

Lady Bird Deeds a Mechanism for Medicaid Long-Term Planning

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on May 16, 2012.

Many clients planning for long-term care fear that the State or the Texas Medicaid program will take their home if they apply for and receive Medicaid benefits. The Medicaid Estate Recovery Program (MERP) is responsible for recovering from the estate of a deceased Medicaid recipient funds expended by the Medicaid program for that recipient's benefit. While exceptions to recovery exist, many single individuals face the prospect of their home being subject to estate recovery. The good news is that under current Medicaid rules there are ways to protect the home from any estate recovery effort.

Texas does not have a statute specifically allowing for the creation of a transfer on death deed, however, Texas, along with nine other states, permit the use of Lady Bird deeds as a mechanism for transferring property upon the death of the owner.

A Lady Bird deed, also known as an enhanced life estate deed, allows the grantor to transfer a remainder interest in the property while retaining the ability to sell, convey or mortgage the property without the consent of the remainder beneficiaries. Moreover, if the grantor sells the property during his or her lifetime, the grantor retains one-hundred percent of the sales proceeds.

The first Lady Bird deed was drafted by a Florida attorney in 1982. The deed got the name Lady Bird deed because in a lecture discussing the benefits of the deed, the presenter used the names of President Lyndon Johnson and his family in an example of how the deed operated.

Lady Bird deeds are commonly used during the process for planning for Medicaid long-term care benefits. Not only does the execution of a Lady Bird deed protect the home from a potential Medicaid estate recovery claim, but the deed also allows the grantor to transfer a remaining interest in his or her property without incurring a Medicaid transfer of assets penalty. This is because the remainder beneficiaries (i.e. the grantees) do not have an ownership interest in the property that they can sell. The only interest the remainder beneficiary has under the Lady Bird deed is to receive the property if the grantor still owns it at the time of death.

In addition to the benefits of a Lady Bird deed in the Medicaid planning process, Lady Bird deeds can serve other functions for the grantor. First, it allows the grantor to transfer a remainder interest in the property while still maintaining control. The grantor does not need the consent of the remainder beneficiaries for any actions taken over the property and does not owe any duty to the remainder beneficiaries. A Lady Bird deed also avoids probate because the property transfers immediately upon the death of the grantor without the necessity of a court proceeding. Additionally, a Lady Bird deed protects the property from any creditor of the beneficiary. If creditors of the beneficiary threaten the property, the grantor can revoke the Lady Bird deed and execute a new one to a different beneficiary.

For tax purposes, there is also no gift tax liability for the grantor since the transfer is not a completed gift. Upon the death of the grantor the property will receive an adjusted basis for tax purposes, which generally has the effect of avoiding any capital gains tax liability when the beneficiary sells the property

after the death of the grantor. Finally, a Lady Bird deed allows the grantor to maintain his or her property tax exemptions, including homestead, over-65 and disability exemptions.

Lady Bird deeds offer an alternative method for transferring real property upon the death of the owner. Any individual undergoing Medicaid planning for themselves or a loved one should consider the execution of a Lady Bird deed to protect the property from Medicaid estate recovery.