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Life Estate Deeds: An Estate Planning Option?

There are many estate planning tools available to you to help establish a comprehensive plan for the management and disposition of your estate. One of those tools comes out of Ye Olde England, and that is a *life estate deed*.

A life estate deed can be used by you to transfer a particular real estate parcel, such as your home, to a loved one while allowing you to maintain control over the property for the rest of your life. A deed is actually created between you, as grantor, and you, as grantee, which provides that upon your death, that the real estate automatically transfers to the remaindermen, your loved ones.

Life estate deeds come in two basic flavors – with powers and without powers. The powers include the power to sell, convey, transfer or mortgage the real property.

If you execute a life estate deed with powers, you will retain the right to sell, convey, transfer or mortgage the real estate without having to obtain the consents of the remaindermen. This kind of transfer is not really a gift since you can change your mind and transfer the property back into your own name.

If a life estate deed without powers is created, you will not be able to change your mind later unless all the remaindermen agree to such a change. A life estate deed without powers is like a gift, and has some of the same tax and long-term care planning benefits of a gift.

In both cases, unless the deed is changed by you, upon your death, the real estate belongs to your loved ones. And, in both cases, there should be no adverse

tax consequences regarding capital gains treatment unless the property is sold during your lifetime. Why would this tool be useful to you in your estate planning? One reason is that the real estate, upon your death, will not be subject to probate; it already belongs to your beneficiaries. Another reason is that you have assurance that your intended beneficiary will actually receive the real estate. Finally, in some long-term care planning scenarios, the use of a life-estate deed can be useful for qualifying an individual for governmental benefits in a more expeditious manner.

But, there are pitfalls with the use of such a deed that removes it from most persons' estate planning options. The ups and downs of life changes our estate planning goals. What seems like a good idea at one time, can produce a disastrous outcome at a later date. If circumstances change, it would be necessary to go through the formality of preparing a new deed, and recording that deed at the court house. It may even be necessary to get the beneficiaries to agree to any change, which may not always be possible, especially if a beneficiary has become disabled.

In recent years, using revocable living trusts can provide many of the same benefits of life estate deeds, but they can be drafted to anticipate changes in family circumstances, such as deaths, disabilities, or other plan-changing events. They are also much easier to amend if future circumstances so require. Thus, revocable living trusts have, in large part, replaced the use of life estate deeds in most persons' estate plans.

Life estate deeds still have some currency in planning, and clients should feel to discuss these planning tools with their attorneys during the estate and long-term care planning process.