

1 H.837

2 Introduced by Representatives Gregoire of Fairfield, Bancroft of Westford,
3 Batchelor 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
15 revoke 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~~
2 creditors.

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

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

9 § 655. ACCEPTANCE, OR CONSIDERATION NOT REQUIRED

10 An enhanced life estate deed is effective without:

11 (1) acceptance by the designated beneficiary during the transferor's life;

12 or

13 (2) consideration.

14 § 656. REVOCATION, REVISION, MORTGAGES

15 A grantor may revoke or revise a deed.

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

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

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

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

(b) A deed to create or convey an interest in real property 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 deed provides otherwise:

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

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

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

§ 659. PREVIOUSLY EXECUTED AND RECORDED ENHANCED LIFE

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 HERELINTO 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.

10 Before me,

11 _____

12 _____

13 STAMP: Notary Public State of Vermont

14 Commission Expires:

15 1/31/2021

16 Commission #: _____

17 Sec. 2. EFFECTIVE DATE

18 ~~This act shall take effect on July 1, 2020.~~

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 supercedes 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 ECUMBERANCE, 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 HERUNTO set our hands this _____, of _____, 20__.

[INSERT NOTARY CLAUSE]

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.