



the Facts of **Life** ESTATES

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 **OLD REPUBLIC TITLE**

What is a Life Estate?

M.G.L. c. 183, § 46

Section 46. If land is held by one person for life with a ***vested remainder*** in tail in another, the tenant for life and the remainderman may convey such land in fee simple by their deed or deeds in common form, as if the remainder had been limited in fee simple; and such deed or deeds shall bar the estate tail and all remainders and reversions expectant thereon.

The Grantor herein reserves from the above-described conveyance of the premises to the Grantees a life estate for the benefit of the Grantor, pursuant to which the Grantor shall have the right, during her life, to occupy, improve, rent, mortgage or otherwise use the premises as she may elect, **but expressly excluding** the right to partition. The Grantor shall be responsible for and pay all taxes, insurance, maintenance and repairs in connection with the above-described property.

Lady Bird Deed

Lady Bird Deeds – Special Power of Appointment

The Grantor also reserves the power to appoint, in whole or in part, the property herein conveyed to any person or persons in such proportions, outright or upon such trusts, terms, and conditions as the Grantor may specify by deed recorded at the appropriate registry of deeds, or by will or codicil thereto making express reference to this power. The Grantor may not appoint the said property to the Grantor, the Grantor's creditors, the Grantor's estate or the creditors of the Grantor's estate. A release, in whole or in part, of the life estate, power of appointment or either reserved hereunder shall be effective when recorded at the appropriate registry of deeds. The Grantor's attorney-in-fact acting under a durable power of attorney may exercise or release this power of appointment or release the foregoing life estate to the same extent as the Grantor. The failure to record notice of any exercise of this power of appointment by Grantor's will and codicil at the appropriate registry of deeds within ninety (90) days of the Grantor's death shall be conclusively treated as a default in the exercise of said power. If the Grantor does not exercise this power of appointment, title shall remain in and be held by the Grantees.

Homestead Considerations

Can both the life tenant and remainder claim homestead in the same residence?

Yes, M.G.L. c. 188, § 1 definition of “Owner” specifics both the life tenant and remainder are entitled to an estate of homestead.

Added by Amendment in 2022 with the effect of mooted *In Re Dougan*, Bankruptcy case 11-19503; *In Re Gordon*, 479 B.R. 9, 13 (Bankr. D. Mass. 2012), and *In Re Bertone*, Bankruptcy case 12-12071 (2013).

Can the homestead exemption amounts vested in both the life tenant and remainder be “stacked”?

It was intended that no one person may ever claim more than one exemption amount, although that specific language is not written into the statute for a life estate/remainder situation.

Sale after Life Tenant Has Died

Proof of death –
see REBA Title Standard 71

Estate Tax Considerations

Was the life estate ***retained*** or
granted?



Sale when life tenant is still alive

Most current deed to Mom and Dad for life, remainder in a Trust (2 of 4 children are trustees and all 4 children are beneficiaries).

Dad died 2 years ago. Mom is currently in the memory care unit at assisted living, although she did execute a power of attorney prior to Dad's death.

When the Life Tenant Can't Sign the Deed

Power of Attorney – see REBA Title Standard 34

Basic POA Checklist:

1. Is use of the POA necessary?
2. Is it presently in effect?
3. Is it durable?
4. Does it authorize the contemplated transaction?
5. Is it properly executed and acknowledged?

Conservatorship

MGL c. 190B, s. 5-423 provides in relevant part:

(d) A conservator may not sell, mortgage or grant options in real estate, except as provided in chapter 202.

