



Homeowner Legal Assistance Project
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Enhanced Life Estate Deed FAQ Windham & Windsor Housing Trust

Important Notice

The information in these FAQs is for informational purposes only. While the information was correct as of August 13, 2024, the laws may have changed. You should see a lawyer to get complete, correct, and up-to-date legal advice about your specific situation.

If you need a lawyer but can't afford one, contact Vermont Legal Aid at 1-800-889-2047. You may be able to get free legal help.

What is an enhanced life estate deed?

An *enhanced life estate deed* (ELED) can help a homeowner leave their house to the person or people they choose after they die. The homeowner can still make decisions about the house during their lifetime. Also, the homeowner can change or end the ELED at any time. When the homeowner dies, the house goes to the person or people they choose without going through probate court.

What is the purpose of an ELED?

An ELED is used for estate planning purposes. An ELED allows individuals to pass on real property smoothly and quickly. Also, a house receives a step-up in tax basis for capital gains tax upon the death of the grantor.

An ELED also saves time and money by helping the house avoid going through probate court.

An ELED also helps the current owner (grantor) keep significant control over the property during their lifetime. The grantor can use it, rent it out, or even sell it without needing permission from the grantee(s). However, they still need to follow WWHT's and their HomeOwner's Association rules.

Can the current owner (grantor) change their mind about an ELED?

The grantor of an ELED can change their mind and revoke or modify the deed without the permission of the grantee(s).

"Revoke" means to end an ELED. A grantor can revoke an ELED when the grantor records a new deed from the themselves to themselves.

"Revise" means to change the grantee on an ELED. A grantor can revise an ELED by recording a new ELED. The grantor can name new grantee. The grantor can add grantees by including the name of the old grantee with the names of new grantees. A revised ELED replaces a prior ELED. To add more grantees to an existing ELED, the new ELED must name all grantees.

How does an enhanced life estate deed divide ownership of the house?

The original owner is the *grantor*. The grantor keeps a common law life estate interest in the house. This means they have the right to convey, use, profit from, and live on the property for the duration of their life.

An ELED names one or more *grantees* who will receive the property when the grantor dies. The grantee can be any person, trust, or entity. Often, a grantor will name a spouse, child, or grandchild as the grantee.

What happens if the grantee dies before the grantor?

If there is only one grantee, then their interest will pass to that grantee's heirs or beneficiaries.

If it is a *tenant-in-common* grantee, then the grantee's interest will pass to their heirs or beneficiaries. Tenant-in-common means that two or more grantees have an ownership interest in the house. Their ownership interest does not have to be equal. All grantees have the equal right to use the house.

If it is a *joint-tenant* grantee, then their interest will pass to any surviving grantee(s). Joint-tenant means that two or more grantees have an ownership interest in the house. Their ownership interest is equal unless the ELED divides the ownership interest unequally. All grantees have the equal right to use the house.

Does the grantee need to accept the interest in the house?

An ELED is effective without the the grantee's acceptance during the grantor's life. But if the grantor and grantee plan together, they can make the best plan for them.

Does the grantee need to pay the grantor for the interest in the house?

No, an ELED is effective without any consideration. Consideration is something a grantee gives the grantor in exchange for the house. An example would be payment or a promise to do something in exchange for the house.

Can the grantee convey their interest in the house before the grantor passes away?

A grantee named in an ELED cannot convey the grantee's contingent remainder interest during the grantor's lifetime. For example, a grantee cannot sell their interest in the home before the grantor passes away. Any attempt to do so is void.

Are there some things that an enhanced life estate deed does not do?

An ELED does not affect the grantor's ownership rights during the life of the grantor.

An ELED does not affect the rights of the grantor's creditors. Any mortgages or liens stay with the property and the grantee takes subject to any liens/mortgages.

An ELED does not give an interest to the grantee until the death of the grantor.

An ELED does not subject the grantor's real property to process from the grantee's creditors. So, creditors of the grantee cannot take a lien on the house.

Is an enhanced life estate deed effective as soon as it's signed?

No, an ELED must be (1) validly executed and (2) recorded in the land records to be effective.

Validly executed means signed and dated by the grantor or grantors in front of a notary public and notarized.

In Vermont, all land records are recorded and preserved at the local level. Usually, they are filed and recorded in the town clerk's office. You must record an ELED in the municipality where the real property sits. The town clerk cannot record the ELED without a property transfer tax return. The recording fee is \$15 per page of the ELED, plus \$15 to record the property transfer tax return.

