

The ins and outs of a usufruct

 By [Adrian Goslett](#)

1 Feb 2017

The definition of a usufruct is a legal right given by an owner to someone who is not the owner, to use the owner's property for a certain period, usually for the remainder of that person's life. The person who holds the usufruct, also known as the usufructuary, has the right to make use of the property and enjoy its profits and benefits provided the property is not damaged or altered in any way. At the end of the stipulated period, the usufructuary must hand the property back over to the rightful owner or heirs.



By Ollemlins – [Wikimedia Commons](#)

A usufruct would come into play where a husband passes away leaving his home to his children but stipulates that his wife has use of the property and contents in it for the rest of her life or until she remarries. While the property is transferred into the name of the children, the usufruct is registered against the new title deed in favour of the surviving spouse. A usufruct is often created because it reduces the amount of estate duty payable. However, it is important to be aware of the possible tax implications for the parties involved.

Property may be let

During the prescribed period, the usufructuary has the right to enjoy the property and all the benefits that come with it, but they are not obliged to live in the house. They are within their rights to let the property out to someone else and gain a rental income from it, provided the rental term doesn't exceed that of the usufruct. While the usufructuary can rent the property out, they are not allowed to sell or leave the home to another party.

Although the children are ultimately the heirs to the property, while the usufruct is in effect, they will have no right or authority with regard to how the property is used or enjoyed. The children must refrain from interfering with the use of the property. However, they do have the right to protect their interests should they feel that the usufructuary is using the property inappropriately.

Obligations apply

While the usufructuary's rights to the use of the home are protected, there are certain obligations that need to be fulfilled. For example, the usufruct must be used for its intended purposes, and the usufructuary is legally bound to act as a diligent owner that may not misuse the property. The usufructuary is also responsible for paying the assessment rates and general

day-to-day costs of maintaining the home. He or she is not obliged to do any large-scale repairs that result from normal wear and tear or daily use. While there is no obligation for the usufructuary to insure the home against storm, fire or other such damage, it is advisable.

The heirs to the property are responsible for keeping it in a habitable state at all times, as well as paying for the repairs. Depending on the age of the children or their financial status, this could be a massive burden to carry. Ideally, provision should be made for the husband to leave enough money to their surviving spouse and children to ensure that the usufruct property is maintained and the monthly expenses such as rates and taxes are paid. A life policy could provide the financial means to ensure that this is done.

Consult a professional

If the heirs pass away before the usufructuary, their portion of the usufruct assets is transferred to their heirs - however, the conditions remain subject to the existing usufruct which is in place.

A usufruct is a way to ensure a surviving spouse has a roof over their head and is looked after for the remainder of their life. That said, those who are looking at adding a usufruct to their will should consult with a professional tax consultant or financial adviser to fully understand its implications and how it can impact those involved.

ABOUT ADRIAN GOSLETT

Adrian Goslett is CEO and regional director of RE/MAX Southern Africa. He joined RE/MAX Southern Africa in 2005 as a franchise development consultant, supporting various regions and offices. Throughout his career at RE/MAX he has held various positions. In 2010, after successfully leading 160 offices and over 1500 agents in six countries through the worst years real estate has ever seen in South Africa in 30 years, Goslett was appointed as CEO of RE/MAX Southern Africa.

- ▀ Predictions for the 2023 housing market - 7 Dec 2022
- ▀ When will housing market activity return to normal? - 16 Sep 2021
- ▀ Interest rate holds steady in face of economic instability - 23 Jul 2021
- ▀ What to do when a tenant asks for pets - 28 Jun 2021
- ▀ Should bond equity be used for debt? - 3 Jun 2021

[View my profile and articles...](#)

For more, visit: <https://www.bizcommunity.com>