Valuation of Life Estate

Actuarial tables | Internal Revenue Service

<https://www.irs.gov/retirement-plans/actuarial-tables>

Publication 1457 (Rev. 6-2023)

<https://www.irs.gov/pub/irs-pdf/p1457.pdf>

Leimberg, LeClair & Lackner, Inc. > Software > NumberCruncher > Overview

<https://leimberg.com/Software/NumberCruncher/Overview>

ADDENDUM TO SETTLEMENT STATEMENT

SELLER'S PROCEEDS

PROPERTY, CLOSING DATE, PARTIES	LIFE TENANT	REMAINDER
123 WASHINGTON STREET, SOMEWHERE, MA		
SALE DATE: JULY 31, 2017	NAME	NAME(S)
SMITH TO JONES	AGE 82 ON 7/1/17:	
PERCENTAGE PER IRS TABLES	14.51%	85.49%
SALE PRICE	364,500.00	\$52,899.89
		\$311,600.11
SHARED CLOSING COSTS		
1. Closing credit to Buyer	5,500.00	
2. Broker's commission	17,950.00	
3. Transfer tax	1,662.12	
4. Smoke Certificate	50.00	
TOTAL SHARED CLOSING COSTS	25,162.12	3,651.02
		21,511.10
ADJUSTED SALE PRICE	339,337.88	49,248.11
		290,089.77

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ADJUSTED SALE PRICE	339,337.88	49,248.11	290,089.77
CLOSING COSTS PAID ONLY BY LIFE TENANT			
1. Real Estate Tax adjustment	328.07		
2. Final water, sewer, trash	85.51		
3. Basement Technologies	-40.16		
4. Trash cost adjustment	-16.85		
5. Record Power of Attorney	76.00		
6. Wire fee	50.00		
TOTAL AMOUNTS PAID ONLY BY LIFE TENANT	482.57	-482.57	
CLOSING COSTS PAID ONLY BY REMAINDERMAN			
1. Wire fee	50.00		-50.00
TOTAL PROCEEDS DISBURSEMENT	338,805.31	48,765.54	290,039.77
REMAINDERMAN BY		LIFE TENANT BY	
XXXXXXXXXXXX		XXXXXXXXXX, Attorney in Fact	

SALE DATE: JULY 31, 2017		NAME	NAME(S)
SMITH TO JONES		AGE 82 ON 7/1/17:	
PERCENTAGE PER IRS TABLES		14.51%	85.49%
SALE PRICE	364,500.00	\$52,899.89	\$311,600.11
SHARED CLOSING COSTS			
1. Closing credit to Buyer	5,500.00		
2. Broker's commission	17,950.00		
3. Transfer tax	1,662.12		
4. Smoke Certificate	50.00		
TOTAL SHARED CLOSING COSTS	25,162.12	3,651.02	21,511.10
ADJUSTED SALE PRICE	339,337.88	49,248.11	290,089.77
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Life Estates and Partition Rights

MGL c. 241, s. 1

Section 1. Any person, except a tenant by the entirety, owning a present undivided legal estate in land, not subject to redemption, shall be entitled to have partition in the manner hereinafter provided. If such estate is in fee, he shall be entitled to partition in fee; if a life estate or a term for years, he shall be entitled to partition thereof to continue so long as his estate endures. A life tenant or a tenant for years of whose term at least twenty years remain unexpired may, in the discretion of the court, have partition of the fee. The existence of a lease of the whole or a part of the land to be divided shall not prevent partition, but such partition shall not disturb possession of a lessee under a lease covering the interests of all the co-tenants.

Life Estates and Partition Rights

Simonson/McDevitt v. Roderick et. al. (Land Court)

2004 Deed:

An undivided one-half interest to Arlene McDevitt . . .and an undivided one-half interest to the said Michael C. McDevitt and Julie McDevitt, as husband and wife tenants by the entirety

Arlene McDevitt dies January 7, 2010

Per will:

I give a life estate to my son, Michael C. McDevitt and his wife, Julie, and to each of them, meaning and intending that each may reside and occupy said property for the remainder of each of their lifetimes, and I give and devise the remainder ownership interests to my other three children, Mary A. Larson; Theresa A. Walsh; and Melissa M. Roderick.

