

STANDARD 6.11

ENHANCED LIFE ESTATE: LIFE TENANT AND HOMESTEAD PROPERTY

STANDARD: A LIFE TENANT WITH AN INTEREST IN 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. During his lifetime and for his own benefit, John Doe by a deed reciting the power of disposition, conveyed Blackacre in fee simple to Jeffrey Williams. John Doe was a single man at the time of the conveyance to Jeffrey Williams. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith?

Answer: Yes.

Problem 2: Same facts as in Problem 1, except that John Doe was married at time of the conveyance to Jeffrey Williams and his spouse joined in that conveyance. 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 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.

Authorities: Art. X, Sec. 4(c), Fla. Constitution; F.S. 732.401 (2018), and F.S. 732.4017 (2018); *Oglesby v. Lee*, 73 Fla. 39, 73 So. 840 (1917); 19 Fla. Jur. 2d *Deeds* § 170

Comment: This type of 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 life tenant must have retained 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. A conveyance of a homestead residence by the life tenant is subject to the spousal joinder requirements of Art. X, Section 4(c). The restriction on the devise of homestead contained in Art. X, Sec. 4(c), of the Florida Constitution, must be considered after the death of the life tenant if they were survived by a spouse or minor child. Conveyances from all of the heirs of the deceased life tenant, including the surviving spouse, may be required to convey fee simple title to the remainderman named in the vesting deed that created the enhanced life estate.

The wording of a deed reserving of the right to resell the property may create a fee simple determinable or an estate upon condition subsequent. In *Oglesby*, the conveyance from a father to daughter reserving the right to sell and place the proceeds of the sale in lieu of the property resulted in no title interest in the daughter that could be clouded by a subsequent conveyance. Upon a life tenant's conveyance or mortgage of a fee interest to a bona fide purchaser or lender for value, title to the property is free and clear of the lien of the judgment against the remainderman. However, upon the death of the life tenant, the lien of the judgment against the remainderman would attach to the property.

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 represents the consensus view of the Real Property, Probate, and Trust Law Section of the Florida Bar.