WHAT IS A “LADY BIRD” DEED?

A Lady Bird Deed is an enhanced life estate deed. Basically, it is a conveyance of real property with a reservation of a life estate by the grantor, including the power to sell, mortgage, lease, etc.
WHAT IS THE DIFFERENCE BETWEEN A TYPICAL OR STANDARD LIFE ESTATE DEED AND A LADY BIRD DEED?

With a standard life estate deed, a beneficiary is named to inherit the property while the grantor retains rights as a life tenant of the property. The life tenant would not be able to unilaterally sell, mortgage or lease the property. The beneficiary owning the remainderman’s interest in the property would be required to join in any conveyance, mortgage or lease of the property with the life tenant.
WHAT IS THE DIFFERENCE BETWEEN A TYPICAL OR STANDARD DEED AND A LADY BIRD DEED?

The Lady Bird deed is distinctive because the life estate reserved is coupled with the power to gift, mortgage, sell, lease or otherwise dispose of the property.

A Lady Bird deed will specify that the real estate will remain in the owner’s name for so long as the owner is living, and that during the time the owner is living, the owner will continue to enjoy unrestricted ownership, without liability for waste. If something remains of the property upon the owner’s death, the Lady Bird deed allows the real estate to pass outside of probate to the beneficiaries named in the deed.

A Lady Bird deed is the rough equivalent of a “payable on death” bank account.
“The Grantor reserves a life estate for himself/herself during the Grantor’s lifetime coupled with an unrestricted power to convey during the Grantor’s lifetime, which includes the power to sell, gift, mortgage, lease and otherwise dispose of the property, and to retain the proceeds from the conveyance.”
“Claudia T. Johnson, aka Lady Bird Johnson, a single woman, conveys and warrants Blackacre to herself, for her lifetime, coupled with an unrestricted power to convey the property during her lifetime, pursuant to Michigan Land Title Standard 9.3. This power to convey creates a general inter vivos power of appointment, which includes the power to sell, gift, mortgage, and lease (or otherwise dispose of the property) and to retain the proceeds from any conveyance, lease or mortgage. If Claudia T. Johnson has not previously conveyed the property prior to her death, Claudia T. Johnson’s entire interest in the property is conveyed to Luci Bains Johnson and Lynda Bird Johnson Robb, as joint tenants with rights of survivorship.”
“Lyndon and Lady Bird, his wife, grantors, to Lyndon and Lady Bird, his wife, grantees, a life estate, without any liability for waste, with full power and authority in them to sell, convey, mortgage lease and otherwise dispose of the property described below in fee simple, with or without consideration and without joinder by the reamindermen, and to keep absolutely any and all proceeds derived therefrom. Further, the grantors reserve the right to change remaindersmen at any time without consent of remaindersmen. Upon death of the life tenants, title shall be in Lucy and Lynda, as joint tenants.”
No Statute

There is currently no Michigan statute that specifically authorizes the use of Lady Bird Deeds.

Many other states have enacted transfer-on-death deed statutes, but none have yet passed in Michigan.

Title Standard

Michigan Land Title Standard 9.3, titled “Life Estate with Power to Convey Fee,” confirms that, in Michigan, a donee may transfer a fee interest in the subject property.
CASE LAW

Michigan courts and tribunals have enforced Lady Bird Deeds, citing both Title Standard 9.3 and the Powers of Appointment Act.

Anderson v Township of Chocolay, unpublished


In Re Tobias Estates, 2012 WL 1648847 (unreported Michigan Court of Appeals)
WHY ARE LADY BIRD DEEDS POPULAR?
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1. Husband and wife grantors retain tenancy by entireties protection.
2. Avoids probate
3. No need to change house insurance (as compared to trust)
4. Not deemed a transfer for gift tax purposes because the transfer is not considered complete until the death of the grantor. Therefore, it is not a lifetime gift and not subject to gift taxes.
5. Property does not lose step up in basis under IRC 1014 and 2036(a). Basically, the remaindermen can sell the property on the death of the grantor and not pay any capital gains tax.
6. No transfer taxes
7. Grantors keep control during life and can transfer lease, mortgage, etc. WITHOUT THE CONSENT OF REMAINDERMEN.
8. No exposure to future beneficiaries’ creditors during life of grantor (maybe).
9. Remaindermen cannot sell or encumber the property during grantors’ lifetime.
10. Medicaid estate recovery is limited to recovering assets passing through the probate estate. MCL 400.112h(a)
PROBLEMS

1. Minor remaindermen (need conservatorship established)

2. If the grantors are spouses, does the survivor of them retain control to sell, mortgage or convey after death of the first?

3. What happens if the remainderman named in the Lady Bird Deed dies before the grantor?

4. What if the Lady Bird Deed is signed by an attorney-in-fact and is in favor of the attorney-in-fact?

5. No statutory language to guide drafters. Language used may be vague.

6. If grantor is a man, there presumably will need to be proof recorded after death to establish that he did not marry or remarry after the deed was granted.

7. Uniform Fraudulent Transfer Act (UFTA). There is conflict among various probate courts across the state as to whether real property transferred via a Lady Bird Deed is subject to UFTA. The concern is that these types of deeds may be set aside as fraudulent to avoid estate recovery under Medicaid rules and regulations.

8. Remaindermen take the property subject to prior liens and encumbrances.
DON’T PUT ALL YOUR EGGS IN ONE BASKET!