

The Owl on with life



march 2017

The goal of this newsletter is to encourage people who are growing older to keep on with the business of living. We want the experience of growing older to focus on achieving and maintaining a quality of life that is enjoyable and desirable.

If you know of a family member or friend who would like estate planning services, please consider referring them to Beth A. Swagman, PLLC.

Ladybird Deed

An estate planning strategy that has been around for many years is the ladybird deed. Early in my legal career, I heard the story of former President Lyndon Johnson creating a deed to preserve the LBJ ranch for his wife, Lady Bird Johnson. That sounded believable, or was I just gullible? Anyway, I mentioned that story to clients from time to time. Then, I learned that maybe the former President was not the genesis of the *Lady Bird Deed*. Supposedly, an attorney used the term "Lady Bird Deed" in reference to an enhanced life estate, and the term stuck. So whenever reasonable minds differ, what do we do? Google it! From what appears to be a reliable article written by Kary C. Frank in 2015, Frank reports that in 1982, a Florida attorney, Jerome Ira Solkoff, used a fictional cast of characters to explain an enhanced life estate deed in his lecture materials. One

of the characters was Lady Bird. It appears that the term "Lady Bird Deed" simply stuck without any intentional reference to the former First Lady and with no intent that the fictional character, Lady Bird, should become the common name for an enhanced life estate. The article also clarified that the correct spelling of this enhanced life estate deed is "ladybird", not Lady Bird or LadyBird.

Because Frank wrote the article before the onslaught of "fake news", let's hope the information is correct. We do know that the term *ladybird deed* commonly describes an enhanced life estate, which is a well-known estate planning strategy. Now that we *think* we know the origin of the term, what is the purpose behind this deed and estate planning strategy?

The Grantor (owner) of real estate (home) can transfer his or their interest in that home at any time

before his or their death. Upon the death of the Grantor(s), if he or they have not transferred the home to another person, a personal representative may have to open a probate estate for the court to determine the successor owner. For
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Beth A. Swagman, PLLC

Legislative Update: The Asset Protection Act

The Michigan legislature passed an act that offers new asset preservation and asset protection features. The act takes effect in 2017. A more detailed analysis of the act will appear in the May 2017 OWL.



How to Select a Caregiver

An adult caregiver is one option for older adults who want to stay in their home but need a little assistance. The assistance might include meal preparation, dressing or bathing, supervision for a few hours, or helping the adult at bedtime. Some people need a little help every day while others need help only 2-3 times a week because a spouse or family members provide some care.

Because some care may be intimate (bathing or toileting) and some care may be nighttime supervision, selecting someone to be a caregiver is an important decision that could have great rewards or serious consequences. I invite you to go to my website, www.swagmanestateplanning.com and

click on the resources page to review an article written by Nancy Kropiewnicki, Coordinator, from the Area Agency on Aging of Western Michigan. Nancy writes about the features of a caregiver that are important to you whether you are looking to hire someone independently or through a caregiver agency.

If you or someone you are caring for may need Michigan Medicaid within a few years, it is important to know that a caregiver contract, independently written or through an agency, must comply with Medicaid caregiver contract regulations. If the contract does not comply, the expenses paid to the caregiver

may be a divestment. Divestment means Medicaid has found reason to declare the transfer of funds from the Medicaid applicant to the caregiver via the contract impermissible. As a result, Medicaid declares a penalty based on the amount of the caregiver's contract. If the contract extends over several years, the dollar amount could be substantial. The penalty becomes the amount the Medicaid applicant will likely private-pay to the nursing home before Medicaid coverage begins.

Ladybird Deed

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many homeowners, the thought of transferring the home to a successor owner while he or they are still healthy and enjoying the use of the home seems dreadful. However, if that person or couple cannot transfer the property after death, how does a homeowner wisely transfer ownership and potentially avoid a probate estate?

An enhanced life estate deed may fill the need nicely. An enhanced life estate allows the Grantor to retain ownership of the home and all the powers to maintain it or sell it at his or their discretion. As long as the Grantor is alive, the home remains his. That is the "enhanced" part - the Grantor does not give up ownership or possession of the home. The ladybird deed transfers the home to whomever the Grantor

designates as the new owner. This transfer takes place on the death of the Grantor, and thus, the Grantor and successor owner avoid probate.

Of note, the Michigan legislature recently approved the transfer of real estate between certain family members using a ladybird deed to be exempt from property tax uncapping which makes the transfer just a little sweeter.

Beth A. Swagman, PLLC