

# A Unique Estate Planning Tool in Florida the Lady Bird Deed

## Key Takeaways on Lady Bird Deeds: An Attorney's Perspective by Laurie Satel

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A Lady Bird Deed, also known as an Enhanced Life Estate Deed, is an excellent estate planning tool for real property assets located in Florida. This type of Deed allows you to transfer real property upon your death, without the need for probate.

### Understanding Lady Bird Deeds

A Lady Bird Deed is a legal instrument that allows you to retain ownership and control of your real property during your lifetime, while also naming beneficiaries on the face of the Deed who will receive ownership of the property upon your death. Unlike a traditional life estate Deed, where the beneficiary has an ownership interest in the real property, a Lady Bird Deed permits the grantor to maintain full authority and control over the property during their lifetime - an "enhanced" life estate - so you can sell, mortgage, or even revoke the Deed without seeking the beneficiary's permission.

The Lady Bird Deed is recorded in the Official Records of the county where your property is located, so when you pass away, the beneficiaries are already listed as the recipient owner of the property. The conveyance is automatic upon your death, with no need for probate or the filing of additional Deeds to complete the transfer.

### Advantages of Lady Bird Deeds:

1. **Avoidance of Probate:** One of the primary benefits of using a Lady Bird Deed is that it bypasses the probate process. Probate can be time-consuming and costly for your heirs, but with a Lady Bird Deed, the property automatically transfers to the designated beneficiary upon the grantor's death, outside of probate proceedings.
2. **Retained Control:** Unlike traditional deeds, a Lady Bird Deed allows the grantor to maintain full control of the property during their lifetime. This means you can continue to make decisions about the property, such as selling or mortgaging it, even changing or removing the beneficiary altogether, without requiring the beneficiary's consent.
3. **Medicaid Planning:** For individuals concerned about Medicaid eligibility, a Lady Bird Deed can offer a way to transfer property while preserving the ability to qualify for Medicaid benefits. This can be particularly important when planning for long-term care costs.
4. **Avoidance of Capital Gains Tax:** A Lady Bird Deed allows your heirs to avoid capital gains tax on the property, since your beneficiaries inherit the property with a new tax basis equal to the fair market value of the property on the day of your death. In addition to preserving your step-up in basis to eliminate capital gain tax, a Lady Bird Deed also results in no gift tax and no documentary stamp tax.
5. **Retain Florida Homestead:** You can still qualify for the Florida homestead tax exemption after using a Florida Lady Bird Deed.

## Disadvantages of Lady Bird Deeds:

While a Lady Bird Deed is an exceptional estate planning tool for many individuals and their estates, it may not be suitable for everyone. A Lady Bird Deed does not mitigate estate taxes; although it provides a step-up in basis to avoid capital gains tax, the property remains part of the taxable estate. At the time of this writing, the estate tax exemption is over \$12 million, meaning that you would have to exhaust over \$12 million of taxable gifts and assets left in your taxable estate before any estate taxes would need to be paid. Therefore, even with the property included in your taxable estate, the vast majority of people will never owe estate taxes. Additionally, the Deed may be challenged in court if it is not properly executed or if there are questions about the mental capacity of the person signing it, and it may be difficult to rescind the deed if the situation changes and the involved parties no longer want to continue with the arrangement. Consulting a qualified attorney can minimize these disadvantages and provide guidance should any of these issues occur.

## Conclusion: A Versatile Tool for Florida Estate Planning

Lady Bird Deeds are a powerful estate planning tool that provides a unique balance of control and flexibility, allowing you to streamline the transfer of real estate to your chosen beneficiaries, while sidestepping the complexities of probate. Whether you seek to simplify the distribution of your assets or ensure a smooth transition of real property, considering a Lady Bird Deed as part of your Florida estate plan is advisable.

Although Lady Bird Deeds offer numerous advantages, it's crucial to recognize that they might not be suitable for everyone's estate planning needs. Engaging an experienced estate planning attorney is essential to determine the suitability of a Lady Bird Deed aligning with your specific goals and circumstances.

Schedule a consultation with our experienced estate planning attorneys today by emailing us directly at [admin@satellawfirm.com](mailto:admin@satellawfirm.com) or using our online form.

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