H.837


Referred to Committee on

Date:

Subject: Property; enhanced life estate deeds

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

An act relating to enhanced life estate deeds
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 and to reconvey real property.

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

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

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

(B) the grantor expressly reserves the right to convey, revise, revoke, and reconvey 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 the grantee’s heirs, subject to encumbrances of record.

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

assigns.

(5) “Grantor” means one or more grantors who shall be natural persons

and the grantor’s heirs and assigns.

(6) “Revise” means to change the grantee on a deed and is accomplished when the

grantor records a deed from the grantor to himself or herself.

(7) “Revoke” means to negate a deed and is accomplished when the

grantor records a deed from the grantor to himself or herself.

§ 654. EXECUTION AND RECORDING OF AN ENHANCED LIFE

ESTATE DEED

(a) Subject to the rights expressly reserved in the deed during a grantor’s

lifetime, a validly executed and recorded deed shall 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

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 a 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, the interest stated in the deed vests in the grantee, subject to encumbrances of record.

§ 655. ACCEPTANCE, OR CONSIDERATION NOT REQUIRED

An enhanced life estate deed is effective without:

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

or

(2) consideration.

§ 656. REVOCATION, REVISION, MORTGAGES

A grantor may revoke or revise a deed.

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

(2) The granting of a mortgage shall not operate to revoke or revise the deed, but the property interest conveyed in a deed shall be subject to the 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
Nothing in this chapter shall be construed to affect the validity of an enhanced life estate 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, a contingent remainder interest, which does not convey to the Grantees, their heirs, and assigns any present right, title, or interest in and a certain piece of land in, in the County of ______________, and State of Vermont, described as follows:

PROPERTY DESCRIPTION:

[Insert property description or attached schedule]

GRANTORS RESERVED RIGHTS:
This deed is an enhanced life estate deed executed pursuant to 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; together with (b) all the rights and privileges set forth in the ELED Act, including 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, a contingent remainder interest, which does not convey to the Grantees, their heirs and assigns, any present legal or equitable right, title, or interest in and to the above described property. We the said Grantors, for ourselves and our heirs, executors, administrators, and assigns do covenant with the said Grantees, ________________ and ________________, and 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 ENCUMBRANCE, except as aforesaid, and the Grantors hereby engage to WARRANT AND DEFEND the same against all lawful claims whatsoever.
WE HAVE HEREUNTO set our hands and seals this _____ day of ______, 20__.

_____________________________

STATE OF VERMONT

COUNTY OF___________, SS.

At ______________, in said County and State, this _____ day of __________, 20__, personally appeared ________________ and __________ and they acknowledged this instrument by them sealed and subscribed to be their free act and deed.

Before me, ______________________

_____________________________

STAMP: Notary Public State of Vermont

Commission Expires: 1/31/2021

Commission #:__________

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2020.