



Life Estate or Right of Residence?

It's quite common, particularly in the case of blended families, that a person when making a new Will may want to ensure that their partner can continue to live in the family home after their death but at the same time preserve their interest in the property so that it is ultimately inherited by their children or other nominated beneficiaries.

This issue is generally addressed by the willmaker including a provision in their Will that grants a life estate or a right of residence in the property to their partner.

Life Estates

A life estate, also known as a life tenancy, is an entitlement under a Will that allows a beneficiary a right of exclusive use, enjoyment and possession of a property for the rest of their life. The life estate confers on the beneficiary a proprietary interest in the property which is capable of being registered on its title. Upon the death of the life tenant the property is inherited by the "remainderperson", being the person or persons nominated by the willmaker to receive the property on this event occurring.

A life estate in a property can be granted without conditions or be made subject to conditions, such as the beneficiary not remarrying. The grant of a life estate can also be made as a "portable grant" which enables the beneficiary to sell the property and purchase another property to be held on the same terms as the originally occupied property.

Because the beneficiary has a proprietary interest in the property, they are generally entitled to use the property in the same manner as an "owner". Consequently, subject to the terms of the life estate grant, they can rent, mortgage or sell the property.

The life tenant is however generally responsible for the upkeep of the property and is obliged to do those things in relation to the property that any owner ordinarily would do – this includes paying council and water rates and other outgoings, keeping the property insured and otherwise maintaining and repairing the property.

Right of Residence

A right of residence is the grant of a personal right to a beneficiary to reside in a property nominated by a willmaker. The beneficiary receives a licence to reside in the property on the terms specified in the Will and as it is a personal right, the right of residence has no value to anyone but the beneficiary.

Unlike a life estate, a right of residence does not confer any proprietary interest in the property to the beneficiary. Consequently, the beneficiary cannot rent, sell or mortgage the property and generally they cannot use the property for any profitable purpose.



A right of residence can be granted for a specific period of time after the willmakers's death and also contain terms which if breached can lead to the right of residence being terminated. These terms can include obligations for the beneficiary to maintain the property, pay for rates and insurance and not allow other persons to reside in the property. It can also specify that the right of residence is terminated if the beneficiary marries or enters into a de facto relationship.

If you would like further information about including a Life Estate or Right of Residence provision in your Will or want to discuss making a Will or having your current Will reviewed, please contact [Lisa Delalis](#) or [John Bateman](#) of our office on 02 4731 5899 or email willsestates@batemanbattersby.com.au.