



WHAT IS A
"LADY BIRD"
DEED?

ENHANCED LIFE ESTATE DEEDS

DECEMBER 2020

VERMONT ATTORNEYS TITLE CORPORATION

LUNCH & LEARN SERIES



HOUSEKEEPING

- **Questions during the program?**
 - Use the Q&A at bottom of your screen and type them in. I may wait until the end of the program to respond.
- CLE Certificate will be posted to the Home Page of our website (News/Announcements)
- This video will be archived (with others) on our website.
- Next Month's Program: January 12, 2021
 - You will receive a Zoom invite
 - Topic: Solar Panels/UCCs & Manufactured Homes


COMMON LAW ELE DEEDS

WHAT COULD GO WRONG?

VIEWED FROM TITLE INSURER'S PERSPECTIVE

Assume the following deeds are ELE deeds

- Mother to Son and Daughter as TIC
 - Son dies then Mother dies. Who owns what? What if there is a 3rd sibling?
- Mother to Son and Daughter as JT w/ survivorship
 - Son dies then Mother dies. Who owns what?
- Mother to Son; then Mother mortgages to Bank; then Mother to Daughter? Mother dies.
 - Who owns what?
- Father to Son; Son mortgages to Lender.
 - What is the status of mortgage?



It all depends on
whose ox is
gored.


American proverb

COMMON LAW ELE DEEDS

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American proverb

- Father to Son but if not survived by Son, then to Nephew, if not survived by Nephew then to Niece.
- Mother to Son and Daughter then Mother to Mother.
- Father to Son and Daughter; lien filed against Son. What effect? If none, what effect if Father conveys to Daughter?
- Whiplash deeds: Father and Mother to Son; Father and Mother to Daughter; Father and Mother to Son; etc.
- Family feuds and litigation: *Weed v. Weed* (efficacy of reserved powers); *Brousseau v. Brousseau* (off record intention); *Coburn v. Cook* (divorce asset?)



27 VSA CHAPTER 6 §651 ET SEQ. EFFECTIVE - 7/13/2020

Per statute, ELE Deed means a deed in which:

- What is an Enhanced Life Estate Deed?
- Certainty & Simplicity
- The Grantor expressly reserves a common law life estate;
- The Grantor expressly reserves the right to convey the property during grantor's lifetime;
- The Grantee acquires a contingent remainder interest such that, prior to death of the grantor, the grantee has no vested rights in the property;
- Upon the death of the Grantor, title vests in the surviving grantee, or, for a deceased grantee, title passes pursuant to section 658.

Enhanced Life Estate Deed/
Ladybird Deed (\$29.99)

[Click Here to Purchase Deed](#)

STATUTORY DEFINITIONS

SIMPLICITY, BREVITY AND CERTAINTY ARE WONDERFUL THINGS

- **Convey:** To grant, sell, gift, lease, transfer, or encumber real property, with or without consideration, including the ability to **revise** or **revoke** a deed.
- **Revoke:** To negate an ELE deed. Accomplished when the grantor records a deed from the grantor to him/herself.
- **Revise:** To change the grantee on an ELE deed. 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 supersedes and replaces the prior ELE deed;
 - To **add** an add'l grantee to an existing deed, the new ELE deed must name all grantees.

REAL WORLD SCENARIOS

STATUTORY ELE DEED TO SON AND DAUGHTER FOLLOWED BY GRANTOR'S "CHANGE OF MIND"

1. GRANTOR WANTS THE PROPERTY BACK.

SOLUTION:

GRANTOR **REVOKES** THE ELE DEED BY RECORDING A NEW DEED FROM GRANTOR TO GRANTOR.

2. GRANTOR WANTS TO REMOVE THE SON FROM THE DEED.

SOLUTION:

GRANTOR **REVISES** THE ELE DEED BY RECORDING A SECOND ELE DEED ONLY TO DAUGHTER.



