

Life Interest and Right to Reside

What is a Life Interest?

A Life Interest is a trust. Although there are many variations the most common version of a Life Interest is where an asset (eg a property or shares etc) are held on trust for the benefit of an individual (the life tenant) for his or her life time. The life tenant is entitled to the income generated from the trust for his or her lifetime but has no entitlement to the capital of the trust (the assets). The capital is preserved for the benefit of the remainder beneficiaries. On the death of the life tenant the capital is distributed to the remainder beneficiaries.

The Trustee of a Life Interest must balance the needs and interests of both the life tenant and the remainder beneficiaries when managing and investing the assets of the trust. Therefore the Trustee must invest in assets which both have a capital growth component and an income producing component and must not advantage one over the other.

This type of trust is often created in a testator's Will where he or she wishes to financially support one individual during his or her lifetime but wishes to give the actual asset to another party. For example this type of trust may be the solution

for a testator who has a current spouse from a second marriage and children from a first marriage. The testator is then able to preserve the capital for his or her children while providing his or her spouse with an income for his or her life time.

What is a Right to Reside?

A Right to Reside is an entitlement to occupy a property for a specified time or for the life time of the beneficiary. The beneficiary's entitlement is normally subject to certain conditions such as, maintaining the property and paying property expenses. The beneficiary cannot lease the property nor is he or she entitled to receive income. When the trust ends, the property is either transferred or sold and the net proceeds paid to the remainder beneficiaries.

Another common term included in a Right to Reside is the ability for the Trustee to sell the property to purchase a more suitable property for the beneficiary to live in; this may even extend to the ability to pay a nursing home bond.

As mentioned above this type of trust is also used to allow a testator to provide someone (such as a spouse) with the use and benefit of the house during their lifetime whilst preserving the property for the benefit of another party (children). This type of trust is not only used in the situation where the testator has a spouse from a second marriage but also where the testator is concerned that his or her spouse may remarry and their children may lose their entitlement to their parent's matrimonial home.



Key differences between a Life Interest and Right to Reside

	Life Interest	Right to Reside
Term of trust	Generally the lifetime of the beneficiary (life tenant), but the testator may nominate a shorter period of time.	<ul style="list-style-type: none"> • For the life time of the beneficiary; • For a specified time; • Until beneficiary remarries or no longer lives at the property; • Fails to pay expenses and maintain property.
Does the beneficiary have access to income	Yes, either absolute entitlement or at the discretion of the Trustee.	No
Does the beneficiary have access to capital?	Generally no, but the terms of trust can give the beneficiary access to capital at the Trustees discretion.	No
Can the beneficiary live in the property?	Depends on terms of the trust.	Yes
Can the original assets of the trust be sold to purchase new assets?	Generally yes but again will depend on the terms of the trust.	Generally no unless the terms of the trust allow for a substitute residence.
Who is responsible for the payment of asset expenses?	In many cases the income from the trust will pay for the expenses unless otherwise specified.	In most cases the beneficiary living in the property is responsible for the expenses.
Can you have more than one beneficiary?	Yes	Yes

For more information please contact us to discuss the right trust structure for you and your beneficiaries.



145 High Street
 Nagambie VIC 3608
 (03) 5794 2334
www.tbalaw.com.au