What is the effect of a mortgage on an ELED?

If the grantor gives a mortgage after recording an ELED, a mortgage does not revoke or revise an ELED.

A mortgage does affect the the property interests conveyed and reserved in an ELED. The grantee takes an interest subject to the mortgage.

What is the effect of a Windham & Windsor Housing Trust (WWHT) housing subsidy covenant/Ground Lease (HSC/GL) on an ELED?

A WWHT HSC/GL does affect the the property interests conveyed and reserved in an ELED. A grantee takes an interest subject to the WWHT HSC/GL. If a grantor has a WWHT HSC, then the ELED should reference it in writing.

The grantee must follow the rules of the WWHT HSC/GL and should reach out to WWHT immediately to see what the requirements are for them as the new owner. Depending on the situation, the grantee may need to sell the home through WWHT or they may be able to keep the home as their primary residence.

What is the property transfer tax?

Property transfer tax is a tax on the transfer of title to real property in Vermont. An executed and recorded ELED is subject to the property transfer tax requirements.

Who owes the property transfer tax?

The property transfer tax is owed by the grantee of an ELED unless the grantee and grantor have a written agreement stating that the grantor owes the transfer tax.

When is payment of property transfer tax due?

Payment of the property transfer tax is due within 30 days of recording the ELED.

Are there some exceptions to a property transfer tax?

Yes. There is no property transfer tax is owed if the transfer of the property is between certain types of people without consideration. Transfers between following types of people are exempt:

- Two spouses,
- parent and child or child's spouse, or
- grandparent and grandchild or grandchild's spouse.

How is value determined for the Property Transfer Tax for an ELED?

The value, or dollar amount, to calculate transfer tax is based on a statutory formula . The value is not based on a sale price of the real property, because the real property was not sold.

The value is the Grand List value of the property at the time of the transfer, multiplied by a factor published by the Internal Revenue Service for purposes of valuing life estates and remainders pursuant to 26 U.S.C. § 7520.

The 7520 factor is based on the grantor's age, published actuarial tables, and published interest rate in the month of the transaction.

Is there a Property Transfer Tax Return form?

To record an ELED, you must file a Property Tax Transfer Return form (PTT-172) with the Vermont Department of Taxes and the town. If there is more than one grantor or grantee on the ELED, then you must file another form (PTT-175), as well.

Do I have to file a Property Transfer Tax Return form even if the transfer is exempt from the property transfer tax?

Yes. Even if the transaction is exempt from the property transfer tax a grantor must file Property Transfer Tax Return with the Vermont Department of Taxes and Town. On the form, the grantor lists the exemption.

How do I pay the Property Transfer Tax to the Department of Taxes?

Online: You may pay electronically at myVTax.

By Mail: Please make checks payable to the Vermont Department of Taxes and complete Form PTT-173, Property Transfer Payment Voucher. Mail your payment and voucher to Vermont Department of Taxes, 133 State Street, Montpelier, VT 05633-1401.

How does an ELED affect a Medicaid applicant's eligibility?

A Medicaid applicant is usually still eligible for Medicaid and does not get a transfer penalty if they transfer their home with a ELED.

If the house is as a primary residence of the Medicaid applicant or their spouse, the property is an exempt asset for Medicaid purposes (with an equity limit of \$713,000 for 2024 if no spouse resides there) and there is no transfer penalty.

Without an ELED, sometimes there is a transfer penalty if a Medicaid applicant transfers their home for less than fair market value within the last five years of applying for Medicaid long-term care. A transfer penalty is when Medicaid stops paying for long-term care for a period of time. The period of time depends on the value of the home the Medicaid applicant transfers.

What is Medicaid's Estate Recovery Program?

For individuals age 55 or older, Vermont is required to seek recovery of payments from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services. States have the option to recover payments for all other Medicaid services provided to these individuals, except Medicare cost-sharing paid on behalf of Medicare Savings Program beneficiaries.

Does an ELED help the house avoid Medicaid's Estate Recovery Program?

Yes. Since an ELED transfers the house to the grantee(s) upon the death of the grantor, the house is not part of the grantor's estate. Since the house is not part of the grantor's estate, it is not an asset that is subject to Medicaid's Estate Recovery Program.

It is important to consult with an attorney to see how an ELED specifically affects Medicaid in your case.