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Opinion No. 07-52

Life Tenant Conveying Property for Public Right of Way

QUESTION

Can a person with only a life estate interest in a parcel of real property convey sufficient interest in such property to the county for a right of way to be constructed on such property?

OPINION

The holder of a life estate cannot make a conveyance that will create a perpetual right of way unless all possible owners of the remainder interest consent and join in the conveyance.

ANALYSIS

One who possesses a life estate interest in real property has only a limited interest in the land with a right to use and enjoy the profits of it. *Vaden v. Vaden*, 38 Tenn. 444 (1858). Although the life tenant enjoys possession of the land, the remainderman has a separate possession that is postponed to a future date. That is, there are two possessions — one current and the other postponed — and these possessions are not considered in law to be concurrent. *Sherrill v. Board of Education*, 452 S.W.2d 857, 224 Tenn. 201 (1970). Therefore, the life tenant has no authority or ability to take any action during his possession that destroys or prejudices the future possession of the remainderman. Tennessee law describes the life tenant as a quasi-trustee for the owner of the remainder interest. *Edwards v. Puckett*, 268 S.W.2d 582, 196 Tenn. 160 (1954).

While there is nothing in the law that prevents a life tenant from selling or conveying the property to a third person, the buyer only takes the ownership interest held by the life tenant and no more. *Briggs v. Estate of Briggs*, 950 S.W.2d 710 (Tenn.App. 1997). Fee simple ownership of the land would still pass to the remainderman upon the death of the original life tenant, and the buyer would then lose his interest in the land. Similarly, if a life tenant dedicates any part of the land for public use, such dedication is nullified upon the death of the life tenant. *McKinney v. Duncan*, 118 S.W. 683, 121 Tenn. 265 (1909).

Such being the nature of life estates, a life tenant cannot convey fee simple ownership of land for public right of way, either by sale or dedication, unless the owner or owners of the remainder interest join in the conveyance. Likewise, the life tenant alone cannot convey sufficient interest to create a perpetual easement for a public right of way. Any such easement would only be valid

during the lifetime of the tenant.

If a public necessity for the right of way is established, the right of way could be acquired by authority of eminent domain, which would result in a judicial divestiture of the life estate and any remaining interests. The eminent domain compensation would take the place of the land divested from the life estate, and the life tenant would continue possession and use of the funds during his lifetime in quasi-trust for the remainderman.

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