



The Real Estate Review is a quarterly newsletter issued by *The Ratliff Law Firm* with content about the things that are important to realtors, lenders, buyers and sellers of real estate in the Southwest Virginia area. The newsletter is also downloadable in .pdf format for free at www.ratlifflaw.net/realestatereview and all issues will be available on the date published.

We hope you enjoy the publication! If so, please share with your friends and colleagues...and as always, your feedback is welcome! Questions? Send them to contact@ratlifflaw.net.

What is a Life Estate in property?



That term is intriguing, isn't it? In most cases, when a person buys real property, they buy that property in "fee simple absolute." Fee simple absolute simply means that they bought the whole. However, property can be divided up into numerous

elements (called estates) and owned by numerous separate individuals. This, of course, quite complicated, so I will stick to the "life estate" part.

In common law and statutory law, a life estate is the ownership of land for the duration of a person's life. In legal terms it is an estate in real property that ends at death when ownership of the property may revert to the original owner, or it may pass to another person. This occurs when someone deeds property to another person or persons, and either 1.) reserves a life estate for themselves, or 2.) deeds a life estate to someone else.

The Life Estate holder is the present possessory holder. It means that the person who has a life estate can hold the property to the exclusion of the world - even from the other deeded owner or owners. The reason for this is that the others who have their names on the deed are considered "future interest" holders. That means that their interest in the property does not become valid until the life estate holder dies.

A life estate can be used to protect property from Medicaid spend down, or can be used to ensure that property transfers automatically to another. There are other uses too. A Life Estate can be a good tool...but do discuss it with your lawyer to ensure it fits your needs!

TRANSFERRING PROPERTY: THERE ARE ONLY THREE (3) WAYS

Want to transfer real estate? There are only 3 ways:

- 1.) DEED - a deed transferring from the grantor to the grantee.
- 2.) WILL - A decedent leaves property in a properly written will.
- 3.) INTESTATE SUCCESSION - a person dies and the property travels along the lines of succession as allowed by law.

A separation agreement in divorce does NOT transfer real estate! The separation agreement is a contract to settle property rights. Even after it is signed by both parties a deed must be done to transfer title to any real estate. Paying real estate taxes on a parcel has no effect on title.

NEW REAL ESTATE JUDGMENT LIEN LEGAL PROTECTIONS IN VIRGINIA

In real estate news, the Virginia legislature passed a new law for 2016 (enacted with an effective date of July 1, 2016) that protects a married couple's primary residence from any judgment arising from medical bills - even if joint. Entitled, "Spouse's liability for medical care; exemption for principal residence" House Bill 1128 (Habeeb).

Provides that a lien arising out of a judgment for a spouse's emergency medical care shall not be enforced against the judgment debtor's principal residence held as tenants by the entireties unless the residence is refinanced or transferred to new owners.

"Tenants by the Entireties" is a preferred legal status held exclusively by married couples that is (and always has been) designed to protect the estate against liens. This law takes the protection even further.

Ultimately, this means that emergency medical care for one or both spouses cannot result in a valid lien against the home until or unless sold or refinanced.

Previously, the granting of a judgment under the doctrine of necessities resulted in a creditor for medical debt having the ability to get a judgment against BOTH parties, even if only one received treatment. This judgment against both owners made it possible for the judgment lien to attach to the married couple's property, even if titled as "tenants by the entirety" which is a protected estate.

IS RECORDATION OF A DEED REQUIRED?

Recordation of a deed is done solely for the purpose of providing notice to the world that real estate has been titled in the name of the Grantee (purchaser). This allows any person to search the land records of the county in which the property is located and determine 1.) the owner or owners, 2.) liens that may exist against the property, 3.) out-conveyances in the past, 4.) easements, timber rights, or mineral sales, and a number of other things. However, recording is actually NOT necessary to transfer title to real estate.

Title is conveyed to real estate when a deed is prepared, signed by the grantor (seller) and delivered to the grantee (purchaser). That is it. No more, no less.

Recording is done to ensure that the property is shown to belong to the grantee. It is for notice and is done to keep things honest. ALWAYS record to protect yourself, but this is the reason why!

Virginia is considered a "race notice" state. This status gives priority of title to the party that records first, but only if the party also lacked notice of prior unrecorded claims on the same property...it means first to the courthouse wins! More on Recording and Virginia recording requirements on Page 2.



VIRGINIA DOCUMENT RECORDING REQUIREMENTS

The Circuit Court Clerk of each Virginia County has a land records department. In that department, there are recorded documents that are very important, including, but not limited to Deeds, Deeds of Trust, Leases, Wills, Powers of Attorney, etc.

