

PRESENTED AT**ESTATE PLANNING, GUARDIANSHIP AND ELDER LAW CONFERENCE**

August 8-9, 2024
SAN ANTONIO, TEXAS

**A HOUSE DIVIDED:
THE RIGHTS AND DUTIES OF HOMESTEADERS,
LIFE TENANTS, REMAINDERMEN, & CO-TENANTS
(Version 3.1)**

Gus G. Tamborello

Gus G. Tamborello
Gus G. Tamborello, P.C.
1455 West Loop South, Suite 775
Houston, TX 77027
713.659.7777
Gus@Tamborellolaw.com

**A HOUSE DIVIDED: THE RIGHTS AND DUTIES OF HOMESTEADERS,
LIFE TENANTS, REMAINDERMEN, & CO-TENANTS**

TABLE OF CONTENTS

I.	INTRODUCTION: COMPETING INTERESTS	2
II.	THE HOMESTEAD	2
	A. <i>What is a Homestead?</i>	2
	B. <i>What Is the <u>Probate</u> Homestead and How is it Acquired?</i>	4
	C. <i>How Long Does the Probate Homestead Last?</i>	5
	D. <i>What is the Homestead Were Put Into A Trust Prior to the Decedent's Death?</i> ...	6
	E. <i>Can a Homestead Be Subject to Debts or Liens?</i>	8
	F. <i>What Are the Rights of a Homesteader?</i>	8
	G. <i>What are the Responsibilities or Duties of a Homesteader?</i>	10
	H. <i>Do the Remaindermen have a Remedy Against the Homesteader if She Fails to Fulfill Her Duties Such as Paying Taxes?</i>	11
	I.. <i>Does the One Exercising the Homestead Right Have a Remedy Against the Remaindermen who fail to fulfill their duty?</i>	12
	J. <i>Does a Homestead Right Itself Have Monetary Value?</i>	12
III.	LIFE ESTATES	13
	A. <i>What is a Life Estate?</i>	13
	B. <i>What are the Rights of the Life Tenant?</i>	14
	C. <i>What Are the Responsibilities of the Life Tenant?</i>	15
	D. <i>Do the Remaindermen have a Remedy Against the Life Tenant for Failure to Fulfill His Duties?</i>	18
	E. <i>How Do You Value a Life Estate?</i>	18
	F. <i>Statutory Life Estate In One-Third Acquired Through Intestacy</i>	20
IV.	REMAINDER INTEREST	21
	A. <i>What is the Remainder?</i>	21
	B. <i>What are the Rights of the Remaindermen?</i>	21
	C. <i>What Are the Responsibilities of the Remaindermen?</i>	21
	D. <i>How Do You Value a Remainder Interest?</i>	22
V.	CO-TENANTS	22
	A. <i>Co-Tenants Rights Subject to Homestead Right or Administration of Estate</i> 22	
	B. <i>What Are the Rights of a Co-Tenant?</i>	22
	C. <i>What Are the Duties of a Co-Tenant?</i>	26
VI.	CONCLUSION.....	27

I. INTRODUCTION: COMPETING INTERESTS

Anyone who has been involved with decedent's estates has likely confronted one or all of the following scenarios:

- A person dies intestate owning separate and community property, leaving behind a surviving spouse, who is not his first spouse, along with children from a previous marriage or relationship.
- A person dies owning community and separate property which he leaves by will to someone other than his surviving spouse.
- A person either dies intestate leaving several surviving children or grandchildren or has a will devising his property to the children or grandchildren in equal undivided interests.
- A person devises only a life-estate to someone, or a surviving spouse inherits a life estate in one-third of a real estate, with the remainder passing to others.

Each of these not uncommon scenarios give rise to competing interests, particularly with respect to real estate and, more particularly, with respect to the homestead. This article will explore the often confounding relationship between the homesteader and/or life tenant and the remaindermen, or among co-tenants, and will discuss the various rights and duties between and among them.

II. THE HOMESTEAD

A. *What is a Homestead?*

The primary purpose of the homestead was to preserve the family as a basic unit of society. *See Hoefling v. Hoefling*, 167 S.W. 210 (Tex. 1914) (historical view of homestead exemption). The fundamental idea connected with a homestead is "that of a place of residence for the family, where the independence and security of a home may be enjoyed, without danger of its loss, or harassment and disturbance." *Cocke v. Conquest*, 35 S.W.2d 673, 678 (Tex. 1931); *Grant v. Clouser*, 287 S.W.3d 914, 919 (Tex. App.- Houston [14th Dist.] 2009, no pet.). Homestead protections are liberally construed to prevent people from losing their homes. *See Gilbreath v. Steed*, 2013 WL 2146230 at *14 (Tex. App. - Tyler 2013); *Solomon v. Lesay*, 369 S.W.3d 540, 554 (Tex. App. - Houston [1st Dist.] 2012, no pet.).

A homestead is defined in the Texas Constitution and in the Texas Property Code and differs as to whether it is rural or urban or whether the homesteader has a family or is a single adult. *Compare* Tex. Const. art. XVI, § 51, with Tex. Prop. Code Ann. §§ 41.002(a), 41.005(b) (West 2024). The following is a summary of the extent of the homestead right:

Family - Urban Homestead

- One or more contiguous lots amounting to not more than 10 acres;
- in a city, town, or village;
- used for the purposes of a home or both as an urban home and a place to exercise a business or calling of the claimant;
- together with improvements.

Tex. Const. art. XVI, § 51; Prop. §§ 41.002(a), 41.005(b).

Family - Rural Homestead

- 200 acres;
- not in a city, town, or village;
- used for the purposes of a home;
- together with improvements.

Tex. Const. art. XVI, § 51; Prop. §§ 41.002(b)(1), 41.005(a).

Single Adult - Urban Homestead

- One or more contiguous lots amounting to not more than 10 acres;
- in a city, town, or village;
- used for the purposes of a home or both as an urban home and a place to exercise a business or calling of the claimant;
- together with improvements.

Tex. Const. art. XVI, § 51; Prop. §§ 41.002(a), 41.005(b).

Single Adult - Rural Homestead

- 100 acres;
- not in a city, town, or village;

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: A House Divided: The Rights and Duties of Homesteaders, Life Tenants, Remaindermen, and Co-Tenants

First appeared as part of the conference materials for the
26th Annual Estate Planning, Guardianship and Elder Law Conference session
"A House Divided: The Rights and Duties of Homesteaders, Life Tenants, Remaindermen,
and Co-Tenants "