TFR-06 Life Estates

Version 2 – 17/10/2018

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1 Creation of Life Estates and Estates in Remainder

Estates for life and estates in remainder must be created by transfer.

In common law and statutory law, a life estate is the ownership of land for the duration of a person's life. In legal terms it is an estate in real property that ends at death when ownership of the property may revert to the original owner, or it may pass to another person.

Where the proprietor of any land desires to either create in himself or herself or, another, a life estate and an estate in fee simple in remainder in another or himself or herself the preferred method is that the required effect be accomplished in the one document.

An existing owner may elect to create a life interest. A transfer transferring an estate for life, or remarriage, to a person with an estate in remainder expectant upon the death or remarriage of that person to another, is registrable.

The appropriate panels of such transfers would show:

Estate: fee simple

Transferor: A

Consideration: as the case requires

Transferee: A of (address) an estate for life and B of (address) an estate in fee simple in remainder expectant upon the death of A;

or

Transferee: B of (address) an estate for life and A of (address) an estate in fee simple in remainder expectant upon the death of B.

An Estate for Life and Remainderman may also be created at the request of purchasers, one of
whom is to be the life tenant and the other is to be the remainderman.

The appropriate panels of such a transfer would show:

Estate: fee simple

Transferor: A (Seller)

Consideration: as the case requires

Transferee: (1) B of (address) an estate for life and (2) C of (address) an estate in fee simple in remainder expectant upon the death of B.

Note: More than one person can hold a life tenancy. The life tenants may also hold that interest as Joint Tenants or hold equal/unequal shares.

It is possible to transfer an estate for life or an estate in fee simple in remainder.

The appropriate panels of such transfers would read:

Estate: an estate for the life of B; or fee simple in remainder expectant upon the death of A

Transferor: B or A

Consideration: as the case requires

Transferee: C of (address).

On registration of the transfer the title will show all the proprietors, and their various estates and tenancies.

Successive life estates may also be created, for example: a life estate to A and on A’s death, a life estate to B with an estate in fee simple in remainder expectant upon the death of the Survivor of A and B to C.

The registered proprietor may also transfer a life estate to one person to be held during the life of a second person (estate pur autre vie).

The appropriate panel of such a transfer would read:

Estate: an estate for the life of C

Transferor: A

Consideration: as the case requires

Transferee: B of (address).

2 Transfer by Life Tenants

The life tenant may transfer his or her interest to another person. However, as the interest being transferred is limited to the life of the life tenant, the interest of the purchaser or transferee is again an estate pur autre vie. On the death of the first life tenant the interest of the registered proprietor of the life estate ceases. In a transfer of this nature the appropriate panels should read:

Estate: an estate for life of A
Transferor: A
Consideration: as the case requires
Transferee: C of (address).

3 Transfer by Remainderman

The interest of a remainderman may be transferred without disturbing the interest of the life tenant. In a transfer of this nature the appropriate panels should read:

Estate: an estate in fee simple in remainder expectant upon the death of C
Transferor: A
Consideration: as the case requires
Transferee: B of (address).

4 On the Death of Joint Life Tenants

An Application by Survivorship may be lodged\(^1\). See DEC-02 Survivorship Applications.

\(^1\)[Guide updated to insert sentence on 17/10/2018]

5 On the Death of a Life Tenant

Where any person registered as proprietor of an estate for life dies, the person or persons registered as proprietors of the estate in remainder must apply to be registered as proprietors of the estate in fee simple in possession, i.e. the whole interest in the land. Although the interest of the life tenant in the land ceases immediately on death and the interest of the remainderman is immediately enlarged, the legal estate does not change until the required application is made and the Register amended.

The form to be used is a blank application Form and the application is made by the remainderman or remaindermen. The correct words to be used in the third section on the Form are:

“to be registered as the proprietor (or proprietors) of an estate in fee simple in possession, the life tenant (name) having died on (date of death).”

In support of the application the following should be supplied:

A certified copy of the certificate of death of the deceased life tenant as issued by the Registrar General or an office copy of a Grant of Probate or Letters of Administration.

and

A statutory declaration of the remainderman or one of them if more than one. This declaration should:

identify the declarant
identify the land being dealt with by reference to its volume and folio numbers in all cases, and where a mortgage, charge or lease of land is being dealt with, also by the number of that instrument

introduce the certified copy of the certificate of death or Grant of Probate produced as evidence of death

and

identify the deceased life tenant with the person shown on the evidence of death produced. Any differences of name, address or occupation must be explained.

The duplicate certificate of title containing the life estate must be produced. Where the life estate is held in a separate certificate of title it must be produced for cancellation. The duplicate certificate of title containing the estate in remainder or the duplicate certificate of title with both estates is suitably endorsed with a memorandum of the application or where required, a new title is created and registered.²

²[Guide updated to replace contents of section 5 on 17/10/2018]

6 On Death of the Remainderman

Where the person holding the Remainderman interest (ultimate owner) dies prior to the life interest holder, his or her Estate (Executor/Administrator) may lodged an Application by Personal Representative (Transmission Application).

The Life Estate will remain until a Transfer is lodged by the Life Tenant and the Where the person holding the Remainderman interest (ultimate owner) dies prior to the life interest holder, his or her Estate (Executor/Administrator).

7 On Death of the Life Tenant and the Remainderman

In those instances, where the person/s holding the Life Estate and the Remainderman are both deceased. The Executor/Administrator of the Remainderman may make Application pursuant to Death of a Life Tenant (see DEC-02 Survivorship Applications) accompanied by the standard Application by Personal Representative. (See DEC-03 Transmission Applications).

The Executor/Administrator can then sell or transfer the land to the beneficiaries, or as the case requires.

8 Also see

- SIG-01 Signing of Documents
- DEC-02 Survivorship Applications