REAL WORLD SCENARIOS:

STATUTORY ELE DEED TO SON AND DAUGHTER FOLLOWED BY GRANTOR'S "CHANGE OF MIND"

3. GRANTOR WISHES TO **ADD** STEPSON TO TITLE.

SOLUTION:

GRANTOR **REVISES** THE ELE DEED BY CONVEYING THE PROPERTY TO SON, DAUGHTER & STEPSON.

NB: When adding a grantee, avoid malpractice by remembering the statutory requirement to name ALL grantees.

4. GRANTOR WISHES TO CONVEY TITLE TO THEIR NEW SIGNIFICANT OTHER.

SOLUTION:

GRANTOR **REVISES** THE ELE DEED BY CONVEYING THE PROPERTY TO THE SIGNIFICANT OTHER.



WHAT ARE THE EFFECTS OF RECORDING AN ELE DEED?

THE STATUTE CONFIRMS THAT ...

- NO AFFECT ON OWNERSHIP RIGHTS OF GRANTOR OR GRANTOR'S CREDITORS;
- DOES NOT TRANSFER OR CONVEY ANY PRESENT RIGHT, TITLE, OR INTEREST (LEGAL OR EQUITABLE) IN THE GRANTEE;
- DOES NOT SUBJECT THE GRANTOR'S PROPERTY TO PROCESS FROM THE GRANTEE'S CREDITORS.



- ELE DEED MAY BE CONVEYED WITHOUT THE NEED FOR JOINDER BY, CONSENT FROM, AGREEMENT OF, OR NOTICE TO THE GRANTEE;
- UPON DEATH OF GRANTOR, UNLESS PREVIOUSLY CONVEYED AND SUBJECT TO ENCUMBRANCES OF RECORD, THE INTEREST VESTS IN GRANTEE
[FOR DECEASED GRANTEE, SEE §658]

FROM THE GRANTEE'S PERSPECTIVE

- WHAT DID THE GRANTEE ACQUIRE?

- LABEL: CONTINGENT REMAINDER INTEREST;
- NO PRESENT INTEREST

- DOES GRANTEE NEED TO SIGN OFF WHEN GRANTOR LATER CONVEYS THE PROPERTY?

- NO. REMEMBER BROAD DEFINITION OF CONVEY.
- NOTE:
 - LENDER MAY HAVE OTHER THOUGHTS.
 - TITLE INSURER “MAY” HAVE OTHER THOUGHTS IF THERE ARE SIGNS OF TROUBLE IN RIVER CITY.



- CAN A GRANTEE CONVEY THEIR CONTINGENT REMAINDER INTEREST DURING GRANTOR'S LIFETIME?

- NO!
- WHY NOT?

- WHAT IS THE EFFECT OF SUCH AN ATTEMPT?

- CONVEYANCE BY GRANTEE IS VOID

DEATH OF GRANTEE PRIOR TO DEATH OF GRANTOR ... WHO GETS WHAT?

SINGLE GRANTEE:

- TITLE VESTS IN THE HEIRS OF INTESTATE GRANTEE OR SHALL BE DISTRIBUTED AS DIRECTED BY PROBATE DIVISION



MULTIPLE GRANTEES

TENANTS IN COMMON

- TITLE VESTS IN THE HEIRS OF INTESTATE GRANTEE OR SHALL BE DISTRIBUTED AS DIRECTED BY PROBATE DIVISION

JOINT TENANTS

- TITLE VESTS IN ANY GRANTEE WHO SURVIVES THE GRANTOR



MISCELLANY

- GUARDIANS?

- WITH APPROVAL OF PROBATE DIVISION, A GUARDIAN MAY CONVEY AN ELE DEED

- POWERS OF ATTORNEY?

- AN AGENT MAY EXECUTE AN ELE DEED.
- NB:THE POA MUST COMPLY WITH 14VSA CHAPTER 123 **INCLUDING ANY APPLICABLE GIFTING AND SELF-DEALING PROVISION**

- MORTGAGES?

