

III. Advantages and Disadvantages of Lady Bird Deeds

§1.3 The use of a Lady Bird deed, with the grantor retaining an enhanced life estate, does not cause an uncapping under [MCL 211.27a\(7\)\(c\)](#). In addition, if the Lady Bird deed is regarding a home, there is no change in the status of the home to cause a rescission of the principal residence exemption.

The box on the property transfer affidavit that describes the life estate should be checked, and the property transfer affidavit should be filed at the assessor's office. In addition, there is no uncapping at the death of the grantor if the property is a residential property and is transferred to certain relatives. [MCL 211.27a\(7\)\(d\)](#).

The *advantages* of a Lady Bird deed against other types of transfers are as follows:

- There is no need for *deeds in the drawer*.
- There is no *due on sale* or acceleration of the mortgage note.
- A married couple retains tenancy by the entireties protection.
- It avoids the cost and delay of probate.
- Liability insurance does not need to be changed.
- Tax advantages include the following:
 - There is no uncapping of property tax.
 - There is no rescission of the principal residence exemption.
 - There is no gift tax owed under the Internal Revenue Code.
 - The property does not lose the step up in basis under [IRC 1014](#) and [2036\(a\)](#).
 - The property does not lose the capital gain exclusion under [IRC 121](#).
 - There is no county transfer tax.
 - There is no state transfer tax.
- Medicaid advantages include the following:

- Estate recovery will be avoided.
- There is no divestment for Medicaid purposes.
- There is no loss of any Medicaid exemption.
- Beneficiary issues include the following:
 - The grantor keeps control during life and may transfer, mortgage, lease, or perform any other transaction concerning the real estate.
 - The capacity of the beneficiary does not affect the property.
 - There is no exposure to future beneficiaries' creditors during the life of the grantor.
 - Future beneficiaries may not sell or encumber the property.
 - Future beneficiaries may not partition or interfere with the use of the property.
 - The risk of elder abuse is reduced.

The *disadvantages* of a Lady Bird deed against other types of transfers are as follows:

- The property is a countable asset for Medicaid purposes unless it is exempt (i.e., a homestead).
- The property is an asset for federal estate and generation-skipping taxes (i.e., not a completed gift).
- There is no control after death unless the property is conveyed to a trust.
- Some assessors and register of deeds personnel are unfamiliar with Lady Bird deeds and may misclassify them.

IV. Special Considerations Using Lady Bird Deeds

§1.4 The use of title insurance and liability insurance. In some estate planning situations, the major asset of the estate is the house. The house may have been owned without any title insurance or have increased substantially in value since the house was purchased. In addition, the deed presented to you as stating the title for the property may be inaccurate.

To ensure that the beneficiaries of the Lady Bird deed have no title problems selling the property at the death of the owner, title insurance can be obtained for Lady Bird deeds.

A new issue regarding liability insurance appeared in 2021 in *Strope-Robinson v State Farm Fire & Cas Co*, No 20-1147 (8th Cir Feb 5, 2021). In this case, under Minnesota law, the Lady Bird deed grantor died, and a few days after the death of the grantor, the house burned down. The court held that there was no insurance coverage since the remainder beneficiary immediately vested and became the owner on death. Attorneys should consider advising their clients to add remainder beneficiaries as additional named insureds on their real estate insurance policy. In addition, see the analysis of this case in Sandra D. Glazier, *Ladybird, Ladybird, Fly Away Home, Your House Is on Fire, Your Insurance is Gone—Strope-Robinson v. State Farm & Casualty: The Importance of Adding Appropriate Insureds when Ladybird Deeds Are Utilized*, 40 Mich Prob & Est Plan J 23 (Spring 2021).

Death of a remainder beneficiary. If one of the beneficiaries dies before the grantor, the grantor should prepare a new deed removing the deceased beneficiary from the deed. If not, the predeceased beneficiaries' estates may have an interest in the property that may be unintended by the grantor. One title company has informed me and one author has written that the deceased beneficiary's estate has a vested interest in the property. See an analysis of predeceased beneficiaries in Richard C. Mills, *When Avoiding Probate Does Not Avoid a Mess: Pitfalls and Strategies when Planning with Beneficiary Designations and Ladybird Deeds*, 30 Res Ipsa Loquitur 8 (May/June 2021).

V. Conclusion

§1.5 The use of Lady Bird deeds has increased throughout Michigan and the country. As with other areas of the law, the advantages and disadvantages of Lady Bird deeds against other types of transfers must be weighed according to the facts of your situation. However, in most circumstances, the advantages that a Lady Bird deed will often outweigh the disadvantages.