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## **Tax Benefits Stay with Life Estate Owner**

September 8, 2010 by [Deirdre Wheatley-Liss](#)



Will your taxes change if you make a gift of real estate subject to a life estate over a straight gift of real estate? Guest blogger [Stacey Crowell Maiden, Esq.](#), Of Counsel to our [Trusts and Estates and Elder Law Practice Group](#) provides an explanation of this common, but non-intuitive planning technique.

In our estate planning and elder law practice, we sometimes incorporate the use of a “Life Estate Deed” to transfer real property. Under a Life Estate Deed, the “life tenant” retains 100% of the present interest of the property. The future interest (which is defined as the full interest after your death) would be transferred to the “remainder persons.” When retaining a Life Estate in the property, you are not transferring or giving the entire interest in the property away. Instead, the remainder persons are given today the right to own the property after you pass away.

The life tenant is responsible for the payment of real estate taxes on the property. However, the Municipal Tax Office - on receiving a copy of the recorded Life Estate Deed from the County Clerk – will update its records, listing the remainder persons as the owners, which means the tax bills are then sent in the names of the remainder persons. This can be a source of confusion and concern for our clients, particularly as to whether they will lose any tax benefits related to ownership.

Guidance is found in the Internal Revenue Code and Regulations, New Jersey Statutes and the New Jersey Administrative Code to assure our clients that as life tenants, they continue to receive certain tax benefits provided to owners in New Jersey.

For example, life tenants retain the Income Tax Deduction for Real Estate Taxes. As the owner of the property by virtue of the life estate, a life tenant may continue to deduct the real estate taxes he pays on his federal income tax return. (I.R.C. §164(a); Reg. §1.164-1(a)).

And, by reserving a Life Estate and paying the real estate taxes, the life tenant is entitled to continue to receive the New Jersey Homestead/New Jersey Saver Rebate (N.J.S.A. 54:4-8.58; 54:4-8.58a; 54:8.59); the Senior Citizen's Deduction (N.J.A.C. 18:14-1.1 and N.J.A.C. 18:14-2.8); and the Veteran's Deduction (N.J.A.C. 18:27-2.10).



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Of course, there are other potential taxes (e.g. capital gains taxes) to be concerned with when transferring property pursuant to a Life Estate Deed, but the above tax benefits related to present ownership of the property remain in place for a life tenant who pays the real estate taxes.

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