

# FRANKLIN GRAND ISLE BAR ASSOCIATION

January 22, 2020

## In Re: HOUSE BILL 837 - ENHANCED LIFE ESTATE LEGISLATION - UPDATE

I am happy to report that House Bill 837 - **Vermont Enhanced Life Estate Deed Act**, sponsored by Representative James Gregoire along with Co-Sponsors, Rep. Robert Bancroft, Rep. Lynn Batchelor, Rep. Jessica Brumsted, Rep. Thomas Burditt, Rep. Eileen "Lynn" Dickinson, Rep. Charen Fegard, Rep. Marianna Gamache, Rep. Kenneth Goslant, Rep. Rodney Graham, Rep. Lisa Hango, Rep. Mark Higley, Rep. Robert LaClair, Rep. Marcia Martel, Rep. Christopher Mattos, Rep. Michael McCarthy, Rep. Francis McFaun, Rep. Leland Morgan, Rep. Mary Morrissey, Rep. Linda Myers, Rep. Terry Norris, Rep. Woodman Page, Rep. Kelly Pajala, Rep. John Palasik, Rep. Carl Rosenquist, Rep. Brian Savage, Rep. Patrick Seymour, Rep. Harvey Smith, Rep. Vicki Strong, Rep. Casey Toof, and Rep. Theresa Wood, has been for Introduced and assigned to the Judiciary Committee.

By way of a recap of the reasons of the need for passage of this legislation please note the following:

1. An **Enhanced Life Estate Deed (ELED)**, is a type of deed recognized by common law in Vermont and five other states: Florida, Michigan, North Carolina, Texas, and West Virginia and are powerful and important estate and asset planning tools. An Enhanced Life Estate is also sometimes called a "Life Estate Deed with Reserved Powers, or a "Lady Bird Deed", "Medicaid Deed" and a "Italian Deed" or "Granai Deed".
2. The purpose of an Enhanced Life Estate Deed is to provide for the automatic transfer of the property at the death of the property owner to the named beneficiaries (remainderman) without the necessity of probate. The additional benefits of an Enhanced Life Estate Deed include:
  - A. The right of the property owner to keep control of the property and to keep the right to use and profit from the property for the property owner's lifetime together with the right to grant, sell, gift, lease, transfer, or encumber (mortgage) the property with or without consideration, including the ability to revise or revoke a Deed and to reconvey said real

property;

B. The owner's homestead remains an exempt asset for Medicaid purposes, up to the maximum value, currently \$585,000.00;

C. The use of an Enhanced Life Estate Deed does not subject the property to the claims of creditors of the remaindermen, their estates or the claims of divorcing remaindermen and their spouses;

D. The use of an Enhanced Life Estate Deed does not disqualify the owner's homestead from receiving the Vermont Home Owner's property tax prebate/rebate;

E. The property owner is not required to file a Gift Tax return as there isn't any present gift; and

F. When the property owner dies the remaindermen interest in the property will qualify for a step-up in basis of the property to the value as of date of death.

3. As important an estate and asset planning tool that the Enhanced Life Estate Deed is, its use in Vermont is not without concerns. As creatures of common law they are subject to inconsistent interpretations by the Courts, Lending Institutions and Title Insurance Companies and as a result it is next to impossible for a property owner to obtain title insurance coverage for property subject to such a deed.

For the above reasons the Franklin Grand Isle Bar Association, with the support and assistance of the Vermont Attorneys Title Company (VATC), supports this proposed ELED legislation and believes that the proposed Act, as presented, will provide aid to the Courts, Lending Institutions, the real estate conveyancing bar and the clients they serve.

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