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WHAT IS A LIFE ESTATE DEED?

When you transfer your property, for example to your children, subject to a retained Life Estate in the Property, you are not transferring or giving to your children your entire interest in the Property. Instead, you are giving your children *today* the right to own the property *after you pass away*. Your interest in the Property will be called a "Life Estate". Your children's interest in the Property will be called a "Remainder Interest".

Benefits:

- ❖ When you transfer the Property subject to a Life Estate, you are starting the Transfer Penalty Period for the Medicaid 5-year Look Back Period as to the Remainder Interest. Assuming this transfer is the only transfer that you make, then after the 5-year Look Back Period the transfer of the Remainder Interest will no longer generate a penalty when making an application for Medicaid.
- ❖ If you die while owning the Property (for deaths in 2011 going forward), the existence of the Life Estate will cause the Property to be included in your taxable estate. To the extent that your taxable estate, including the Property, exceeds \$675,000, a New Jersey estate tax may be due.
- ❖ Since you own the Life Estate your children cannot evict you from the Property. You have the right to live there until you die.
- ❖ As the owner of the Life Estate, you will continue to be responsible for all maintenance and upkeep on the Property. You will be responsible for paying all real estate taxes. This means that you also continue to be eligible for any property tax rebates.

Drawbacks:

- ❖ The obvious drawback is that you are no longer the sole owner of the Property. In the event you wish to sell the Property, you must obtain the consent of your children as owners of the Remainder Interests. In the event one of your children is involved in the lawsuit, the Remainder Interest in your Property is an asset of your child, which may be subject to the claims of

creditors. This risk can be minimized by a trust holding title to the Remainder Interest, not your children.

❖ In the event you wish to sell the Property during your lifetime, you will only be entitled to a portion of the sales proceeds equal to the value of your Life Estate interest in the Property at the time of the sale. For example, if your Life Estate interest is actuarially determined to have a value equal to 25%, and you sell the Property for \$400,000, then you will only be entitled to \$100,000 of the sale proceeds. You will not have to pay any capital gains tax upon the receipt of sales proceeds because the Property is your primary residence. Your children will be entitled to the other 75%, or \$300,000 of the sale proceeds. That amount will be subject to capital gains tax. **As such, there is a significant disincentive to sell the property during your lifetime after establishing the Life Estate.**

❖ Additionally, using a product called a "reverse mortgage" you might be able to draw equity out of the house, either as a lump sum, or as incremental payments, to provide you with the funds to pay for your care so you may remain at home. Reverse mortgages are commonly used to provide a source of funds to be able to pay for caregiver services at home, to avoid having to enter a nursing home. While there are many other pros and cons to reverse mortgages, one fixed requirement is that all of the owners of the Property be at least 62 years of age. If any of your children are under the age of 62, then you will not qualify for a reverse mortgage.

The Tax, Trusts & Estates and Elder Law Department of FSK&S consists of attorneys, paralegals and support staff experienced with the legal needs of the elderly. Our attorneys work with a variety of legal tools and techniques to meet the goals and objectives of the older client. We represent clients in Elder Law matters from our offices in *Parsippany* and *Toms River*. Henry H. Fein, Esq. and Deirdre R. Wheatley-Liss, LL.M. (Taxation), CELA* are shareholders of our Tax Trusts & Estate and Elder Law Department and work together with Stacey Crowell Maiden, Esq., of counsel to the firm, and Steven A. Loeb, Esq. to help families with questions about "What happens to my assets as I age."

*Certified Elder Law Attorney by the American Bar Association accredited National Elder Law Foundation.