

# 4 things to know about a Lady Bird Deed

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—and when you should connect it with a Living Trust

By [Paul Premack](#)

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A Lady Bird Deed is a property ownership arrangement.

**Dear Mr. Premack: I've been reading your column and have a few questions. Can a Ladybird Deed name two people (daughter and granddaughter) in the transfer of property? Is there an age requirement for the beneficiary (can the deed name a minor)? Can the ladybird deed apply to other property besides the principal residence of the current owner? JG**

A Lady Bird deed is an enhanced life estate arrangement. This legal document accomplishes many goals: 1) it

transfers a remainder interest in real estate; 2) it allows the current owner to hold life estate in that real estate, 3) it allows the current owner to terminate the remainder interest and transfer that real estate to someone else, and 4) it has no present value, so there is no current gift and no gift tax.

Lady Bird deeds are used most often as part of a plan to protect a homestead from a Medicaid Estate Recovery claim. When the Lady Bird deed is signed, there is no value transferred hence there is no disqualification from receiving Medicaid. The holder of the life estate is allowed to treat the property as homestead, so it does not interfere with qualifying for Medicaid. If the deed is not cancelled, then when the holder of the life estate dies, the property vests in the holder of the remainder interest and Medicaid has no opportunity to claim the homestead's value.

You ask three detailed questions about Lady Bird deeds. First, can two people (or more) be named as holders of the remainder interest? Yes. However, the deed must then address what happens if one of those holders dies while the life estate is still intact, and there is a possibility that a title company will be uncomfortable about insuring the title.

The remedy when you desire to name several recipients is to have the lawyer create a Living Trust agreement. The Lady Bird deed names the Trust itself as recipient of the remainder interest in the real estate. The Trust agreement can then have any number of beneficiaries and contingent beneficiaries, with a more complex plan of distribution that the Lady Bird deed should ever have.

Second, is there an age requirement for the beneficiary? Technically, no, the Lady Bird deed could name a minor beneficiary. However, if that person is still a minor when the life estate holder dies, an adult may have to establish a guardianship in order to control the real property for the minor. Again, a better solution is to have your lawyer create a Living Trust, name the Trust as beneficiary of the Lady Bird deed, and then name the minor individual as beneficiary of the Trust. Inherently, the Trust will have an adult manager (Trustee) with control over the property until the minor beneficiary becomes an adult.

Third, can a Lady Bird deed be used for property other than the principal residence? This depends on whether the motive for creating the Lady Bird deed is to avoid a Medicaid Estate Recovery claim. If so, then simply owning real property which is not a principal residence could disqualify the person from receiving Medicaid benefits (and the Lady Bird deed would not act as a shelter). However, if the primary motive for creating the Lady Bird deed is to avoid probate (to transfer the real property without having to go to court) then yes, it can include other real property. In that case, however, it is often better to avoid the Lady Bird deed and instead utilize a Living Trust, as the Living Trust will also avoid probate and can shelter both real estate and financial assets from going through probate.

Before taking any action, you should always consult with a qualified elder law / estate planning attorney. There are many legal factors that must be considered when deciding whether to use a Lady Bird deed, to qualify for Medicaid, to avoid Medicaid Estate Recovery, and to avoid probate.

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