

Asset Protection Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION ♦ JUNE, 2015 EDITION

LADY BIRD DEED: Enhanced Life Estate Deed in Florida

As a Florida Elder Law Attorney people sometimes people ask me to draft a deed to add someone as a co-owner with rights of survivorship or draft a Lady Bird Deed to avoid probate.

Changing real estate ownership should not be taken lightly. Previous articles discussed issues to consider when people want to add someone as a co-owner with rights of survivorship. Below is a discussion about the use of a Lady Bird Deed in Florida.

Advantages of a Lady Bird Deed

A Lady Bird Deed, also called an Enhanced Life Estate Deed in Florida, is a relatively new type of deed first used in Florida in the early 1980s. Here are some of the advantages of using a Lady Bird Deed:

1. Avoid probate. Similar to a standard life estate deed, the Lady Bird Deed names beneficiaries, called remaindermen, who will receive the property at your death.
2. Keep complete control during your lifetime with no consent needed from the remainder beneficiaries.

One of the major drawbacks of a standard life estate deed is that the remainder beneficiaries must consent if you want to sell or mortgage the property during your lifetime.

This problem also exists when adding a co-owner to the property. Unlike the standard life estate deed, with a Lady Bird Deed beneficiaries do not have to consent to the sale or mortgage of the property.

3. Avoid making a gift that might be subject federal gift taxes. If you use a standard life estate deed or a deed adding a co-owner to the property, you are gifting a portion of your property to that person. In 2015, you can only make gifts of up to \$14,000 per person without reporting the gift on a federal gift tax return.

Issues with Lady Bird Deeds

If you are interested in using a Lady Bird Deed to avoid probate, seek guidance from an experienced real estate lawyer. Here are a few common mistakes to watch out for:

1. A properly drafted Lady Bird Deed will not affect your Florida homestead tax exemption or Save Our Homes cap.

However, if a non-lawyer (or even an attorney who is not well-versed in real estate law) attempts to draft a Lady Bird Deed, there could be issues with both of these.

2. If there is a mortgage on the property, is it important not to trigger any due on transfer clause that may be in the mortgage. There will be documentary stamp taxes because of the mortgage.

These costs should be considered when determining whether the Lady Bird Deed is a cost-effective alternative to avoiding probate.

3. If after you sign and deliver the Lady Bird Deed you later want to change the remainder beneficiary to another person, a title insurance company or attorney providing an opinion of title may require you first obtain consent of the current remainder beneficiary and record the consent in the real estate public records.

4. Lady Bird Deeds must meet all of the formalities required under Florida law for a deed to be valid. If it does not, the deed will not achieve your goal of transferring the property without probate.

Call us at (954) 963-8719 to schedule a free 30-minute consultation with a Florida Elder Law Attorney.

MAY SOMEONE WITH DEMENTIA SIGN A WILL?

Millions of people are affected by dementia. Unfortunately many of them do not have all their estate planning affairs in order before symptoms start.

If you or a loved one has dementia, it may not be too late to sign a will or other documents. But certain criteria must be met to ensure that the signer is mentally competent.

In order for your will to be valid, you must have "testamentary capacity". This means you must understand the implications of what is being signed.

Simply because you have a form of mental illness does not mean that you automatically lack the required mental capacity. As long as you have periods of lucidity, you may still be competent to sign a will.

Generally, you are considered mentally competent to sign a will if the following criteria are met:

1. You understand the nature and extent of your property. This means you know what you own and how much of it.

2. You remember and understand who your relatives and descendants are and are able to articulate who should inherit your property.

3. You understand what a will is and how it disposes of property.

4. You understand how all these things relate to each other and come together to form a plan.

Family members may contest your will if they believe you lacked mental capacity to sign it.

If a will is found to be invalid, a prior will may be reinstated or the estate may pass through the state's intestacy laws (as if no will existed). To prevent a will contest, your attorney should help make it as clear as possible that the person signing the will is competent.

I may have a series of questions to ask you to assess your competency. In addition, I can have the will signing videotaped or arrange for witnesses to speak to your competency.

To discuss the prevention of a will contest or other elder law issues with an attorney, please call the Elder Law Office of Mark A. Roseman at (954) 963-8719 or, in Miami-Dade County, at (305) 326-7400.

News You Can Use

2015 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,199.00
Personal Needs Allowance:	\$105.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Medicare Part B Premium:	\$104.90
Community Spouse Resource Allowance:	\$119,220.00
Minimum Monthly Maintenance Income Allowance:	\$1,966.25
Maximum Monthly Maintenance Income Allowance:	\$2,980.00