- THE GRANTING OF A MORTGAGE DOES NOT OPERATE TO REVOKE OR REVISE AN ELE DEED;
- PROPERTY INTERESTS CONVEYED OR RESERVED ARE ENCUMBERED BY MORTGAGE AND ANY FUTURE ADVANCES

- EXISTING ELE DEEDS?

- STATUTE DOES **NOT** AFFECT THE VALIDITY OF AN ELE DEED EXECUTED PRIOR TO EFFECTIVE DATE OF THE ACT.
- E.G.THEY STAND – OR FAIL – ON THEIR OWN.

LADY BIRD DEED

Enhanced life estate deeds



OTHER FAQ'S



Death Bed Conveyance?

- If deed is not recorded prior to death, what about “delivery”?
- Title Std. 11.1 Delivery
 - Delay in recording, with or without record evidence of the intervening death of the grantor, does not of itself rebut the presumption of delivery.
 - Cf. Perry E. Bove’s Executor v. Marie H. Bove, et al, 116Vt. 76 (1950).

The Tinkerer

- I am a lawyer. I am the best deed drafter this side of the Pacific Ocean! Shouldn’t I embellish the statutory form deed to make it “even better”?
 - DON’T EVEN THINK ABOUT IT
- Why use the statutory deed?
 - Creates a Safe Harbor
- What about Transfer Tax?
 - Most transactions are parent to child = exempt
 - If not the foregoing, then transfer tax due on death of grantor.

COMPONENTS OF THE VT STATUTORY ELE DEED

AGAIN, “SIMPLE IS GOOD”



- Expressly creates an ELE by citing to the ELED Act (27 VSA chapter 6) e.g. Safe Harbor
- Defines Grantor’s Reserved Rights very simply as:
 - Reserving **common law life estate**; and
 - Reserving the right to **convey**. (broad statutory definition)

COMPONENTS OF THE VT STATUTORY ELE DEED

AGAIN, “SIMPLE IS GOOD”

- Practice Tip: Title the deed “Enhanced Life Estate Deed”
 - Clear and unambiguous; connotations of deed less likely to be missed by others
- Practice Tip: Don’t bite off too much and don’t “grant” a life estate.
 - Example: Second marriages. Wife wants to leave property to her 3 children subject to a life estate to 2nd husband.
 - Option 1: Use ELE statutory form and try to do everything.
 - Option 2: Two steps:
 - Step 1 = create LE to 2nd husband;
 - Step 2 = ELE to children subject to previously conveyed LE

TITLE DEED VERMONT AVE	
RENT \$6.	
With 1 House	\$30.
With 2 Houses	90.
With 3 Houses	270.
With 4 Houses	400.
With Hotel \$550.	
Mortgage Value \$50.	
Houses cost \$50. each	
Hotels, \$50. plus 4 houses	
<small>If a player owns All the Lots of and Color-Group, the rent is Doubled on Unimproved Lots in that group.</small>	

COMPONENTS OF THE VT STATUTORY ELE DEED

- Practice Tip: Too many children? Too confusing? Aversion to Whiplash Conveyances?
 - Consider setting up a Trust to be the Grantee.
- Remember: While a Trust can be a Grantee, **ONLY** a natural person can be a Grantor.

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TITLE STANDARD 15.1

DEEDS RETAINING LIFE ESTATES WITH RESERVED POWERS

2020 AMENDMENT



Standard itself amended to add:

27VSA Chapter 6, known as the Enhanced Life Estate Deed Act, became effective July 13, 2020 addressing transfers after the effective date of the Act.

Comment 5. Inter alia, 27VSA Chapter 6, includes a statutory form deed such that the provisions of the statute govern any such deed executed after the Effective Date of July 13, 2020.

QUESTIONS FOR ANDY? TYPE AWAY

What
to
Ask

