



Lady Bird Deeds

Transferring Property Without Probate

Many people wish to develop their estate plans in a manner to avoid probate. They can use beneficiary designations for investment accounts, title accounts as payable on death or transfer on death, or even title assets jointly with another person. However, with real estate, often there are reasons why you would not want to add another person to your title and give that person an immediate ownership interest.

One option is to deed your property to others, for example, your children, and reserve a life estate. This allows you as the life tenant the right to possess and occupy the property during your life. 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, a life estate deed 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 where President Lyndon B. Johnson conveyed an enhanced life estate deed to his wife, Lady Bird Johnson.

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



Dorothy L. Korszen

TEL 941.639.1158

EMAIL dkorszen@farr.com

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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.

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. In addition, the deed may not be valid with respect to homestead property if the life tenant dies with a surviving spouse or minor children. Finally, 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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