



Conveyancing, Cannabis & the Sun

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Spring Landscape

The easiest way to understand what is happening in a deed or other document conveying title is to think of property rights as a “Bundle of Sticks”.



“Livery of Seisen”

- The act of the seller actually handing a bundle of sticks tied in a bow to the buyer of real estate.
- Was a valid way to convey property in England until 1925.



Each stick in the bundle represents a
distinct property right.



It's Just a Bundle of Sticks...



There Are Three Basic Ways That Two Or More People Can Jointly Own Real Estate

Tenants By
The Entirety

100%/100%

Joint Tenants
with Right of
Survivorship

50%/50%

Tenants In
Common

50%/50%

It's Just a Bundle of Sticks...



Life Estate Deeds

- Life Tenant has the right to occupy now;
- Remainderman has the right to the property in the future;
- Life Tenant can have additional powers.



What is “Registered Land”?

- In 1898 the General Court created the “Court of Land Registration;
- Totally separate system recording system;
 - Once land is “registered” the Commonwealth of Massachusetts guarantees the title.



What is “Registered Land”?

- Once land is registered no one can claim adverse possession against it;
- All documents subsequently affecting title must be reviewed by the Land Court;
- There is a Land Court Office in each Registry of Deeds.



Trusts

- Trusts can be revocable or irrevocable;
- The Settlor creates the trust;
- The Trustee manages the trust;
- The Beneficiary derives the benefit from the trust.



Trusts

Trusts are like a cup of coffee

Res

Trustee

Trust



It's Just a Bundle of Sticks...



Nominee Trusts

- Nominee Trusts are not true trusts;
- The Trustee can be a Beneficiary;
- The Trustee lacks power to act except as directed by the Beneficiaries.



Let's look at some examples
of deeds.

It's Just a Bundle of Sticks...



*Let's take a short break –
See you in 10 minutes.*

So What's the Status of Solar ?

- The ATB continues to render decisions that “eclipse” the ability to collect personal property tax on solar arrays;
- The General Court seems poised to finally pass a sensible solution, but the legislation creates opportunities for mischief.



Let's Quickly Review the ATB Decisions



Forrestall Enterprises, Inc.
v.
Assessors of Westborough

- Exemption applies through net metering to residential & business properties not located on the same parcel as the solar array.

Let the Sun Shine....



Let's Quickly Review the ATB Decisions



KTT, LLC v. Assessors of Swansea

- Exemption applies through net metering to properties owned by unrelated third party and allocated among their properties.



Let's Quickly Review the ATB Decisions



Quabbin Solar, LLC, et al
v.
Assessors of Town of Barre

- Exemption applies through net metering to businesses who lease even if they don't prove they pay for the “energy needs”.

Let the Sun Shine....



Let's Quickly Review the ATB Decisions



United Salvage v. Assessors of Framingham

- Decision pending but would extend exemption to anyone who participates in net metering.



Senate Bill # 2364

- Passed by the Senate to be Engrossed;
- Read in House & Referred to Ways & Means;
- Would amend Clause 45th to exempt a “solar or wind powered system that is capable of producing not more than 125 % of the annual electricity needs of the real property upon which it is located”;
- Defines “real property” as land “owned or leased by the owner within the same municipality”.



Senate Bill # 2364

- All other systems “not exempt” unless PILOT:
 - Executed by municipal board or officer authorized by its Legislative Body;
 - 20 Year Term, unless PILOT provides otherwise;
 - Payments due when the tax would otherwise be due;
 - PP Tax Billing & Collection provisions apply.
- Requires Annual (by 3/1) Declaration by the Owner under oath.



Senate Bill # 2364

- Section 3 charges MassDOR (in consultation with MassDOER) with soliciting “input from the public” and issuing guidance on the method for the valuation. The guidance may include, but not be limited to the following:
 - standardized formulas for the calculation of property taxes;
 - recommendations from state and regional stakeholders on the appropriate terms and schedule of payments in PILOT Agreements.



Senate Bill # 2364

- Input re: guidelines for a standardized PILOT Agreement, which may be based on a specified payment:
 - Per KW AC of installed rated capacity; or
 - System's annual gross electricity revenues, including any receipt of net metering credits or Massachusetts RPS-eligible renewable energy certificates received by the owner of a solar or wind powered system.



Valuation of the Solar Array

Really, there are 3 possible methods

Sansoucy Method

Direct
capitalization or
discounted cash
flow (DCF)
Application
(Property Tax
Rate added to
DCF).

Central Valuation

Value of Solar
Arrays is
established by
DOR.

Costello Cost Hybrid

Typical PP Cost
Approach (incl.
inverter
replacement),
accounts for specific
project costs, then
annualized over 20
years.

Let the Sun Shine....



Impacts on Municipal Revenue from Medical & Recreational Marijuana

- Medical Use of Marijuana is regulated under General Laws Chapter 94I.
- Recreational Use of Marijuana is regulated under General Laws Chapter 94G.

Medical Marijuana

- Vertically Integrated System
 - Registered Marijuana Dispensaries (RMD) must grow and process their own marijuana.
- Originally only Massachusetts Non-Profit Corporations could operate an RMD – now can be for-profit.
 - They can lease property from a for-profit entity or an individual.

Medical Marijuana

- Exempt from Sales Tax
 - DOR has determined that the sales tax exemption for prescription medicine in G.L. c. 64H, § 6(l) applies to sales of medical marijuana.
- Host Community Agreements
 - Typically provide for a “gift” pursuant to G.L. c. 44, § 53A based on a percentage of gross sales revenues to compensate for municipal impacts.

Recreational Marijuana

- Horizontally Integrated System
- Some terms to remember:
 - Marijuana Cultivator
 - Marijuana Product Manufacturer
 - Independent Testing Laboratory
 - Marijuana Retailer
- Priority Certification/Colocation

Recreational Marijuana

- Local Sales Tax
 - Municipalities can accept provisions of General Laws Chapter 64N, § 3 and assess a 3% Local Sales Tax in addition to the State Sales Tax.
- Host Community Agreements
 - Can include community impact fee of 3% of gross sales as long as the fee is reasonably related to real costs imposed on the municipality due to the establishment or RMD operating there.

Thank You!

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