Michael McDevitt dies July 12, 2020 and then Julie files petition to partition in Land Court

The petition is dismissed:

“Ms. McDevitt holds and undivided $\frac{1}{2}$ interest in the property in fee simple, and a life estate in the remaining $\frac{1}{2}$ of the property . . . Therefore, partition cannot lie, as there is no adversary against whom Ms. McDevitt can petition for partition of the property.”

Julie McDevitt conveys her life estate interest to her son, Jayden Simonson and files an amended petition

Now, she can pursue partition.

The court ENTERS an interlocutory decree pursuant to G.L. c. 241, §10 that petitioner Joseph Doucette as attorney in fact for Julie McDevitt owns a 50% tenancy in common interest in the property. The remaining 50% tenancy in common interest in the property is held by Jayden Simonson in a life estate measured by the life of Julie McDevitt, with remainders in the other respondents in equal $\frac{1}{6}$ shares. Therefore, the plaintiff is entitled to have partition for the share claimed.

(This decree was appealed, which was pending when the parties settled.)

Life Estates and Title Insurance Considerations

ALTA 1992 policies (prior to 2006) –

(a) “insured”: the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

...

2. *Continuation of Insurance After Conveyance of Title.*

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

2006 – Standard ALTA Policy

Standard ALTA Policy

(i) The term "Insured" also includes

- (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
- (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
- (C) successors to an Insured by its conversion to another kind of Entity;
- (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - 1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - 2) if the grantee wholly owns the named Insured,
 - 3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - 4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

2006 – Enhanced Owner's Policy

It applies only to a one-to-four family residence and only if each insured named in Schedule A is a Natural Person. If the Land described in Schedule A of the Policy is not an improved residential lot on which there is located a one-to-four family residence, or if each insured named in Schedule A is not a Natural Person, contact Us immediately.

...

- a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else.
- b. This Policy also insures:
 - 1) anyone who inherits Your Title because of Your death;
 - 2) Your spouse who receives Your Title because of dissolution of Your marriage;
 - 3) the trustee or successor trustee of Your Trust or any Estate Planning Entity created for You to whom or to which You transfer Your Title after the Policy Date;
 - 4) the beneficiaries of Your Trust upon Your death; or
 - 5) anyone who receives Your Title by a transfer effective on Your death as authorized by law.

2021 – Standard ALTA Policy

“Insured”:

- (a) The Insured named in Item 1 of Schedule A;
- (b) the successor to the Title of an Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
- (c) the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
- (d) the successor to the Title of an Insured resulting from its conversion to another kind of Entity; or
- (e) the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is:
 - (1) an Affiliate;
 - (2) a trustee or beneficiary of a trust created by a written instrument established for estate planning purposes by an Insured;
 - (3) a spouse who receives the Title because of a dissolution of marriage;
 - (4) a transferee by a transfer effective on the death of an Insured as authorized by law; or
 - (5) another Insured named in Item 1 of Schedule A.

2021 – Enhanced Owner's Policy

This policy covers You only if the Land is improved with an existing one-to-four family residence and each party named in Item 1 of Schedule A is a Natural Person or Estate Planning Entity.

...

- a. Your coverage under this policy continues as of the Date of Policy, so long as You:
 - i. own Your Title;
 - ii. own an obligation secured by a purchase money Mortgage given by a purchaser from You; or
 - iii. have liability for warranties of title given by You in any transfer or conveyance of Your Title.
- b. This policy also insures:
 - i. anyone who receives Your Title by operation of law upon Your death;
 - ii. Your spouse who receives Your Title because of a dissolution of Your marriage;
 - iii. Your Estate Planning Entity to which You transfer Your Title after the Date of Policy;
 - iv. any beneficiary or distributee of Your Estate Planning Entity who receives Your Title;
 - v. anyone who receives Your Title by a transfer effective upon Your death as provided by law; or
 - vi. another Insured named in Item 1 of Schedule A.

QUESTIONS?

