



What's a Lady Bird Deed?

By Susan Peters, Legal Hotline Volunteer Attorney

Many people are eager to avoid probate, especially as to their homestead, when they pass on their estates. Frequently, people add names of children or other relatives to the deed to their home. This option, while quick and inexpensive, has many risks associated with it and should be considered very carefully. Sometimes people transfer their home to a relative and retain the right to live in the home until they die; this is called a life estate deed and it will avoid probate, while allowing the owner to continue the use of the property until death. But like adding names to a deed, it can't be changed without the consent of the "remainder" tenant.

Another option—commonly referred to as a "Lady Bird" deed—has been steadily gaining acceptance. It is technically called an "enhanced life estate deed." This type of deed allows the owner of the home to keep all the rights to the property in his or her name until death; the property then transfers after death, without any probate. The name comes from Lady Bird Johnson, President Lyndon Johnson's wife. President Johnson used this type of deed as an estate planning technique to ensure property passed to Lady Bird after his death, without the necessity of probate.

The Lady Bird deed is unique in that it creates a "power of appointment" and names a "default beneficiary" to whom the property passes if the power of appointment is not exercised. In Michigan, a "power of appointment" gives someone authority to dispose of property. With a Lady Bird deed the owner of the property reserves this power while deeding a new property interest to him or herself and designating someone to whom the property will pass if still in the owner's possession at death. Thus, a power of appointment is created along with a default beneficiary.

The specific authority granted in a power of appointment can be tailored to best serve a given situation but essentially works to remove property from an individual's probate estate. It also creates more flexibility for you by removing property from your estate while allowing for a future determination as to how exactly to dispose of it. In other words, decisions about disposition of the property need not be made at the time a power of appointment (in the Lady Bird deed) is created. You can change your mind after you sign the deed. Changing your mind can include abandoning the whole option of avoiding probate, transferring the property to someone else, or borrowing against it using a mortgage. Changing your mind later is not possible with a regular quit claim deed which you would use to add names to the title to your home or transfer the property outright.

The benefits to using a Lady Bird deed for passing on property can be significant. As stated, it is an increasingly popular means of avoiding probate—upon the death of the

owner, the property is immediately transferred to the beneficiary named in the deed. There is no uncapping of property taxes when a Lady Bird deed is created. The property receives a stepped-up basis for tax purposes at the time of this transfer (at death of the owner) rather than at the time the deed was created. Unlike many other means of transferring an interest in property, a Lady Bird deed is not subject to gift taxes and reporting requirements. The property is considered part of the decedent's gross estate because it is deemed property in which decedent had an interest at the time of death. Since the execution of a Lady Bird deed does not transfer property ownership there is no gift under federal tax laws. The default beneficiary takes only upon the death of the owner assuming the power of appointment has not been used to transfer the property to someone else.

Lady Bird deeds can also be a helpful tool in Medicaid planning. Medicaid rules prohibit a person from transferring assets in the 5 year period prior to application for Medicaid. But a Lady Bird deed is not considered a transfer.

Lady Bird deeds ensure that property will go to an intended beneficiary without exposing the property to the claims of a beneficiary's creditors during the owner's lifetime. If an intended beneficiary's debts are a concern, the power of appointment preserves the owner's right to dispose of the property in some other manner – perhaps through a sale or a different transfer by designating another beneficiary. Importantly, the beneficiary—who may have creditors—does not take any right of ownership until after the death of the owner.

Lady Bird deeds are a helpful tool in estate planning. If this is a tool you might want to consider as part of your planning you should discuss the possibility with a competent estate planning attorney in your area. Application of the law and drafting of the appropriate documents in a given situation can be very complex and the law is still evolving. These deeds are more complicated than the usual warranty or quit claim deed and therefore you will need to have one drafted by someone who is thoroughly familiar with them.

The Legal Hotline for Michigan Seniors is available Monday – Thursday to answer legal questions about deeds and other issues for people 60+ years of age, without charge. In cases requiring more specialized advice or assistance, the Hotline may be able to provide referrals to one of its Referral Panel Attorneys. You can set an appointment for a lawyer to contact you by calling (800) 347-5297.