

we need to point this option out when we send our letter.

## Other Implications

There are also possible implications to consider. The transfer of the "fee" usually constitutes a gift which may have implications, for example on Inheritance Tax, Capital Gains Tax, or for claiming benefits.

Working out an accurate value of the gift is a complex matter, based on the value of the property and the age of the Liferenter (ie how long they would normally be expected to have the liferent). We will need to make a simple calculation of the value for the purposes of recording the new title deed, but if you think that tax or benefit issues may be important, please let us know and we will carry out the more complex calculation and let you have a note of this for your own records. This will of course incur a little more cost for our additional work.

It is also important to note that if you transfer your own title to a liferent, this may be considered a "gift with reservation" under Inheritance Tax. If you consider that this tax may apply on your death, you may wish to make additional arrangements to deal with this.

This information contained in this leaflet is general advice only. It cannot be relied upon as a definite statement of the law and you should take specific legal advice on any particular situation.

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is available on request



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## Titles to Land and Buildings

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Scots law provides a number of different methods of different people owning or having rights over “heritable property” ie land and buildings. One possible ownership arrangement is Liferent.

## What is a Liferent?

In Liferent ownership, the title deed specifies a “Liferenter” who owns a "liferent", that is a right to use the property during their life. The “Fiar” owns the "fee" of property, or in other words owns the property but cannot occupy it (unless the liferenter agrees).

It is also possible for the liferent or fee to be split between more than one person, in just the same manner as a more straightforward ownership of title can be split.

Legally it is possible for the Fiar to sell or transfer the fee of the property to someone else, while the Liferenter is alive.

The Liferenter may also give up this liferent, either by specifically doing so by a formal document, or by permanently leaving the property having no intention to return. Once the Liferenter permanently gives up the liferent or dies, the Fiar is then automatically the full owner of the property.

## What is the day to day effect of the Liferent?

During the liferent the Liferenter is only legally liable for expenditure on the property directly arising from the use eg paying all

Council Tax or carrying out normal day to day repairs.

Because the Liferenter owns the use of the property, he or she can choose to rent the property out to a tenant, taking the rent and living somewhere else. However this may need special provisions in the lease to deal with the Fiars rights, and might not apply where someone else has given the Liferenter the liferent eg in a Will.

During the liferent, the Fiar is not entitled to use the property, but does have a right to take action to preserve the condition of the property, and may in certain cases be liable for expenses as an owner of the property. The Fiar is legally liable for what is known as "capital expenditure". The Fiar may also carry out works to the property, such as major repairs or improvements, subject to making arrangements with the Liferenter to avoid undue disturbance of the Liferenters use of the property.

**Example:** A slipped slate would be the responsibility of the Liferenter, while replacement of the whole roof would be the responsibility of the Fiar.

The Liferenter and Fiar may agree other arrangements between themselves, but this does not bind third parties.

**Example:** if the local Council serves a Repairs Notice on the property requiring work to be done, the Fiar is usually the one legally responsible for paying for the work.

Situations may also arise where it is not clear who is legally responsible - in the example above this might be where a substantial section of the roof needs work and it is not clear if this is ordinary maintenance or "capital maintenance". If the Liferenter and Fiar can agree matters between them there is no problem, but if they cannot it could take a lengthy and expensive court case to establish who is legally liable.

Also, once a liferent is in place, any sale of the property needs the agreement of everyone on the title deed ie the Liferenter(s) and the Fiar(s). Likewise, you will almost certainly not be able to get a loan secured over the property (mortgage), so for example the Liferenter will not be able to get an "Equity Release" loan.

## How do I arrange to put my own title into Liferent?

First, in most cases you cannot transfer your title to liferent if you have a Standard Security (Mortgage) over your property. Assuming that there is no such security, you simply need to make an appointment with a solicitor to discuss matters. Once your solicitor has your title deeds and the relevant details, it is usually comparatively simple to draw up the new liferent title deed.

Because the arrangements will give the Fiar legal obligations, he or she must agree to the transfer before the title deed can be recorded. We would usually send a simple letter to be signed by the Fiar confirming agreement to the proposed arrangement. The Fiar may of course want to obtain independent advice, and we/