Elder Law NEWS

JANUARY 2020

WATCH OUT FOR THESE POTENTIAL PROBLEMS WITH LIFE ESTATES

Life estates can be an excellent tool for Medicaid planning, probate avoidance and tax efficiency, but there are potential problems to look out for. Knowing the implications and risks of a life estate is essential in determining whether it is appropriate for your situation.

In a life estate, two or more people each have an ownership interest in a property, but for different periods of time. The person holding the life estate — the life tenant — possesses the property during his or her life. The other owner — the remainderman — has a current ownership interest but cannot take possession until the death of the life estate holder. The life tenant has full control of the property during his or her lifetime and has the legal

LAW OFFICES OF
BARRY R. CRIMMINS P.C.

Phone: (781) 344-2886 Email: info@brc-law.com

responsibility to maintain the property as well as the right to use it, rent it out, and make improvements to it.

Life estates are excellent planning techniques in many circumstances. They permit parents to pass ownership in their homes to their children while retaining absolute possession of the property during their lives. By executing a life estate deed, the property avoids probate at the parents' deaths, is protected from a Medicaid lien, and receives a step-up in tax basis.

However, there are potential issues that may arise with life estates and it’s important to fully understand the following risks:

- As a life tenant, you may not easily sell or mortgage property with a life estate interest. The remaindermen must all agree if you decide to sell or borrow against the property. One thing that can help is a testamentary power of appointment in

the deed. This is a mechanism that permits the life tenants to change who ultimately receives the property by directing its disposition in their wills. It won't allow the life tenant to sell the property, but it does give the life tenant more bargaining power with the remaindermen. Another option is a nominee realty trust. This type of trust permits one or more children to act as trustee or trustees for all the children, and provides that they must follow the direction of a majority of the beneficiaries. So, if there are four children and one child objects to the sale or mortgage of the property, but the other three are on board, the majority can direct the trustee to sign the papers necessary to facilitate the sale or borrowing.

- If the property is sold, the remaindermen are entitled to a share of the proceeds equal to what their interest is determined to be at that time.
- It is not as easy to remove or change a name once it is on a deed to real estate as it is to change the beneficiary on a life insurance policy or bank account.

- Once a remainderman is named on the deed to your house, he or she has an interest in the home and his or her legal problems could become yours. For example, if your child, who is a remainderman, is sued or owes taxes, a lien could be filed against your home. Your child's interest in the home is not protected if he or she files for bankruptcy. If your child gets a divorce, his or her spouse could claim all or part of your child's interest in your home. Should your child die before you do, the child's estate would have to go through probate unless at least one other remainderman was listed as a joint tenant. However, while these claims may be made against the property, no one can kick you out of it during your life.
- Giving away an interest in property could disqualify you from receiving assistance from Medicaid, should you require long-term care within five years of the transfer. In addition, if you and the remaindermen were to sell the property while you were in a nursing home, the state could have a claim against your share of the proceeds

LAW OFFICES OF
BARRY R. CRIMMINS P.C.

Phone: (781) 344-2886 Email: info@brc-law.com

Elder Law NEWS
JANUARY 2020

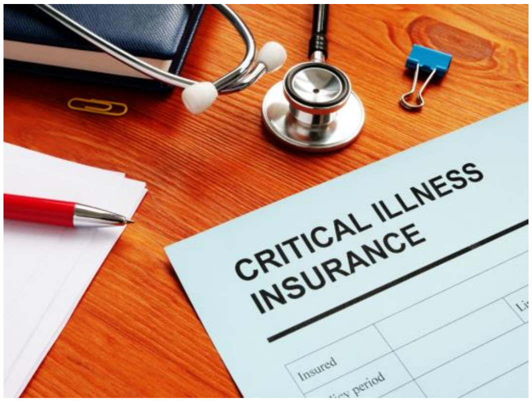
for payments it has made on your behalf, but the share of the proceeds allocated to your children would be protected.

As with most planning tools, a life estate can be very useful with valuable benefits, but it is not for everyone. In many cases, the potential problems outweigh the benefits. As the law in this area is complex, it's important to talk to a lawyer who knows about this in-depth.

Elder Law NEWS

JANUARY 2020

WHAT IS CRITICAL ILLNESS INSURANCE AND IS IT WORTH BUYING?



Many employers offer critical illness insurance as part of their benefit package. What is this insurance and is it worth purchasing? You should consider your options before paying for a plan.

While a regular health insurance plan usually offers comprehensive coverage for all types of illnesses, many plans have high deductibles and copays that require policyholders to pay a lot of money out of pocket. Critical illness insurance allows you to buy insurance to cover that gap if you have a serious health diagnosis, such as cancer or a heart attack. Critical illness insurance can also cover non-medical expenses, such as mortgage or child-care bills.

Elder Law
NEWS
JANUARY 2020

Premiums for critical illness insurance policies are relatively low, which makes the coverage appealing. The policies usually pay out in a lump sum, with the amount depending on the policy purchased. There are different types of critical illness insurance policies: some cover only one illness, like cancer, while others offer coverage of a number of different illnesses. The more coverage offered, the higher the premiums.

Before purchasing one of these policies, however, you need to consider the downsides. Reading the fine print on the policy is very important because the policy will only cover certain illnesses, and actual coverage may depend on the severity of those illnesses. For example, even though the policy says it covers cancer, it may only cover aggressive cancer and not a more slow-moving cancer. In addition, critical illness insurance doesn't offer the same protections that regular health insurance offers under the Affordable Care Act, so you can be denied coverage if you have a pre-existing condition. Critical illness insurance

Elder Law NEWS

JANUARY 2020

premiums also tend to rise as you get older, and you could be denied coverage once you reach a certain age.

Instead of critical illness insurance, you can consider alternatives. First, you should look at your health insurance to see exactly what it will cover. In addition, a health savings plan in which you contribute pre-tax dollars can be a good way to cover unexpected medical expenses. Disability insurance can also offer protection for lost salary due to illness.

For more information about critical illness insurance, click here.

LAW OFFICES OF
BARRY R. CRIMMINS P.C.

Phone: (781) 344-2886 Email: info@brc-law.com