

Who should be listed as the owner of real property when the property is subject to a life estate?

Attorneys and other title examiners are conflicted on how to properly list real estate when it is subject to a life estate or some other type of property interest (as opposed to fee simple ownership). VLCT's opinion is that listers can list either the life tenant, or the "remainderman," as the owner of property in the grand list.

One Vermont attorney has stated that "this type of transfer constitutes a gift, but the gift is not completed, and therefore no transfer actually occurs until the grantor (generally the life tenant) dies." This is the common law rule that the life tenant, and not the remainderman, has the duty to pay property taxes on a piece of real property.

The Vermont Supreme Court, however, has rejected the common law rule, and has held that both the life tenant *and* the remainderman can be listed as the owner for tax purposes. The Court reasoned that if the Legislature intended only life tenants to be responsible for taxes as the "owner" of real property, it would have explicitly said so. The statute relevant to this inquiry is 32 V.S.A. § 3651, which states, "taxable real estate shall be set in the list to the last owner or possessor thereof on April 1 in each year in the town, village, school and fire district where it is situated." The Court stated,

*it seems reasonable to conclude that the Legislature intended to make [the listing of real estate] as simple and easy as possible for the listers and that it evidenced this intention by the use of the unqualified word "owner" so that the listers could properly list property to any person who was an owner of it within the generally accepted meaning of that word. It seems to us that this intention is also evidenced by permitting the listing to either an owner or a possessor of the property. It appears unreasonable to conclude that the Legislature intended to cast upon the listers the burden of determining the nature of the titles of various owners of different interests in a piece of real estate and at their peril assess the tax on the same to the owner or the life estate if such there was. If the Legislature had intended that in a case of divided ownership the life tenant, if any, should be the only one to be considered the 'owner' of the property it could easily have so provided in express terms." *Town of Brattleboro v. Smith, 117 Vt. 425 (1953).**

Brattleboro v. Smith remains good law in Vermont. Therefore, listers are *not* required to determine the nature of the titles of the owners of different interest in the same piece of real estate and can list *either* the life estate holder or the remainderman, as the Court has held that both are "owners" for tax purposes.

- Brian Monaghan, Attorney, VLCT Municipal Assistance Center