

Reversionary Interest



A landowner concerned about the future use of their land can donate or sell their land on a conditional rather than absolute basis. The deed used to convey the land can include terms that will trigger a change in ownership back to them—or some other person or entity assigned by them—if use of the land falls out of compliance with the conditions set in the conveyance.

Introduction..... 1

A Powerful Tool 1

 Transferring Property on Condition 1

 Applicability..... 1

 Transferring Reversionary Interest to Another Entity 2

Varieties of Reversionary Interests 2

 Automatic Reversion 2

 Right of Reentry 2

 Option to Reacquire..... 3

Issues to Consider 3

 Assigning the Reversionary Right to Another Party..... 3

 Identifying Triggering Events..... 3

 Title Issues 4

Introduction

A reversionary interest is the right to resume ownership of land if and when certain conditions are met. Reversionary interests have been used for centuries to provide a mechanism for change of ownership if certain conditions set forth in a deed are not met.

If an owner is willing to donate or sell land only for so long as it is used, or not used, for a particular purpose, the owner can transfer the land on a conditional rather than absolute basis. The deed used to convey the property can include terms that will trigger a change in ownership back to the original owner—or some other person or entity assigned by them—if use or ownership of the land falls out of compliance with the conditions set forth in the deed.

Professional assistance in drafting a reversionary interest deed clause is a must to assure that the desired result is achieved. If there is any uncertainty about whether the parties intended to create a reversionary interest, the

courts will interpret the clause to be only a use restriction enforceable by injunction—not by forfeiture of ownership.

A Powerful Tool

Transferring Property on Condition

A reversionary interest is created when a deed provides that the property transfer is “on condition that” or “only for so long as” the property described in the deed is used, or not used, for certain purposes. The reservation of a reversionary interest in a deed gives the original owner (and the owner’s heirs, successors, and assigns) a powerful tool to take the land back if promises about future land use are broken.

Applicability

A reversionary interest is useful for addressing a number of conservation scenarios; for example:

- An owner may be more willing to donate land to a municipality for a public park or other conservation use if there is a mechanism in place for a transfer of ownership back to the owner or the owner’s heirs, successors, and assigns if the municipality at a later date decides to sell the land, build a salt dome on it, or use the land in some other way detrimental to the donor’s conservation intent.
- A donor wishes to donate land to a *nonprofit that does not have conservation as its central purpose* and wants to ensure that the land is maintained in a relatively natural and open condition. Examples of nonprofits

that can benefit by open space donations but that aren't necessarily inclined to maintain gifts of open space as open space in the long run include but aren't limited to churches, universities, and scouting groups. Reserving a reversionary interest in the deed at the time of the gift can assure that the land will transfer to a conservation organization if the recipient of the gift uses, or ceases to use, the land in conformity with the expectations of the donor.

- A reversionary interest can meet the needs of a donor who will not transfer ownership of their land to an entity without strong assurance that it will be used only for a specific public or charitable purpose, for example, a public trail.
- Funders of open space acquisitions can use reversionary interests to assure that property acquired with their grant funds will be used in conformity with their program standards or, if not, ownership will be transferred to another entity who will use the land in conformity with such standards.

Transferring Reversionary Interest to Another Entity

The possibility of future ownership—the reversionary interest—can be transferred to a [land trust](#) or other person or entity by recording a deed or other instrument of transfer in the public records of the county in which the land is located.

Because a reversionary right may not be exercised for an indeterminate period, an individual who has reserved such a right is well advised to transfer the right during their lifetime to an entity that can act quickly and decisively in the event of a breach of condition.

Varieties of Reversionary Interests

Reversionary interests can be structured in several ways. The change of ownership can occur automatically when the condition is broken; alternatively, it can occur only if and when the holder of the reversionary interest elects to

retake the property once the condition is broken. The reserved right can be structured as an option to repurchase for nominal (e.g., \$1 or \$10), fair value, or other consideration if and when the condition is broken.

Automatic Reversion

An automatic reversion is created by a deed that grants title from grantor to grantee on condition that, or only for so long as, certain conditions are met. If nothing more is said about how the change of ownership is to occur, it happens automatically upon the occurrence of the condition. Full title and the right of possession become immediately vested in the original grantor or whoever now holds the grantor's possibility of reverter.

While this automatic reversion is true as a legal principle, in actuality it's not that simple: official title and tax records are not automatically changed merely by delivery of an affidavit that a certain occurrence has happened and, accordingly, by operation of law, the holder of the reversionary interest is now the owner of the property. An action in [ejectment](#) (an action to determine rights of possession) or, perhaps, if possession of the property is not in issue, an action in [quiet title](#) (an action to determine rights of ownership), may be necessary to establish the termination of the grantee's fee simple interest and the change of ownership to the holder of the reversionary interest on the public records. If the occurrence of the triggering event is disputed, then establishing the change of ownership may not be simple, easy, or inexpensive.

