

No. 145. An act relating to enhanced life estate deeds.

(H.837)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 27 V.S.A. chapter 6 is added to read:

CHAPTER 6. ENHANCED LIFE ESTATE DEEDS

§ 651. SHORT TITLE

This chapter shall be known as the “Enhanced Life Estate Deed Act” or the “ELED Act”.

§ 652. APPLICATION OF CHAPTER

This chapter applies to deeds in which a grantor reserves a common law life estate interest in real property while expressly reserving rights such that the deed creates a contingent remainder interest in the grantee.

§ 653. DEFINITIONS

In this chapter, unless a deed indicates an intention to the contrary:

(1) “Convey” means to grant, sell, gift, lease, transfer, or encumber real property, with or without consideration, including the ability to revise or revoke a deed.

(2) “Enhanced life estate deed” or “ELE Deed” means a deed in which:

(A) the grantor expressly reserves a common law life estate;

(B) the grantor expressly reserves the right to convey the property during the grantor’s lifetime;

(C) the grantee acquires a contingent remainder interest such that, prior to the death of the grantor, the grantee has no vested rights in the property; and

(D) upon the death of the grantor, title vests in the surviving grantee or, for a deceased grantee, title passes pursuant to section 658 of this title, subject to encumbrances of record.

(3) “Grantee” means one or more grantees and the grantee’s heirs and assigns.

(4) “Grantor” means one or more grantors, each of whom shall be a natural person, and the grantor’s heirs and assigns.

(5) “Revoke” means to negate an ELE deed and is accomplished when the grantor records a deed from the grantor to himself or herself.

(6) “Revise” means to change the grantee on an ELE deed and is accomplished when the grantor records a new ELE deed to a grantee other than, or in addition to, the grantee named in the prior ELE deed. A revised deed supersedes and replaces a prior ELE deed. To add an additional grantee to an existing ELE deed, the new ELE deed must name all grantees.

§ 654. EXECUTION AND RECORDING OF AN ENHANCED LIFE

ESTATE DEED

(a) Subject to the rights expressly reserved in the deed, a validly executed and recorded ELE deed does not:

(1) affect the ownership rights of the grantor or the grantor’s creditors;

(2) transfer or convey any present right, title, or interest in the property or create any present legal or equitable interest in the grantee; or

(3) subject the grantor's property to process from the grantee's creditors.

(b) The grantor may convey the property described in an ELE deed, or any portion thereof, without the need for joinder by, consent from, agreement of, or notice to the grantee.

(c) If not previously conveyed during the lifetime of the grantor, upon the death of the grantor, subject to encumbrances of record, the interest stated in an ELE deed vests in the grantee or, for a deceased grantee, the interest passes pursuant to section 658 of this title.

§ 655. ACCEPTANCE OR CONSIDERATION NOT REQUIRED;

CONVEYANCE NOT PERMITTED

(a) An enhanced life estate deed is effective without:

(1) acceptance by the designated grantee during the grantor's life; or

(2) consideration.

(b) A grantee named in an ELE deed shall not convey the grantee's contingent remainder interest during the grantor's lifetime, and any conveyance which attempts to do so is void.

§ 656. REVOCATION, REVISION, MORTGAGES

(a) A grantor may revoke or revise an ELE deed.

(b) Joinder by, consent to, agreement of, or notice to the grantee of an ELE deed shall not be required for revocation or revision.

(c) The granting of a mortgage shall not operate to revoke or revise an ELE deed, but the property interests conveyed and reserved in an ELE deed shall be encumbered by the mortgage and by any future advances made pursuant to it.

§ 657. EXECUTION BY GUARDIAN; USE OF POWER OF ATTORNEY

(a) With the approval of the Probate Division, a guardian may convey the real property of a person under guardianship by an ELE deed.

(b) An ELE deed may be executed by an agent under a power of attorney if the power of attorney complies with the requirements of 14 V.S.A.

chapter 123, including any applicable gifting and self-dealing provisions.

§ 658. DEATH OF GRANTEE PRIOR TO DEATH OF GRANTOR

Unless the ELE deed provides otherwise:

(1) If an ELE deed conveys title to a single grantee and the grantee predeceases the grantor, upon the death of the grantor, title to the property vests in the heirs of an intestate grantee or the interest shall be distributed or conveyed to a grantee's heirs or beneficiaries, as directed by the Probate Division.

(2) If an ELE deed conveys title to multiple grantees as tenants in common and one or more grantees predecease the grantor, upon the death of the grantor, title to the property vests in the heirs of any intestate grantee or the interest shall be distributed or conveyed to a grantee's heirs or beneficiaries, as directed by the probate court.

(3) If an ELE deed conveys title to multiple grantees as joint tenants and one or more grantees predecease the grantor, upon the death of the grantor, title to the property vests in any grantee who survives the grantor.

§ 659. PREVIOUSLY EXECUTED AND RECORDED ENHANCED LIFE

ESTATE DEEDS

Nothing in this chapter shall be construed to affect the validity of an enhanced life estate deed, a “Life Estate Deed with Reserved Powers,” a “Lady Bird Deed,” a “Medicaid Deed,” an “Italian Deed,” or similar deed executed and recorded prior to the effective date of this act.

§ 660. OPTIONAL FORM FOR ENHANCED LIFE ESTATE DEED

The following form may be used to create an enhanced life estate deed:

ENHANCED LIFE ESTATE DEED

(Vermont statutory form deed)

KNOW ALL PERSONS BY THESE PRESENTS, that

I/We, _____ and _____ of _____, in the

County of _____ and State of Vermont, Grantors, without

consideration, by these presents, do freely GIVE, GRANT, SELL, CONVEY,

AND CONFIRM unto the Grantees, _____ and _____,

of _____, in the County of _____ and State of Vermont and

their heirs and assigns forever as _____ [insert nature of tenancy] a

certain piece of land in _____, in the County of

_____, and State of Vermont, described as follows:

PROPERTY DESCRIPTION:

[Insert property description or attach schedule]

GRANTORS RESERVED RIGHTS:

This is an enhanced life estate deed executed pursuant to, and with the rights and privileges set forth in, 27 V.S.A. chapter 6, the Enhanced Life Estate Deed Act (the "ELED Act"). The Grantors, or the survivor of them, hereby reserve unto themselves: (a) a common law life estate, with the exclusive use, possession, and enjoyment of the property; and (b) the right to convey the property. Reference is hereby made to the aforementioned deeds and records and to the deeds and records contained in those documents, in further aid of this description.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantees, _____, and their heirs and assigns, to their own use and behoof forever, as _____ [insert nature of tenancy] . I/We, the said Grantors, for ourselves and our heirs, executors, administrators, and assigns do covenant with the said Grantees, _____ and _____, and their heirs and assigns, that until the ensealing of these presents we are the sole owners of the premises and have good right and title to convey the same in the manner aforesaid, that they are FREE FROM EVERY ECUMBRANCE, except as aforesaid, and the Grantors hereby engage to WARRANT AND DEFEND the same against all lawful claims whatsoever, except as otherwise provided in this deed. I/WE

HAVE HEREUNTO set our hands this _____, of _____,

20_____.

[INSERT NOTARY CLAUSE]

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: July 13, 2020