

STANDARD 6.10

ENHANCED LIFE ESTATE: DEED FOR NON-HOMESTEAD PROPERTY

STANDARD: **THE HOLDER OF A LIFE ESTATE IN NON-HOMESTEAD PROPERTY, COUPLED WITH THE POWER TO SELL, CONVEY, MORTGAGE AND OTHERWISE MANAGE THE FEE SIMPLE ESTATE, CAN CONVEY OR ENCUMBER THE FEE SIMPLE ESTATE DURING THE LIFETIME OF THE HOLDER WITHOUT THE REMAINDERMAN.**

Problem 1: A remainder in Blackacre was conveyed by John Doe to Jane Smith with John Doe reserving for himself without any liability for waste full power and authority in himself to sell, convey, mortgage or otherwise manage and dispose of the property in fee simple with or without consideration without joinder of the remainderman and full power and authority to retain any and all proceeds generated by such action. John Doe died. Is the conveyance to Jane Smith valid?

Answer: Yes.

Problem 2: Same facts as in Problem 1, except that John Doe, during his lifetime and for his own benefit, by a deed reciting the power of disposition, conveyed Blackacre in fee simple to Jeffrey Williams. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith?

Answer: Yes.

Problem 3: Same facts as in Problem 1, except that John Doe, during his lifetime and for his own benefit, by a deed reciting the power of disposition, conveyed Blackacre in fee simple to Jeffrey Williams. At the time of the conveyance Creditor had a judgment lien against Jane Smith. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith and Creditor?

Answer: Yes.

Problem 4: Same facts as in Problem 1, except that Creditor has a judgment lien against John Doe. However, Creditor does not levy and execute on his judgment. John Doe dies without conveying the property. Did Jane Smith acquire title to Blackacre free of the judgment lien of Creditor?

Answer: Yes.

Authorities: F.S. 733.706 (2018), F.S. 733.702(4)(a) (2018), *Oglesby v. Lee*, 73 Fla. 39, 73 So. 840 (1917); *Aetna Ins. Co. v. La Gasse*, 223 So.2d 727 (Fla. 1969); 19 Fla. Jur. 2d *Deeds*, § 170

Secondary Authority: Stephanie Emrick, *Transfer on Death Deeds: Is It Time to Establish the Rules of the Game*, 70 Fla. L. Re. 469 (2018)

Comment:

This type of enhanced life estate conveyance is commonly referred to as a “Lady Bird Deed.” It is used for various purposes, among which is the avoidance of probate by the holder of the life estate. Attempts by the life tenant with enhanced powers during their lifetime to divest the remainderman of their remainder interest may create questions as to who holds fee simple title after the death of the life tenant. For the record to be clear, the prudent practitioner should have the life tenant retain the power to divest the remainderman in the vesting deed creating the enhanced life estate and any conveyance attempting to divest the remainderman should clearly state the life tenant’s intent to do so. The wording of a deed reserving the right to resell the property may create a fee simple determinable or estate upon condition subsequent. In *Oglesby* the conveyance from a father to a daughter reserving the right to sell and place the proceeds of the sale in lieu of the property resulted, upon such sale, in divestment of the daughter’s interest. A remainderman as to an enhanced life estate during the lifetime of the life tenant holds a vested remainder interest which is subject to divestment by the life tenant and, therefore, any judgment against the remainderman may be similarly divested. However, upon the death of the life tenant, the lien of judgment against the remainderman would attach to the property.

A judgment against a decedent is not enforceable against real property owned by the decedent at the time of death, but shall be filed in the same manner as other claims against estates of decedent. *See* F.S. 733.706 If a creditor does not levy and execute on its judgment lien, it is just a general lien on all of the property of the debtor. F.S. 733.702(4)(a) permits enforcement of the lien of mortgages, security instruments or other liens on specific property without the necessity of filing a claim.

Although Lady Bird Deeds are used prevalently in Florida for various purposes among which is the avoidance of probate by the holder of the life estate, there is no Florida Statute governing such conveyances and scant judicial authority supporting the practice. The practitioner should thus be aware that this Standard and its guidance represent the consensus view of the Real Property, Probate, and Trust Law Section of the Florida Bar.