

SAMPLE

Oliver, who lives in Richmond, wants to give his land to his good friend Andy so that Andy can use the land during Andy's lifetime. Oliver then wants the land to go to his friend Betty's youngest girl, but only if Betty becomes a Buddhist. If Betty does not become a Buddhist, then Oliver would like his land to go to Tuckahoe Elementary School, but only for so long as Tuckahoe Elementary School meets the Virginia Board of Education Excellence standards.

Oliver tells you that Andy and Betty are alive. He also indicates that, thankfully, Tuckahoe Elementary School currently exceeds the Board of Education Excellence standards. Betty is currently not a Buddhist and she has no children.

You are Oliver's attorney. Please draft a grant that will dispose of Oliver's land in the way he desires. Explain to Oliver why you have chosen the language you have chosen.

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I. Draft Conveyance

I, Oliver, convey my land to Andy for Andy's lifetime, then if Betty becomes a Buddhist before Andy's death, the land goes to Betty's youngest daughter and her heirs. However, if Betty does not become a Buddhist by Andy's death, then the land goes to Tuckahoe Elementary School and its heirs for as long as Tuckahoe Elementary School meets the Virginia Board of Education Excellence standards.

II. Explanation and Potential Concerns

A. Andy's Interest

1. What Was Created

The draft conveyance creates a present possessory estate in a life estate because of the words of limitation used – “for Andy's lifetime.”

2. Potential Concerns

Oliver should be aware of the limitations on Andy's use of the land. As seen in earlier cases, life estates, because of their limited duration, are tough to lease, mortgage, or sale. Life estates are also subject to control by future interests via the doctrine of waste, which can go so far as to prevent Andy from making any changes to the land that future interest holders do not approve.

Oliver should consider whether he might want to give a larger interest to Andy, although that would come at the cost of the interests to Betty's youngest daughter or Tuckahoe Elementary School. A trust may also be an option, however that is beyond my area of expertise.

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B. Betty's Youngest Daughter's Interest

1. What Was Created

The draft conveyance creates a contingent remainder in Betty's youngest daughter in fee simple absolute. The future interest is a remainder because it meets both requirements for creating a valid remainder: (a) it follows an expirable estate (Andy's life estate) and (b) Betty's youngest daughter will take possession, if at all, at the expiration of that estate (there is no shifting or gapping). The future interest will become a fee simple absolute if Betty's youngest daughter takes possession because of the use of the words of limitation "and her heirs". The future interest is contingent because it meets neither of the requirements for a vested remainder: (a) the purchaser, Betty's youngest daughter, is not yet born or ascertainable and (b) the condition precedent of Betty becoming a Buddhist before Andy's death has not yet been met.

2. Potential Concerns

Oliver should also be aware of some ambiguities in his wishes that I have resolved in this draft conveyance. Oliver did not tell me what interest he wanted Betty's youngest daughter to get if Betty becomes a Buddhist. I gave her the largest interest possible, a fee simple absolute. This means once the conditions are satisfied and Andy dies, Betty's youngest daughter will have complete control over the land from that time forward.

Oliver was also unclear on the Buddhist condition. I have written it so that if Betty ever becomes a Buddhist during Andy's lifetime, even if she stops being a Buddhist, the condition is satisfied. I have also written the conveyance so that we only test this during Andy's lifetime. We do not wait after Andy's death to continue to see if Betty becomes a Buddhist. My reason for this is that if we are going to wait, the land will sit in Oliver, or his heirs, hands for an indeterminate period of time that may hurt the marketability and value of the land.

I did not do this for the youngest daughter limitation. This means we will wait for Betty to have a youngest daughter if Betty becomes a Buddhist, even if this occurs well after Andy's death. Oliver may want to consider what we should do if Andy dies and Betty has not daughter yet. Does Oliver want to wait to see if she has a daughter, which is what the law will do. Or should the land move on? Another related concern here would be giving land to an individual of a very young age.

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C. Tuckahoe Elementary School's Interest

1. What Was Created

The draft conveyance creates a contingent remainder in fee simple determinable in Tuckahoe Elementary School. It is a remainder because it follows immediately after an expirable estate (Andy's estate). It is a fee simple determinable because of the durational language used ("as long as"). It is contingent because of the condition precedent—Betty has not become a Buddhist yet, but there is still has a possibility of her becoming a Buddhist.

2. Potential Concerns

Oliver should be aware of the characteristics of the fee simple determinable condition. As written, if Tuckahoe Elementary School ever fails to meet the standard, they will automatically lose rights in the land. Oliver should consider possibilities such as the standard changing its name (its identified explicitly in the grant), the level of excellence required, and its relevance to the presumed underlying concern—school quality.

Oliver should also know about the automatic lose of the interest if the standard is no longer met. This means the future interest holder automatically becomes the rights holder in the land and, if they do not eject the School within fifteen years, the School may obtain interests in the property via adverse possession. However, if the conveyance was drafted differently, creating a fee simple on condition subsequent where the future interest (right of entry) must be affirmatively elected, the uncertainty surrounding rights in the land may stay uncertain for much longer.

D. Oliver's Interests

1. What Was Created and Potential Concerns

a. Possibility of Reverter

The conveyance, as written, gives Oliver a possibility of reverter following the School's interest. If the School stops meeting the standard, Oliver, or one of his intestate heirs, will automatically obtain ownership of the land.

b. Reversion

The conveyance also creates a reversion, which is essentially a fee simple absolute, in Oliver in the situation that Betty becomes a Buddhist during Andy's lifetime but never has a daughter. He would also get a reversion for the period of time after Andy's death as we wait to see if Betty has a daughter.