

STANDARD 6.12

ENHANCED LIFE ESTATE: REMAINDERMAN AND HOMESTEAD PROPERTY

STANDARD: **THE REMAINDERMAN IN HOMESTEAD PROPERTY, WHEREIN THE LIFE TENANT RESERVED THE POWER TO SELL, CONVEY MORTGAGE AND OTHERWISE MANAGE THE FEE SIMPLE ESTATE, ACQUIRES FEE SIMPLE TITLE UPON THE DEATH OF THE LIFE TENANT ONLY WHEN NOT IN VIOLATION OF CONSTITUTIONAL RESTRICTION ON DEVISE OF HOMESTEAD.**

Problem 1: A remainder in Blackacre was conveyed by John Doe, a single man, 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 without a spouse or a minor child. Upon the death of John Doe, is fee simple title vested in Jane Smith?

Answer: Yes.

Problem 2: Same facts as in Problem 1, except that John Doe died while married to Sally Brown. Upon the death of John Doe, is fee simple title vested in Jane Smith?

Answer: No.

Problem 3: Same facts as in Problem 2, except that the deed is executed on or after July 1, 2018 and John Doe's spouse, Sally Brown, joined in John Doe's deed to Jane Smith and the deed contained the following statement: "By executing or joining in this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me"? John Doe had no minor child at the time of his death. Upon the death of John Doe, is fee simple title vested in Jane Smith?

Answer: Yes.

Problem 4: Same facts as in Problem 1, except that at the time of the conveyance and when John Doe died Jane Smith was his spouse and Jane Smith joined in the deed. John Doe had no minor children at the time of his death. Is the conveyance to Jane Smith valid

Answer: Yes.