

H.837

Introduced by Representatives Gregoire of Fairfield, Bancroft of Westford,

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

13 Referred to Committee on

14 Date:

15 Subject: Property; enhanced life estate deeds

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

18 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.

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

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

18 (B) the grantor expressly reserves the right to convey 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(s)
5 or, for deceased grantee(s), title passes pursuant to §658, subject to encumbrances of
6 record.

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

9 (5) “Grantor” means one or more grantors who shall be natural persons
10 and the grantor’s heirs and assigns.

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

13 (7) “Revise” means to change the grantee on an ELE deed and is accomplished
14 when the grantor records a new ELE deed to a grantee other than, or in addition to,
15 the grantee named in the prior ELDE deed. A revised deed supercedes and replaces
16 a prior ELE deed. To add an additional grantee to an existing ELE deed, the new
17 ELE Deed must name all grantees.

18 § 654. EXECUTION AND RECORDING OF AN ENHANCED LIFE

19 ESTATE DEED

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

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

(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 an ELE 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, subject to encumbrances of record, the interest stated in an ELE
7 deed vests in the grantee(s) or, for deceased grantees, the interest passes pursuant to
8 §658.

7
8 § 655. ACCEPTANCE, OR CONSIDERATION NOT REQUIRED;
9 CONVEYANCE NOT PERMITTED

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

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

11 or

12 (2) consideration.

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

14 § 656. REVOCATION, REVISION, MORTGAGES

15 A grantor may revoke or revise an ELE deed.

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

18 (2) The granting of a mortgage shall not operate to revoke or revise an
19 ELE deed, but the property interests conveyed and reserved in an ELE deed shall be
encumbered by the

20 mortgage and by 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 ELE deed.

4 (b) An ELE deed 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 ELE deed provides otherwise:

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

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

19 (3) If an ELE deed conveys title to multiple grantees as joint tenants and one
20 or more grantees predeceases the grantor, upon the death of the grantor, title to
21 the property vests in the grantee(s) who survive the grantor.

22 § 659. PREVIOUSLY EXECUTED AND RECORDED ENHANCED LIFE

1 This is an enhanced life estate deed executed pursuant to, and with the rights and
2 privileges set forth in, 27 V.S.A.
3 Chapter 6, the Enhanced Life Estate Deed Act (the “ELED Act”). The
4 Grantors, or the survivor of them, hereby reserve unto themselves: (a) a
5 common law life estate, with the exclusive use, possession, and enjoyment of
6 the Property; and (b) the right to convey the property.
7 Reference is hereby made to the aforementioned deeds and records, and to the deeds
8 and records 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, as _____ [insert
12 nature of tenancy] . We, the said Grantors, for ourselves and our heirs, executors,
13 administrators, and assigns do covenant with the said Grantees,
14 _____ and _____, and heirs and assigns, that
15 until the ensealing of these presents we are the sole owners of the premises and
16 have good right and title to convey the same in the manner aforesaid, that they
17 are FREE FROM EVERY ENCUMBRANCE, except as aforesaid, and the
18 Grantors hereby engage to WARRANT AND DEFEND the same against all
19 lawful claims whatsoever.

1 WE HAVE HEREUNTO set our hands this _____ day of _____,
2 20 .

3 _____

4 [INSERT NOTARY CLAUSE]

5

12

13 Sec. 2. EFFECTIVE DATE

14 This act shall take effect on July 1, 2020.