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H.837

2      Introduced by Representatives Gregoire of Fairfield, Bancroft of Westford,  
3                  Bachelor of Derby, Brumsted of Shelburne, Burditt of West  
4                  Rutland, Dickinson of St. Albans Town, Fegard of Berkshire,  
5                  Gamache of Swanton, Goslant of Northfield, Graham of  
6                  Williamstown, Hango of Berkshire, Higley of Lowell, LaClair  
7                  of Barre Town, Martel of Waterford, Mattos of Milton,  
8                  McCarthy of St. Albans City, McFaun of Barre Town, Morgan  
9                  of Milton, Morrissey of Bennington, Myers of Essex, Norris of  
10                 Shoreham, Page of Newport City, Pajala of Londonderry,  
11                 Palasik of Milton, Rosenquist of Georgia, Savage of Swanton,  
12                 Seymour of Sutton, Smith of New Haven, Strong of Albany,  
13                 Toof of St. Albans Town, and Wood of Waterbury

14      Referred to Committee on

15      Date:

16      Subject: Property; enhanced life estate deeds

17      Statement of purpose of bill as introduced: This bill proposes to establish  
18      requirements for creating enhanced life estate deeds in Vermont.

19      An act relating to enhanced life estate deeds

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

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

3 **CHAPTER 6. ENHANCED LIFE ESTATE DEEDS**

4 **§ 651. SHORT TITLE**

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

7 **§ 652. APPLICATION OF CHAPTER**

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

11 **§ 653. DEFINITIONS**

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

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

16 (2) “Deed” means an enhanced life estate deed.

17 (3) “Enhanced life estate deed” means a deed, recorded during the  
18 lifetime of the grantor, in which:

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

20 (B) the grantor expressly reserves the right to convey, revise, revoke,  
21 and reconvey the property during the grantor’s lifetime;

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

4           (D) upon the death of the grantor, title vests in the surviving grantee  
5       or the grantee's heirs, subject to encumbrances of record.

6           (4) "Grantee" means one or more grantees and the grantee's heirs and  
7       assigns.

8           (5) "Grantor" means one or more grantors who shall be natural persons  
9       and the grantor's heirs and assigns.

10          (6) "Revoke" means to negate a deed and is accomplished when the  
11       grantor records a deed from the grantor to himself or herself.

12          (7) "Revise" means to change the grantee on a deed and is accomplished  
13       when the grantor records a new deed to a grantee other than, or in addition to,  
14       the grantee named in the deed. The deed need not reserve the right to revise.

15          § 654. EXECUTION AND RECORDING OF AN ENHANCED LIFE

16          ESTATE DEED

17          (a) Subject to the rights expressly reserved in the deed during a grantor's  
18       lifetime, a validly executed and recorded deed shall not:

19           (1) affect the ownership rights of the grantor or grantor's creditors;  
20           (2) transfer or convey any present right, title, or interest in the property  
21       or create any present legal or equitable interest in the grantee; or

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

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

5           (c) If not previously conveyed during the lifetime of the grantor, upon the  
6           death of the grantor, the interest stated in the deed vests in the grantee, subject  
7           to encumbrances of record.

8           § 655. ACCEPTANCE, OR CONSIDERATION NOT REQUIRED

9           An enhanced life estate deed is effective without:

10           (1) acceptance by the designated beneficiary during the transferor's life;  
11           or  
12           (2) consideration.

13           § 656. REVOCATION, REVISION, MORTGAGES

14           A grantor may revoke or revise a deed.

15           (1) Joinder by, consent to, agreement of, or notice to the grantee of a  
16           deed is not required for revocation or revision.

17           (2) The granting of a mortgage shall not operate to revoke or revise the  
18           deed, but the property interest conveyed in a deed shall be subject to the  
19           mortgage and to any future advances made pursuant to it.

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

2           (a) With the approval of the Probate Court, a guardian may convey the real  
3           property of a person under guardianship by an enhanced life estate deed.

4           (b) A deed to create or convey an interest in real property may be executed  
5           by an agent under a power of attorney if the power of attorney complies with  
6           the requirements of 14 V.S.A. chapter 123, including any applicable gifting  
7           and self-dealing provisions.

