

## RIGHT OF HABITATION IN ESTATE PLANNING

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The right of habitation is the right of a person to dwell in the house of another. This right can be established by contract or will. The right can not be transferred to another person. However, the person's family may live with him in the residence. The right of habitation can be established on houses only. This right survives the sale of the residence.

Tom and Jerry live together in Tom's house. Tom wants to leave his estate to his nieces and nephews but it is his desire that Jerry live in the residence as long as he so desires. Tom can write a will and give Jerry the right of habitation of his home. This right can be for Jerry's lifetime.

John and Mary, who both have been married before, live together in Mary's house. Both John and Mary have grown children who reside out of state. John is ill. Mary desires to leave her estate to her children. However, she would like to make sure that John has the right to remain in the house should she predecease him. Mary can write a will and give John a right of habitation for his lifetime. Mary could further provide in her will that should John vacate the residence prior to his death for a continuous period of six (6) months that this right of habitation will terminate. This right of habitation is not ownership. Therefore, should it become necessary for John to go into a nursing home, this right, not being an asset of his estate, is not relevant to the issue of long term care.

The individual who has this right of habitation has certain obligations. The person is liable for ordinary repairs; for the payment of taxes such as property taxes and for annual charges. This individual is not responsible for extraordinary expenses such as the replacement of the roof. If a person occupies only a portion of the residence, he is liable for the expenses for that portion which he occupies. A person having the right of habitation is bound to use the property, prudently, and at the expiration of his right to deliver it to the owner(s) in the condition in which he received it, ordinary wear and tear excepted.

This right of habitation terminates at the death of the individual unless a shorter period has been stipulated in the contract or will. The right of habitation cannot be inherited, alienated, rented or mortgaged.

In 2002 the 4<sup>th</sup> Circuit Court of Appeals of Louisiana ruled that this right of habitation survived a partition and public auction of the residence notwithstanding the fact that the individual with the right of habitation was given a portion of the proceeds from the sale.

In conclusion, the right of habitation can be a powerful and effective estate planning tool where it is your desire that your significant other live in your residence.

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