

## Life Estate Letter

Someone wants to give you his or her home while retaining the right to live there? Proceed cautiously.

A property that has hidden environmental or structural problems, or a donor who fails to maintain the property after signing a life tenancy agreement, may put the charity in the adversarial role of an aggrieved landlord. The donor's only financial benefit is an income tax deduction that results from giving the charity a remainder interest in a personal residence or farm. But if the donor does not have enough other assets to feel financially secure, the deduction may not be worth it.

For these and other reasons, most nonprofit organizations approach life estate agreements cautiously. Professional appraisals and clear definitions of the rights and responsibilities of all can prevent a life tenancy agreement from becoming a problem.

Cheerfully respond to the donor's inquiry using something like the letter below, but keep these cautionary notes in mind.

## Sample Life Estate Letter

Dear \_\_\_\_\_,

I am pleased to enclose for your and your attorney's review a life tenancy agreement form that spells out the responsibilities and rights of the parties involved.

Donors who enter a life tenancy agreement with a charity receive an immediate income tax deduction. The deduction is based on the present value of the home discounted by the estimated length of time the charity must wait to receive the home. To put it simply, a person age 70 will receive a larger deduction than will a person age 50.

The IRS grants the deduction even though the donor continues to enjoy full use of the home. But the IRS also assumes the owner continues to have responsibility for the home as well. That's why life tenancy agreements simply continue things as they are currently, with the donor dealing with maintenance, property taxes, insurance and the like.

The major benefits to the donor, then, are the immediate charitable income tax deduction, the avoidance of probate and any estate tax on the property, and the satisfaction of making a substantial gift to our organization during one's lifetime.

**The life tenancy agreement enclosed is for educational purposes only and should not be used without qualified independent counsel.**

Our organization appreciates your considering a life estate agreement. You can direct your gift to projects of special interest to you or designate the gift for our organization's endowment. Whatever your choice, your gift will provide our organization with the resources needed to carry out its work.

Please let me know if you have any questions about the enclosed.

Sincerely,

## LIFE TENANCY AGREEMENT

*This specimen life tenancy agreement is for educational purposes only and should not be used without qualified independent counsel.*

This instrument describes certain rights and responsibilities of \_\_\_\_\_ [Life Tenant's Name] ("Donor") and \_\_\_\_\_ [Life Tenant's Name] ("Donor") and (Name of Organization) ("Our Organization"), a (State) nonprofit corporation, in relation to the Donors' gift to Our Organization, of a remainder interest in the Donors' residence at \_\_\_\_\_ [location] (the "property"). Donor agrees to assume the responsibilities listed below:

1. To make necessary repairs and to maintain the property in a good condition, including necessary upkeep of improvements to protect the property against waste;
2. To make all property tax payments and extraordinary assessments benefiting the entire property interest (under current law, donors are entitled to an income tax deduction for all property tax payments); Donors shall furnish Our Organization with tax payment receipts within 45 days after due dates.
3. To insure the property against fire and all other appropriate risks and to name Our Organization as an additional insured on all insurance policies. Donors are responsible for repairing all damage to the property and may use insurance proceeds for this purpose. Donors' responsibility is not limited to the amount of insurance proceeds available;
4. To make all mortgage payments, if any. (Under current law, Donors are entitled to an income tax deduction for the interest portion and for the principal portion when it is allocable to Our Organization' remainder interest.) By February 15 of each year donors shall provide a copy of the status of the mortgage through December 31 of the prior year;
5. To permit Our Organization representatives to visit the property from time to time upon reasonable notice;
6. To consult with and reach an agreement with Our Organization before making major structural changes or improvements (such changes or improvements shall be approved by Donors and Our Organization jointly, and the cost of such approved changes or improvements will be divided as may be agreed);
7. To consult with Our Organization before making major changes in the use of the property, including the rental thereof (donors and Our Organization

should join together to lease their respective interests; Donors would receive all rental receipts during Donors' lives);

This Agreement shall be binding upon the Donors' successors, assigns, heirs and personal representative.

Dated \_\_\_\_\_ 19\_\_

DONOR:

\_\_\_\_\_  
(life tenant's name)

\_\_\_\_\_  
(life tenant's name)

REMAINDERMAN:

(Name of Organization)

BY \_\_\_\_\_  
(Name of Our Organization representative)

(Title)

*What if a life tenant wants to sell?*

Some attorneys feel that a charity entering into a life tenancy agreement should not make future sale alternatives a formal part of the agreement. The charity should treat the property as its own, unconditioned by what might happen in the future. This not only protects the charity, but also assures the validity of the donor's charitable deduction. But what can be done if the property must be sold while the life tenant is alive?

The donor/life tenant can and should reach a written agreement with the charity before sale of the property. The donor and charity could agree to options along the following lines:

- a. Reinvest the sale proceeds in another residence with donors owning a life estate and the charity owning the remainder interest
- b. Invest the proceeds in a life income arrangement with the charity as remainderman
- c. Divide the proceeds as may be agreed upon
- d. Use a combination of the above
- e. Consult with the charity regarding issues that may arise which are not covered by the Agreement and to mutually resolve such issues.