweetheart scams” or “lonely heart scams.”

A “sweetheart scam” is exactly what it sounds like. The scammer, posing as a potential romantic interest, strikes up an online relationship with their target on social media sites, in chatrooms or in internet discussion forums, gradually earns the target’s trust, and eventually convinces the target that they are in love, playing on that person’s emotions to steal money from them.

In some cases sweetheart scammers have drained their targets of their life savings. The costs are considerable; the FBI reports that in 2020, its Internet Crime Complaint Center received reports from nearly 7,000 elderly victims who lost nearly \$300 million in the aggregate to sweetheart scams.

But there are steps you can take to help the elders in your life avoid such scams. First, you can emphasize never to send money to someone they meet on the internet and drive home the point that some who was really interested in them romantically would not be pressuring them to send money.

It’s a good idea to monitor the internet sites your aging relatives are visiting.

You should also emphasize to your senior friends and family members the need to be wary of anyone they meet online who is not willing to meet in person. It’s also especially important to stress that they must never share personal information online with someone they’ve never met, because that person could use the information to perpetrate an identity theft and steal their assets.

Finally, it’s a good idea for you and other family members to monitor the internet sites your aging relatives are visiting.

If an elderly person in your life has been victimized by a sweetheart scammer, talk to an elder lawyer in your area about potential actions you could take.

Respite care: What is it and who pays for it?

Transitioning an elderly or disabled relative to long-term care can be a difficult, painful decision. That’s why so many people look after elderly and/or disabled relatives themselves rather than placing their loved one in a facility where they fear they won’t get the same care. However, caring for a relative is a full-time job itself and everyone needs a break to take care of personal business or just decompress to stave off burnout.

That’s where “respite care” might come into play.

Respite care simply means having an informal caregiver take over your loved one’s care temporarily – whether it’s a matter of days, weeks or months – so

you can attend to personal needs.

The provider could be a relative or a friend, but could also be someone who is hired through a private organization that provides such services.

Note that respite care can be provided in a variety of settings. In addition to in-home respite care, you might consider an “adult day center” that provides day care for older adults, though this isn’t the best bet if you need to travel. In that case, there are respite care facilities that allow a person to stay overnight for a short-term stay.

Respite care can be expensive, however. Home respite care services and short-term assisted living facilities charge on average about \$150 a day, while adult day care costs about \$75 a day. You or your loved one may have to pay for this out of your own pocket too, since private health insurance plans vary as to how much respite care they’ll cover (if they even cover it at all).

Under certain circumstances, however, Medicaid may cover respite care, depending on the state you live in and the rules it has in place. Medicare is another option, but it only covers respite care for those who qualify for hospice care. That means you can only get it covered if your loved one is terminally ill, is expected to live no more than another six months and has opted not to treat their illness further.



Don't assume that you're bound by a nursing home arbitration agreement

Often when someone moves into a nursing home, they will sign a "mandatory arbitration agreement." Such agreements, which are often buried within admission paperwork, take away a resident's right or the right of their family to hold the nursing home accountable in court for any wrongdoing or carelessness that might occur, such as being given the wrong medication or suffering broken bones from falls resulting from lack of supervision.

Instead, the resident agrees to bring the dispute before a private "neutral" third party, who decides the outcome in a proceeding where normal rules of evidence do not apply and there is no right to appeal an unfavorable decision. Additionally, arbitrators are typically paid by the nursing home and value repeat business, so there's a risk that they're not as neutral as advertised.

Still, even if you or a loved one in a nursing home have signed an arbitration agreement, it's worth talking to an attorney about your rights. Because in some cases, courts have refused to enforce them.

For example, when a South Carolina woman moved into a nursing home, her son signed her admission paperwork, which contained a clause saying it constituted "the entire agreement and understanding" between the parties. He also signed a separate one-page arbitration agreement.

The woman died from sepsis caused by an improperly treated leg wound that led to an infection. Her family went to court to try and hold the nurs-



ing home accountable. The nursing home asked the court to enforce the arbitration clause and send the case to arbitration.

But a judge refused to enforce the provision. Specifically, the judge pointed to a state law that gives a person with an established relationship with an adult patient the authority to make healthcare decisions on the patient's behalf when a patient isn't capable of making their own decisions.

According to the judge, the law empowered the son to sign the admission agreement on his mother's behalf but not the separate arbitration agreement, since signing such an agreement didn't constitute a "healthcare decision." After all, his mother could get the healthcare services covered in the admission agreement without agreeing to arbitrate.

The South Carolina Court of Appeals recently affirmed the decision. The law may differ in other states, however, which is why you should bring such questions to an elder law attorney.

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Life estates in estate planning: pros and cons

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give up your rights in the property, the IRS or your remainderman's creditors could collect on that lien if you were to sell the property while you're still living.

Meanwhile, if you wanted to refinance your home, the fact that your property is subject to a life estate could affect the terms of your financing in a negative way.

A further concern is that should your remainderman die before you, their interest would pass to their heirs. This means you would be owning the

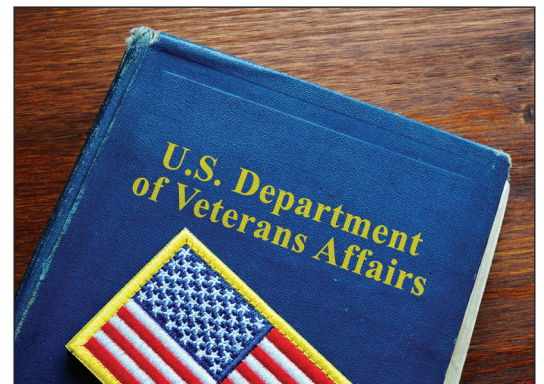
property jointly with your remainderman's heirs for the rest of your life whether you're comfortable with that or not. This could cause complications if you want to sell or mortgage the property, since a life tenant can't do so without the remainderman's agreement (and vice versa).

These are just a few considerations in determining whether a life estate is appropriate for your situation. If you're thinking of going forward, it's important to meet with an elder law attorney where you live to discuss in more detail.

Little-used benefit could be a boon for vets

Every military veteran and every surviving spouse of a military veteran should be made aware of VA Aid and Attendance. This is a military pension benefit offered by the Veterans Administration that can provide a useful tax-free income stream and help offset the cost of long-term care. But too many veterans don't apply for because they don't know about it.

VA Aid and Attendance benefits should not be confused with veteran's disability benefits, which are calculated based on a veteran's disability rating. To qualify for VA Aid and Attendance, a veteran does not need a disability rating, they just need to have served during wartime and be below a certain income/asset threshold. This monthly benefit can range from \$1,317 for a surviving spouse to \$2,050 for a veteran in need of homecare with a surviving spouse.



If you are a veteran or a surviving spouse of a veteran who served even a single day during wartime, you should meet with an elder law attorney to see if you qualify. And you should do so even if you think your assets and income level might be too high, because careful planning could help you meet eligibility requirements.