Right of Reentry

It is generally unwise to accept ownership of a parcel of land that has not been inspected for conformance to applicable laws. For example, the land may have been free of hazardous substances when conveyed but there is no guarantee that it will be free of problems when the condition is broken. For that reason, a right of reentry may be preferable to an automatic reversion. The right of reentry is created by adding a provision to the deed along the lines of the following:

but if the land ceases to be used as and for a public park or nature preserve, then grantor, their heirs, and assigns, have the right to re-enter the premises and, upon exercise of such re-entry, all right, title, and interest of grantee in the above-described premises shall cease and revert immediately to grantor, their heirs, and assigns.

Contemporary drafting practices would support adding to the provision an agreed upon method to effectuate the re-entry other than by taking actual possession or by commencement of an action in ejectment, such as giving of notice by certified mail to the address of the then owner identified on the county tax records, posting at the property, or doing both.

Option to Reacquire

No compensation is paid upon the occurrence of an automatic reversion or a right of re-entry. This may be perfectly acceptable if the original transfer was a donation strictly for open space purposes. But if the original transfer was a sale, in whole or in part, or the grantee is expected to install improvements consistent with applicable restrictions, then the grantee may not be willing to accept the creation of a reversionary interest that does not provide for some compensation being paid to the grantee upon the reversion or exercise of right of re-entry. One method to address this need for compensation is to substitute for a right of re-entry an option to purchase. The purchase price could be the original consideration adjusted by some factor, compensation for the present value of improvements, fair market value, or some other calculation that takes into account the reasonable expectations of the parties without rewarding the grantee for breach of the condition triggering the reversionary right.

Issues to Consider

Assigning the Reversionary Right to Another Party

To avoid an issue as to whether a third party can be vested with the reversionary interest reserved in a deed, it is advisable not to name the third party in the deed; instead, transfer the reversionary right reserved to the grantor (and their heirs, successors, and assigns) to the third party in a separately recorded assignment.

Identifying Triggering Events

Consideration should be given to drafting the triggering event so that action can be taken before damage or destruction of conservation values has occurred.

Change of Use

Change of use as a triggering event may be difficult to enforce without reference to a description of ongoing uses as of the transfer date or a description of uses that may or may not be ongoing as of the transfer date but which do not trigger the reversionary right.

Change of Ownership

Change of ownership alone as a triggering event may be challenged as an *unreasonable restraint on alienation* unless the restriction is limited to a particular category of owners that bears some reasonable relationship to the purpose of the condition. For example, if the purpose of the reversionary right is to limit the universe of potential owners to entities who provide outdoor recreational access to the public or conserve land in the public interest, then the triggering event could be drafted so as to be a change of ownership to an entity lacking that purpose.

If change of ownership is the triggering event, a [right of first offer or right of first refusal](#) may be considered as an additional or alternative right to reacquire the property.

Title Issues

Who Has Rights?

Determining who has the right to exercise, modify, or release a reversionary right can be a complicated title problem. Possibilities of future ownership are often not specifically addressed in wills and so pass through residuary clauses or intestate succession over a number of generations resulting in a large number of individuals holding an undivided proportionate share in the reversionary right.

Has a Reversion Occurred?

The possibility of reversion impacts marketability of title to a greater degree than the existence of a deed restriction on future use of the property (sometimes called a [restrictive covenant](#)). If a restrictive covenant is violated, perhaps inadvertently, the owner can cease the non-compliant activity without concern that their title may be vulnerable to divestment. If the violation has triggered a reversion, title may have been divested or may be subject to divestment even though nothing appears on the public record and the triggering activity has ceased without any visible signs on the property. Title risks are a factor taken into consideration in establishing market value of a property.

Remedies

An action in ejectment or quiet title may be necessary to effectuate the reversionary right and establish good and marketable title on the public record.

Remedies for breach of a restrictive covenant, such as injunctive relief, may not be available if the occurrence is stated only as a triggering event for the reversionary right and not as a separately enforceable restrictive covenant.

Patricia L. Pregmon, attorney at law, and Andrew M. Loza are the authors.

WeConservePA offers this guide thanks to support from the William Penn Foundation and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

Nothing contained in this document is intended to be relied upon as legal advice or to create an attorney-client relationship. The material presented is generally provided in the context of Pennsylvania law and, depending on the subject, may have more or less applicability elsewhere. There is no guarantee that it is up to date or error free.

© 2022, 2012 WeConservePA

Text may be excerpted and reproduced with acknowledgement of WeConservePA.

v. 2022.08.26

