

The “Lady Bird” Deed

A Lady Bird Deed is also called an “enhanced life estate deed.” The Lady Bird Deed is a great for both (a) estate-planning (efficiently passing real estate to designated heirs upon your passing) and (b) Medicaid-planning (not counting as a gift therefore not triggering the five-year lookback period should you desire Medicaid long-term care benefits).

The lady bird deed is roughly the real estate property equivalent of a “pay on death” bank account. Ordinary life estate deeds, which have been around for hundreds of years, allow the owners of real property to retain title for the rest of their lives, and to transfer property to named beneficiaries, called “remaindermen” upon the lifetime owner’s death **without a probate proceeding**. One of the factors that makes a Lady Bird Deed “Enhanced” is that unlike with an ordinary life estate deed, (where the remaindermen become owners upon being named) remaindermen under a Lady Bird Deed do not have any ownership interest in the real property until the death of the lifetime owner(s). This is significant because for any transaction involving the real property, all owners have to consent. However, the Lady Bird deed provides that the real property remains in the lifetime owner’s name as long as they are living, and that during his or her life, the owner will continue to enjoy unrestricted ownership, without any liability for waste. If there is more than one lifetime owner, the property does not pass to the remaindermen until the death of all lifetime owners. This means that the lifetime owners can sell, mortgage, leave vacant, change remaindermen, and take any other action with respect to the real property without the remaindermen’s permission. If something remains of the property upon the last remaining lifetime owner’s death, the Lady Bird deed allows the real property to pass outside of probate to the remaindermen named on the deed.

Another significant advantage concerns Medicaid eligibility: Because the interest of the remaindermen is so limited and uncertain, and indeed can be taken away at any time, Medicaid takes the position that there is no gift-penalty to naming such a beneficiary on the deed. On the other hand, if the owner just quit-claims the property outright, or adds someone to his or her deed as a co-owner (without receiving fair-market value for the property interest), Medicaid would treat this as a gift and would attach penalties accordingly.



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IF YOU HAVE A MORTGAGE: A lady-bird deed could violate the due-on-sale clause and give the lender the right to demand payment in full (while this is not a frequent occurrence, it's advisable to get permission from the lender before recording a lady-bird deed).

If you are considering a reverse-mortgage in the future, note that most lenders will not make that loan on a property subject to a lady-bird deed.

IF YOU WANT TO PREPARE FOR MULTIPLE CONTINGENCIES: As an example, if you want to name an alternate beneficiary should the initial grantee predecease the current property owner, a trust may be a better option than a lady-bird deed.

Another example when a revocable trust may be used (instead of, or in conjunction with, a lady bird deed) is for the property owner who has multiple children and wants them to receive an unequal share of the real estate proceeds. As an example, Ms. Elderly Mom has two children that she loves and wants to inherit from her equally. But Child A has spent \$15,000.00 on Mom's care. Mom may decide to deed her property into a revocable living trust that says the property should be sold after Mom passes away and, out of the resulting proceeds, Child A gets the first \$15,000.00... then Child A and Child B split 50/50 the remaining sale proceeds.

SOME TITLE COMPANIES, IN CERTAIN SITUATIONS, WILL STILL WANT THE PROPERTY TO GO THROUGH PROBATE: While not common, it is also not unheard of for title companies to refuse to insure title, after a property owner has passed away, unless the property goes through a probate administration.

In addition, some title companies will want joinder by the remainderman to make any changes during the life of the initial property owner (even though that is not supposed to be needed under the terms of the lady bird deed).

Title companies are more likely to require a probate if a lady bird deed is signed via power of attorney.

To discuss all of your estate-planning, incapacity planning or Medicaid-planning needs, please do not hesitate to set up a consultation.



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