

Life Estates ~ Resurgence in Popularity



By Brian Madigan LL.B.

For the last 30 years they were relatively unpopular. Now, they're back.

The following bequest would be set out in a Will and later recorded in the Deed:

“W, for the life of W

then to B and C as joint tenants upon A's death”

This is actually rather simple in approach. Actually, this was the old system of transferring property for centuries. The problem is, that it is now relatively uncommon. As an estate planning device it was popular in the '40's, '50's and 60's. A house registered in the name of the husband (sole breadwinner in the household) would be left to the surviving widow for her lifetime, and then the two children upon her death.

Wills frequently contained those types of provisions until 1 January 1972 which was the date capital gains tax came into force. Thereafter, it made good sense to leave it outright to the surviving widow. Then, it could remain exempt from capital gains tax as a principal residence. If it were left to “A for life and then B and C”, the capital appreciation would be subject to capital gains tax. Nobody like to pay taxes, so this provided immediate impetus to the change.

Consequently, as an estate planning tool, that approach fell into disuse. Further, if the testator died and such a provision were included in the Will, a settlement was often arranged for tax purposes. This would work, provided A was the mother of B and C.

By, the 1980's, most people with such Wills had already died. Or, at the very least, if you had one in the 60's, you changed it by the '80's.

There were several other reasons why this approach became unpopular:

- Women's liberation
- Two family incomes
- Longer survivorship periods
- The independence of the children
- The Family Law Act (1978)
- The Succession Law Reform Act (1978)

As a result, the devise of "A for life and remainder to B and C" simply fell into disuse. That is, until recently.

The next little change in social customs is "**later life second marriages**". The husband had a family and was married before. The wife had a family and was married before. Now, these two people get married (or simply live together). Their TRUE beneficiaries as they view it, are the children from their first marriages. But, they would like to have their spouse have the right to continue to live in the house. So, "A for life, and remainder to B and C" becomes popular again in these types of cases.

Over the last 30 years it would be very unlikely that you would come across such a situation. However, I suspect that there will be a considerable number in the next decade.

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