

MEDICAID PLANNING - PART III

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We continue our discussion about Medicaid Planning tools and ways to transfer your home to protect it if you have to go into a skilled nursing facility. So far we have covered gift deeds and gift deeds reserving a life estate. Both of these methods are subject to a five year look back under Medicaid rules. Today we move to a type of deed that has no look back period.

A “Lady Bird” deed, also known as an enhanced life estate, is a special type of deed allowed in North Carolina. The name “Lady Bird” apparently comes from the attorney who created it and used the names Lyndon B. Johnson and Lady Bird Johnson as his examples to explain the deed. Somehow from that the deed got its name. (Hey, just trying to help you out on Jeopardy!)

This special deed works because the Grantor retains all rights to the property while living which means if the property is sold *all* proceeds belong to the Grantor. Because of this, nothing of value has been given away and so no sanction period is created under Medicaid rules. Remember with a gift deed all rights are given away and if the property is sold all proceeds go to the Grantee (person who received the property). If a gift deed reserving a life estate is used and the property is sold while the Grantor is living part of the proceeds belong to the Grantor and the other part to the Grantee.

Additionally, using the “Lady Bird” deed, upon the death of the Grantor the property passes to the Grantee. This means that the property by-passes the estate of the Grantor. The reason this is important is because if Medicaid has paid out funds for long term care for the Grantor the State of North Carolina will file a claim against the estate. Since the property has by-passed the estate it is not subject to being sold to pay the claim.

I really am surprised this is still allowed but for now it is and so it is a valuable planning tool for Medicaid asset protection in a crisis situation. A couple of things to be aware of: my experience is that title companies are not real certain of these and may require Grantors and Grantees to execute a deed if the property is sold while the Grantor is living; and, recently a client was unable to get an equity line on her home without having the property conveyed back to her by the Grantees. I thought this was pretty ridiculous since the language on the deed is clear that Grantor retains all rights to the property while living but my opinion really doesn't matter.

Have a nice Oktoberfest and Halloween and we'll continue with this subject in November!