

## **Act 878 Sections 46-48 - Property Transfer Tax and Enhanced Life Estate Deeds**

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### **Introduction**

My Background: 25 years in private practice concentrating in all areas of property law; approx. 2 years as the Interim Director of Property Valuation and Review; 10 years in the title insurance industry, 35 years involved with the Vt. Bar Association Title Standards project; adjunct faculty (instructor) Champlain College Paralegal Program

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### **Enhanced Life Estate Deeds - Basic Principles**

An Enhanced Life Estate Deed (ELE Deed) is a form of transfer of title to property in which the owners of the property transfer a “remainder” interest to someone and keep for themselves the right to occupy the property during their life (or until they surrender their interest) along with the right to sell, mortgage, lease, give away or create other interests in the property during their lifetime. When the owners of the enhanced life estate pass away, the property is automatically transferred to the holder of the remainder, without passing through probate.

Since the Legislature adopted Title 27 Ch. 6 Enhanced Life Estate Deeds in the 2019-2020 Session, with an effective date of July 13, 2020, almost all ELE deed transactions have been completed using the procedures and forms established in statute. There are a couple of key elements of the ELE deed Statute that impact the analysis.

1. Under the 2020 statute, no actual interest passes to the remainder at the time the deed is issued. It is merely an expectation that the remainder will get the title to the property at some point in the future.
2. An ELE deed can be revoked, revised, amended and otherwise altered by the holder of the life estate interest while the holder of the life estate interest is alive.
3. The majority of ELE deed transfers are exempt from property transfer tax as long as the title passes from Parent to Child (or Child’s spouse) or from Grandparent to Grandchild (or Grandchild’s spouse).

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### **Taxation of Enhanced Life Estate Deeds**

All transfers of real property interests are subject to the transfer tax computed as provided in the Property Transfer Tax statutes, unless there is a specific exemption. This chart compares the taxation of ELE deeds as presently in force based on current law compared to the taxation of ELE deeds under the provisions of Act 878 - Sections 46-48.

Factor For Comparison	Current Law	If Act 878 is Adopted
Taxability of ELE Deeds	Unless exempt, a transfer tax is due when an ELE deed is created	Unless exempt, a transfer tax liability is created but the payment of the tax is deferred
When is the transfer tax payable	When the ELE deed is signed and delivered to the grantee. At the time of the “transfer” when the deed is recorded	When the life tenant (holder of the life estate) dies and the actual title to the property transfers to the remainder.
What happens to the property transfer tax if the ELE deed is revoked by the life estate holder before their death	The person who paid the transfer tax at the time the deed was created is entitled to petition the Tax Department for a <b>refund</b> as long as the petition to collect the refund is filed within eight (8) years of the date the tax was originally paid	Because the tax is not paid until the transfer by reason of the death of the life tenant, the tax is simply abated and there is no requirement that there be a refund processed.
How does a subsequent owner know if the required property transfer tax was paid to clear the obligation to pay the tax	The tax is paid when the deed is created and recorded in the land records, just like every other taxable transfer. There are typically no questions about whether the tax was properly paid.	Someone searching the title to the property will see an ELE deed in the chain of title. The Property Transfer Tax Return that is filed when the deed is recorded will indicate whether the transfer is exempt or not. It is incumbent upon the title searcher to verify whether the tax was paid when the life tenant died and the remainder acquired title to the property. Act 878 provides for a mechanism by which a purchaser, mortgagee or attorney representing an interested party can ask the tax department to issue a certificate confirming the transfer tax was paid.

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## Conclusion

1. The Real Estate Bar and the Estate Planning Bar have discussed the proposed changes for several years. Generally the Real Estate Bar and Estate Planning Bar are in favor of the proposed changes. The justification generally follows the statutory framework for ELE deeds which clearly states that the ELE deed does not transfer any present interest to the grantee (remainder) at the time the deed is executed and recorded. The Property Transfer Tax is applied against the value of the interest transferred *at the time of the transfer*. The change in the due date of the tax makes the taxation of ELE deeds consistent with legal consequences of the transfer.