

the grantor or heirs have the right, at their option, to terminate the estate and reacquire the property. This estate is similar to a fee simple determinable, except that the termination is not automatic. The grantor or heirs must take legal steps to terminate the estate; they are said to have the **power of termination**.

Example: Consider the example used above. Suppose the deed said “provided that it is used for school purposes.” When the property was no longer used for school purposes, it would not automatically revert to Mrs. Martin (or her heirs). She would have to take legal steps to terminate the estate.

The fee simple determinable estate can produce harsh outcomes, because if a condition is not met, the property automatically reverts back to the grantor. To avoid this inflexible result, courts generally try to construe the terms of a grant of a defeasible fee as conditional rather than determinable. Automatic reversion is thus avoided; action by the grantor is required to terminate the estate.

Life Estates

A **life estate** is an estate that is based on someone’s lifetime. For example, Harrison dies, leaving his farm to a charity, but grants a life estate to his sister. Harrison’s sister may possess and live on the property for the remainder of her life, but upon her death, the farm will automatically pass to the charity.

Life estates are often used to simplify the division of property in a will or to avoid the expense of probate. A life estate is usually measured by the life of the holder of the life estate.

Example: To avoid the expense of probating his will after death, Bob deeds his property to his son Stan, but reserves a life estate for himself. Bob has the right to use and possess the property for the rest of his lifetime, but upon his death, the property automatically passes to Stan.

This example describes an **express reservation** of a life estate to the original owner of the property. A life estate may also be created by **express grant** to someone other than the original owner.

A life estate may also be based on the life of someone other than the holder of the life estate. This is called a life estate **pur autre vie** (for another’s life). This type of estate is sometimes used to create security for ailing parents or disabled children who are unable to provide for themselves.

Example: Bob’s mother is afflicted with Alzheimer’s disease, and his sister Charlotte is her caregiver. Bob deeds his property to Charlotte so long as their mother is still alive. Upon their mother’s death, the property is to pass to Bob’s son Stan.

Charlotte has a life estate based on their mother’s life. Charlotte has the right to use and possess the property only so long as their mother is alive. When their mother dies, the property automatically passes to Stan.

Their mother is the **measuring life**. The life estate lasts only as long as her lifetime. Charlotte is the holder of the life estate. She has the right to possess the property and is called the **life tenant**.

The life tenant has an ownership interest in the land that can be sold, leased, or mortgaged. Remember, however, that a person can only sell, lease, or mortgage the interest she owns. In the example above, if Charlotte, the life tenant, sells her interest in the property, the buyers are purchasing only a life estate. The buyers' interest will still terminate when the measuring life ends—that is, when Bob and Charlotte's mother dies—just as it would have if Charlotte still owned the life estate at that point.

Future Possessory Interests. When a life estate is given, an interest also passes to the person who will receive the property when the life estate ends. This is a **future possessory interest**, since he does not have the right to possess the property until sometime in the future (at the death of the measuring life). There are two types of future possessory interests:

- estates in remainder, and
- estates in reversion.

Case Example:

In his will, George left his second wife, Wilma, a life estate in the family home, with the remainder interest to his six adult children from a previous marriage.

After George's death, Wilma had the right to use and possess the property for the rest of her lifetime. Upon her death, the property was to pass automatically to the children. *In re Estate of Campbell*, 87 Wn. App. 506 (1997).

In this case example, George's children hold an **estate in remainder**. Although they do not have the right to possess the property right now, they have a current interest in the remainder of the estate (the estate that will begin when the life estate terminates). George's children are called the **remaindermen**.

When the property is designated to return to the original grantor at the end of the life estate, the grantor has an **estate in reversion**. The grantor (or the grantor's heir) may be known as a reversioner.

A life tenant has certain duties towards the property. A life tenant may not use or abuse the property in any way that would permanently damage the property or reduce its market value. Such abuse is called **waste**. This term implies neglect or misconduct, and does not include ordinary depreciation of property due to age and normal use.

A life tenant must allow for reasonable inspection of the property by the holder of the future possessory interest. He is permitted to check for possible waste. If waste is discovered, the holder of the future possessory interest may bring a legal action for damages. An action for waste may be brought at any time, against either the life tenant, or if the life tenant has died, against the life tenant's estate.

Trusts. In modern practice, life estates are seldom used because trusts provide the same benefits, with the additional safety factor of a trustee who looks out for the interests of the specified party.

When a trust is created, a trustee is given legal title to property that she holds for the life of the beneficiary. Upon the death of the beneficiary, the property is disposed of as provided for by the creator of the trust.

Leasehold Estates

A **leasehold estate** is a more limited interest in property than a freehold estate. The holder of a leasehold estate—the **tenant**—does not own the property but merely leases or rents the property. This gives the tenant the right to exclusive possession of the property for a time.

Although most real estate agents deal with the sale of property, many are also involved in renting or leasing property. Even for an agent who deals only with sales, a knowledge of the different types of leasehold estates is important. If a sale involves rental property, the potential buyer may want to know what kind of leases the current tenants hold, and if or when their leases could be terminated.

In Washington, three different kinds of leasehold estates are recognized:

- tenancy for a specific term (also called estate for years or term tenancy),
- periodic tenancy, and
- tenancy at will.

We'll also discuss the tenancy at sufferance, which is similar to the above tenancies but isn't actually an estate.

Estate for Years

The **estate for years** lasts for a specific time period. Despite its name, this type of estate is not required to have a term of one year or a period of years. It may be for three months, six months and five days, two years, or any period with a specific beginning and ending date.

Example: Ramon is a college student renting an apartment for one semester. The lease gives him the right to possess the apartment from August 20 until December 31. Ramon's tenancy is an estate for years because it is for a specific time period.

With an estate for years, neither party is required to give notice to terminate the lease agreement. The lease terminates automatically at the end of the specified rental period. If the parties want to terminate the lease before the specified end of the lease period, they may do so by mutual consent. The termination of an estate for years by mutual consent is called **surrender**.