

e-Newsletter

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Lady Bird Deeds

As an estate planning tool, the owner of real property may decide to convey the property to his or her children or other individuals reserving a life estate. In that case, the original owner of the property (the “life tenant”) retains the right to possess and occupy the property during his or her life and upon the death of the life tenant the property passes, without probate, to the children or other persons named in the deed (the “remaindermen”).

Although this may be an effective method of avoiding probate, such a conveyance has drawbacks. The life tenant cannot sell or mortgage the property without the consent and joinder of the remaindermen; the life tenant is responsible to the remaindermen for any acts that devalue the property; and the interests of the remaindermen are subject to the claims of their creditors.

It is possible to avoid at least some of the drawbacks by use of an “enhanced life estate” deed, sometimes called a “Lady Bird deed” in reference to published examples with Lady Bird Johnson as a party.

In a “Lady Bird deed” the life tenant specifically reserves the power to sell, mortgage and otherwise deal with the property without the consent or joinder of the remaindermen. Although the courts in some states have held such retained powers to be invalid, Florida recognizes Lady Bird deeds as valid with respect to a conveyance or encumbrance by the life tenant, without the consent or joinder of the remaindermen, provided that the transaction is bona fide and arm’s length for value.



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In the absence of Florida court rulings, however, uncertainty remains with respect to other actions by the life tenant. The life tenant probably cannot revoke the Lady Bird deed and name new remaindermen; the deed may not be valid with respect to homestead property if the life tenant dies with a surviving spouse or minor children; and a conveyance by the life tenant may not eliminate judgment liens against a remainderman's interest.

A Lady Bird deed is an effective estate planning tool only if it is properly drafted and all adverse consequences are carefully evaluated.



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