

Subject: **LIFE ESTATES**

BACKGROUND

The life estate is a freehold estate which existed at common law and is recognized in the Torrens System. (1) The two types of life estates are

- a) a life estate for the life of the tenant e.g., to A for life, and
- b) a life estate *pur autre vie* (i.e., for the life of another).

The following is an example: "to A a life estate for the life of B". In this example, B the person the length of whose life determines the duration of the estate is called the "*cestui que vie*". There can be more than one *cestui que vie* named and the duration can be limited for the shortest (i.e., for the joint lives) or the longest life of the persons. (2) In either case, the duration of the life estate must be clearly specified.

A life estate may be transferred for its duration. However, a life estate for the life of the tenant is not devisable by will as it ceases to exist upon the death of the life tenant. A life estate *pur autre vie* may be devised by the will of the tenant for its remainder. Upon the death of the *cestui que vie*, the life estate *pur autre vie* terminates.

REGISTRATION PROCEDURE

1. The registered owner of the fee simple estate can create a life estate by either
 - a) executing a transfer (FORM 8) of a life estate, or
 - b) reserving a life estate to himself out of a transfer of the fee simple estate. Register the Life Estate first, and then transfer the fee simple title. (A transfer reserving a life estate to a third party is not registrable, unless a transfer of the life estate interest is also presented for registration.)

All registration requirements for a transfer as outlined in the procedure on Transfers TRF-1 apply except as otherwise indicated.

2. **Grant** - The grant of a life estate must establish
 - a) the owner of the estate, and
 - b) the duration of the estate (i.e., whose life or lives determine the length of the estate). For example:
 - (i) If a transfer grants a life estate to B, the duration is for B's life.
 - (ii) If a transfer by A reserves a life estate to A, the duration is for A's life.
 - (iii) If a transfer grants a life estate to A and B as joint tenants, the rule of survivorship applies (see procedure under TEN-1).
 - (iv) If a transfer grants a life estate to A and B for their joint lives, the rule of survivorship does not apply and the duration of the estate ends as soon as one of them is deceased. (3)
 - (v) If a transfer grants a life estate to A and B for the duration of B's life, then it ends when B is deceased.
 - c) a transfer which does not provide the tenancy or duration cannot be accepted for

registration, however, there may have been transfers registered in the past which did not comply with the above requirements. In these cases, a proof of death can be accepted to remove only the deceased person's name.

If you have a series of instruments on a DRR including a life estate; any instruments to be registered prior to life estate on DRR will show on life estate title. Therefore split DRR when creating the life estate title. Land Titles will now always register a life estate interest before the transfer of the fee simple interest, regardless of whether life estate is being reserved or transferred.

3. **Dower** - Dower requirements must be complied with on any dealings with the life estate except on its extinguishment due to the death of the life tenant or the *cestui que vie* (see procedure under [DOW-1](#)).

4. **Foreign Ownership** - Foreign Ownership requirements must be complied with. When the instrument reserves a life estate to the transferor, the foreign ownership requirements are to be complied with in respect of the transferee of the fee simple estate only (see procedure under [FOL-1](#)).

5. **Planning** - Subdivision requirements must be complied with (see procedure under [SUB-1](#)).

6. **Memorandum** - When a life estate certificate of title is issued, the fee simple certificate of title has the following memorandum endorsed on it:

"LIFE ESTATE TITLE IN FAVOUR OF A
7 WOLF DRIVE, EDMONTON, T2K 7S8"

or

"LIFE ESTATE TITLE IN FAVOUR OF A
237 - 7 AVE. S.W., CALGARY, T2P 1J2
FOR THE LIFE OF B"

7. The following memorandum is endorsed on the back of the life estate title: (4)

"SEE TITLE FOR ESTATE OF LARGER EXTENT FOR
REGISTRATIONS PRIOR TO LIFE ESTATE"

Any subsequent memoranda endorsed against either the fee simple or the life estate certificates of title are not to be endorsed against the other certificate of title unless the instrument or caveat deals with both estates.

Always check the life estate title for current ownership information.

8. If a transfer reserves a life estate to the transferor, a certificate of title for the life estate is issued to the transferor using the code LIFE. The transfer of land (TFLA) is then registered, transferring the fee simple estate to the transferee. Separate document registration request numbers are used.

9. **Consent** - Any transaction by either the fee simple or life estate owner does not require the consent of the other owner.

10. **Transfer of a Life Estate** - A life estate may be transferred by use of ([FORM 8](#)) provided the transfer specifies the estate being transferred and the person for whose life the life estate exists is still living. For example, if A was granted a life estate, he may transfer it to B. The life estate certificate of title issued to B must state that B is the owner of a life estate for the life of A. The particulars of the transfer are not endorsed against the fee simple title.

11. **Termination of Life Estate**

a) The owner of a life estate may surrender his life estate to the owner of the fee simple estate by use of a form of surrender similar to the Surrender of Lease ([FORM 14](#)). A transfer to the fee simple owner can be accepted and treated as a surrender. The owner of any subsisting interest affecting the life estate certificate of title must either discharge his interest or consent, with proper attestation, to the surrender before it can be registered.

b) If the person for whose life the life estate has been granted dies, a statutory declaration similar to the one registered with respect to a deceased joint tenant, outlining the date of death with a death certificate annexed, is to be registered. The life estate certificate of title is cancelled notwithstanding any instruments or caveats registered on the title. The request life estate cancellation (RLEC) is used to cancel the title and the surrender of life estate (SURL) screen is used to discharge the life estate memorandum that is endorsed on the fee simple certificate of title.

c) A request to merge, where all requirements for merger are met (see procedure under [MER-1](#)).

12. **Postponement of Life Estate** - A life estate may be postponed in favour of a subsequent mortgage of the fee simple estate. The postponement is endorsed only on the title for the fee simple interest. A systems person must be contacted to facilitate this registration.

STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. s. 32(1)
2. R.E. Megarry, Q.C., and H.W.R. Wade, *The Law of Real Property*, 3rd. ed., at p. 102
3. R.E. Megarry, Q.C., and H.W.R. Wade, *The Law of Real Property*, 3rd. ed., at p. 409
4. s. 32(2)