Every writing to be recorded must conform to the following requirements:

1. **SURNAMES UNDERLINED.** Each individual's surname is underscored and/or written entirely in capital letters (Corporate names are entirely underscored or in capital letters). Virginia Code § 17.1-223.
2. **PAGES NUMBERED.** Each page of the instrument or writing is numbered (including the first page and all exhibits). Virginia Code § 17.1-223.
3. **TAX EXEMPTION STATED.** The Code section under which any exemption from recordation taxes is claimed is clearly stated on the face of the instrument. Virginia Code § 17.1-223.
4. **GRANTORS AND GRANTEEES DESIGNATED.** The names of all grantors and grantees are listed and designated as Grantor or Grantee in the first paragraph. Virginia Code § 17.1-223, § 17.1-227, § 55-48 and § 55-58.
5. **NAME OF DRAFTER STATED.** The first page of the document has an entry showing the name of either the person or entity who drafted the instrument. Virginia Code § 17.1-223.
6. **GRANTEE ADDRESS STATED.** The grantee's current address shall be included on the document. Virginia Code § 17.1-223.
7. **RETURN ADDRESS STATED.** The document will be returned to the grantee unless otherwise clearly indicated on the first page of the document, including a return address. Virginia Code § 17.1-223.
8. **SOCIAL SECURITY NUMBERS REMOVED.** All Social Security Numbers must be removed from the instrument by the preparer. Virginia Code § 17.1-223 and § 17.1-227.
9. **PARCEL IDENTIFICATION NUMBER STATED.** Jurisdictions that use an identifying tax parcel number may require that each land instrument bear in the left margin of the first page such parcel identification number (PIN). Virginia Code § 17.1-252.
10. **DOCUMENT STANDARDS MET.**
 - A) Instruments shall be recorded on paper that is uniformly white, opaque, smooth in finish, unglazed, and free of visible watermarks and background logos.
 - B) The size of the paper shall be no less than 8 1/2 x 11 or larger than 8 1/2 x 14 inches.
 - C) A minimum paper weight of 20 lb is required.
 - D) Positive (black on white background) copies may be substituted provided the copies meet the paper and quality inscription standards noted herein and are microfilmable and capable of producing a legible image from microfilm. Negative (white on black background) and carbon copies are not acceptable.
 - E) All inscriptions shall be black and shall be solid, uniform, dense, sharp, and unglazed.
 - F) Signatures shall be in dark blue or black ink.
 - G) Printing shall be nine point or larger. Typing shall be elite (12 characters per inch) or pica (10 characters per inch) or larger.
 - H) A minimum one inch margin shall be provided on the left, top, and bottom margins and one-half inch on the right margin.

SETTLEMENT ESCROW EXPLAINED

The concept of "Escrow" as related to real estate purchases has frequently eluded clients. It simply is a concept that is tough to resonate. So...what EXACTLY does it mean? In its simplest terms, escrow in a real estate transaction means the entire process from putting an earnest money deposit with the realtor to the actual closing with the attorney.

Escrow begins with the deposit by the buyer and issuance of the real estate contract. The next step is to secure financing from a lending institution, who will do an appraisal and provide a loan commitment. Under Federal CFPB law, *the Clients* then select their choice of Closing attorney and title insurer and vendors. Then come inspections such as the pest inspection, sewer inspection, and possibly, a home inspection (also client choices). The client then chooses their home hazard insurer. From here, the closing attorney provides a title report to ensure clear title and - if all is well - the official closing is scheduled at which time the closing attorney accepts payment, pays any and all liens, vendors, realtors, insurers, taxes and judgments against the property and records the deed on behalf of the new buyer and issues payment to the seller.



LEASE-PURCHASE AGREEMENTS: *What They Are and How They Can Be Useful.*

A lease-purchase agreement is a document that provides the respective responsibilities between a property owner - the Landlord - and a Lessee - the Tenant, with regard to the lease of premises. It is very similar to any typical lease agreement with the exception of the purchase option provided for the Tenant to take title to the property under certain conditions. The Landlord and Tenant can agree on the term, amount for the sale of the property, whether the full payment or a partial payment is applied to the purchase, who is responsible for upkeep and repairs, insurance, and much, much more.

Lease purchase agreements are extraordinarily useful if a tenant has a job, but perhaps less than perfect credit. The agreement is binding for the sale of the property and can be an excellent way to purchase property. For the sellers/Landlord - it is a way to sell, but maintain control of the sale without relinquishing title until all of the conditions are met in the Agreement. Once all of the conditions are met by the Tenant, the Landlord transfers title by deed. Realtor fees can be included as well. Pitfalls do exist, so be certain to have lease-purchase agreements prepared by a knowledgeable attorney. Last big advantage? They are very inexpensive!