8       §658. DEATH OF GRANTEE PRIOR TO DEATH OF GRANTOR

9           Unless the deed provides otherwise:

10           (1) If a deed conveys title to a single grantee and the grantee  
11           predeceases the grantor, upon the death of the grantor, title to the property shall  
12           vest in the heirs of the deceased grantee.

13           (2) If a deed conveys title to multiple grantees as tenants in common and  
14           one or more grantees predeceases the grantor, upon the death of the grantor,  
15           title to the property shall vest in the heirs of a deceased grantee.

16           (3) If a deed conveys title to multiple grantees as joint tenants and one  
17           or more grantees predeceases the grantor, upon the death of the grantor, title to  
18           the property shall vest in the grantee or grantees who survive the grantor.

19       § 659. PREVIOUSLY EXECUTED AND RECORDED ENHANCED LIFE

20           ESTATE DEEDS

1       Nothing in this chapter shall be construed to affect the validity of an  
2       enhanced life estate deed executed and recorded prior to the effective date of  
3       this Act.

4       § 660. OPTIONAL FORM FOR ENHANCED LIFE ESTATE DEED.

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

6                   ENHANCED LIFE ESTATE DEED

7                   (Vermont statutory form deed)

8       KNOW ALL PERSONS BY THESE PRESENTS, that  
9       I/We, \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, in the  
10      County of \_\_\_\_\_ and State of Vermont, Grantors, without  
11      consideration, by these presents, do freely GIVE, GRANT, SELL, CONVEY,  
12      AND CONFIRM unto the Grantees, \_\_\_\_\_ and  
13      \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_ and  
14      State of Vermont and their heirs and assigns forever, a contingent remainder  
15      interest, which does not convey to the Grantees, their heirs, and assigns any  
16      present right, title, or interest in and a certain piece of land in, in the County of  
17      \_\_\_\_\_, and State of Vermont, described as follows:

18                   PROPERTY DESCRIPTION:

19                   [Insert property description or attached schedule]

20                   GRANTORS RESERVED RIGHTS:

1       This deed is an enhanced life estate deed executed pursuant to 27 V.S.A.  
2       Chapter 6, the Enhanced Life Estate Deed Act (the “ELED Act”). The  
3       grantors, or the survivor of them, hereby reserve unto themselves: (a) a  
4       common law life estate, with the exclusive use, possession, and enjoyment of  
5       the Property; together with (b) all the rights and privileges set forth in the  
6       ELED Act, including the right to convey the Property. Reference is hereby  
7       made to the aforementioned deeds and records, and to the deeds and records  
8       contained in those documents, in further aid of this description.

9       TO HAVE AND TO HOLD said granted premises, with all the privileges  
10      and appurtenances thereof, to the said Grantees, \_\_\_\_\_, and their  
11      heirs and assigns, to their own use and behoof forever, a contingent remainder  
12      interest, which does not convey to the Grantees, their heirs and assigns, any  
13      present legal or equitable right, title, or interest in and to the above described  
14      property. We the said Grantors, for ourselves and our heirs, executors,  
15      administrators, and assigns do covenant with the said Grantees,  
16      \_\_\_\_\_ and \_\_\_\_\_, and heirs and assigns, that  
17      until the ensealing of these presents we are the sole owners of the premises and  
18      have good right and title to convey the same in the manner aforesaid, that they  
19      are FREE FROM EVERY ENCUMBRANCE, except as aforesaid, and the  
20      Grantors hereby engage to WARRANT AND DEFEND the same against all  
21      lawful claims whatsoever.

1       WE HAVE HEREUNTO set our hands and seals this       day of                 .  
2       20.

3

4      STATE OF VERMONT

5           COUNTY OF \_\_\_\_\_, SS.

6 At \_\_\_\_\_, in said County and State, this \_\_\_\_\_ day of \_\_\_\_\_,

7      20, personally appeared \_\_\_\_\_ and \_\_\_\_\_ and they

8 acknowledged this instrument by them sealed and subscribed to be their free

## 9 act and deed.

Before me,

**12**      **STAMP:**      **Notary Public State of Vermont**

Commission Expires: 1/31/2021

14 Commission #: \_\_\_\_\_

## 15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on