



# OLR RESEARCH REPORT

August 9, 2013

2013-R-0312

## **LIFE ESTATES AND LIVING TRUSTS**

By: James Orlando, Associate Analyst

You asked whether there is a mechanism under Connecticut law that allows a person to sell his or her home to a relative but retain the right to live in it until death. The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered as one.

### **SUMMARY**

Under Connecticut law, a person can sell or otherwise transfer ownership of his or her home to a relative but retain a life estate, thus allowing the person to remain living in the property until death. A person can also create a living trust, transfer the home's ownership to the trust, but remain living in the home, and designate a relative as the beneficiary to take ownership upon the person's death. Both options avoid the probate process.

Below, we briefly summarize the basic features of life estates and living trusts in the context of your question. The report does not address related tax issues, which can be complex (especially regarding trusts).

### **LIFE ESTATES**

A life estate is an interest in real property with a duration measured by the life of a person or group of people. When that person or people die, the life estate is extinguished and the property automatically goes to the person or people who have a remainder interest in the property.

Thus, a person can transfer ownership of his or her home to a relative while still retaining a life estate for himself or herself. The law sometimes refers to a person who holds a life estate as the “life tenant,” and the person who takes the property upon the life tenant’s death as the “remainderman.” The life tenant can choose to live in the home until his or her death or rent it to someone else, but generally cannot sell it without the remainderman’s consent.

A person wishing to sell or give his or her home to a relative, while still retaining the right to live there until death, would typically accomplish the transfer through a deed. When the life tenant dies, full ownership of the property passes to the remainderman; the property does not go through probate (20 Conn. Prac., Conn. Elder Law § 2:23 (2012)).

The life tenant is responsible for property ownership costs during the life tenancy. Anyone who holds a life estate and commits waste upon the property (i.e., damages the property or fails to keep it in good repair) is liable for damages unless he or she was explicitly authorized by the document that created the life estate to do the acts complained of (CGS § [52-563](#)). For more information on legal remedies when the owner of a life estate does not keep the property in good repair, see OLR Report [2003-R-0647](#).

## **LIVING TRUSTS**

A living or “inter vivos” trust is one created while the person who drafted it (the settlor or grantor) is still alive. Living trusts are typically revocable (meaning the settlor is free to change or cancel the trust before his or her death). In a living trust, the settlor may appoint himself or herself as the first trustee (the person managing the trust’s assets). Thus, the settlor can remain in control of the trust assets as long as he or she is alive and competent.

A settlor can use a living trust as a mechanism to transfer his or her home to relatives, while still living there until death. To do so, he or she must transfer the home into the trust and name the relatives as the beneficiaries. The trust, rather than the settlor, becomes the home’s owner. At the expiration of a specified period or upon the settlor’s death, the trust’s assets (including the home) transfer as outlined in the trust, without going through the probate process.

There are no specific requirements in Connecticut law for the form of a trust agreement (20 Conn. Prac., Conn. Elder Law § 2:11 (2012)). One form of trust involving the transfer of a home is the Qualified Personal Residence Trust, which can offer tax advantages in some circumstances (20 Conn. Prac., Conn. Elder Law § 2:18 (2012)).

For more information on trusts under Connecticut law, see the Probate Court informational booklet, *Understanding Trusts*, available at <http://www.ctprobate.gov/Documents/User%20Guide%20-%20Understanding%20Trusts.pdf>.

JO:ro