

Understanding the Florida Lady Bird Deed (Enhanced Life Estate Deed)

An Educational Overview for Property Owners, with Links to the
Florida Statutes, Florida Administrative Code, and Federal Law

Prepared by **Jonathan Rexford**

Nonlawyer Document Preparer and Florida Notary Public

772-321-2290 | jonathan@notarynearmenow.com | www.NotaryNearMeNow.com

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Laws change. The links in this report point to official or primary sources. Always confirm you are reading the most recent version.

1. What a Lady Bird Deed Is

A **Lady Bird deed** is the everyday name for an **enhanced life estate deed**. It is a recorded deed in which the owner of real property (the *grantor*, also called the *life tenant*) names who should receive the property at the owner's death (the *remainder beneficiary* or *remainderman*), while reserving to the owner, for life, essentially all of the rights of full ownership — including the right to change their mind.

The word “**enhanced**” is what separates it from a traditional life estate deed. In a traditional life estate, the owner keeps only the right to live in and use the property for life; the remainder beneficiary already holds a vested future interest, so the owner cannot sell, mortgage, or give away the whole property without the beneficiary's signature. In an enhanced life estate, the owner keeps the **power to sell, convey, mortgage, lease, gift, or otherwise dispose of the property** during life without anyone's consent, and may even revoke the deed or name a different beneficiary. The beneficiary receives only what, if anything, is left at the owner's death.

A few points of law worth knowing:

- **No Florida statute creates the Lady Bird deed.** It is a creature of Florida common law (court decisions and long-standing title practice), not of a specific section of the Florida Statutes. Florida has *not* adopted a “transfer-on-death deed” statute as some other states have; the Lady Bird deed fills that role here.
- Because it is a deed, it must satisfy Florida's general requirements for conveying real estate — a written instrument, signed by the grantor in the presence of **two subscribing witnesses**, acknowledged before a notary, and recorded in the official records of the county where the land lies. See [§ 689.01, Fla. Stat.](#), and the recording-format requirements in [§ 695.26, Fla. Stat.](#)
- The deed is **effective during the owner's life** only in the sense that it is recorded; it does not shift ownership, possession, income, or control to the beneficiary until the owner dies. The Florida Department of Revenue has described this as a deed that transfers no present beneficial interest in the property (see the documentary stamp discussion in Section 4).

2. What the Owner Keeps: Full Lifetime Control

The defining feature of a properly drafted Lady Bird deed is that **the owner gives up nothing during life**. A typical Florida enhanced life estate deed reserves to the owner, without the joinder, consent, or notice of the remainder beneficiary, the right to:

- **Sell** the property to anyone, for any price, and keep **100% of the proceeds**;
- **Mortgage or refinance** the property, including home-equity loans and reverse mortgages (subject to the lender's own underwriting);
- **Lease or rent** the property and keep all of the rental income;
- **Gift** the property, or place it in a trust;
- **Change the remainder beneficiary or revoke the deed entirely** by recording a new deed;
- Continue to claim the property as **homestead** and to occupy, improve, or neglect it as the owner sees fit.

If the owner exercises any of these powers — for example, by selling the home — the remainder beneficiary's expectancy simply disappears. The beneficiary has no claim to the sale proceeds and no right to object. Florida's Medicaid eligibility manual describes the holder of an enhanced life estate as having the same rights as a complete owner, including the right to sell without the remainderman's consent (see [DCF ESS Policy Manual, Chapter 1600, passage 1640.0305.03](#)).

Practical note (not legal advice): Although the law gives the owner these powers, individual title insurance underwriters and mortgage lenders set their own internal policies. Some may ask for additional documentation, or may prefer that the remainder beneficiary also sign, before insuring a sale or funding a loan during the owner's lifetime. This is a business practice, not a legal requirement, and it varies by company. Owners who plan to sell or refinance may wish to ask their title agent or lender about this in advance.

3. How a Lady Bird Deed Bypasses Probate

Probate is the court-supervised process, governed by the Florida Probate Code ([Chapters 731 through 735, Fla. Stat.](#)), for collecting a deceased person's assets, paying valid debts, and distributing what remains. Real estate titled solely in a decedent's name — or titled in a way that does not pass automatically at death — generally must go through probate before clear title can pass to the heirs. Even the simplified “summary administration” procedure ([§ 735.201, Fla. Stat.](#)) requires a court filing, a petition, and an order.

A Lady Bird deed avoids this because the **remainder interest vests automatically** at the moment of the owner's death, by operation of the recorded deed itself. Nothing passes through the owner's will, and the property is not part of the probate estate. In practice, the beneficiary usually establishes record title by recording a **certified copy of the death certificate** (often together with a short affidavit identifying the property and confirming the deed was not revoked) in the county's official records. No judge, personal representative, or court order is involved.

Married couples

When a married couple signs a Lady Bird deed, both spouses are typically named as joint life tenants. Nothing changes at the first death — the surviving spouse continues to hold the full enhanced life estate, with all of the powers described in Section 2. The remainder beneficiaries take only after the **second** spouse dies. This preserves the survivor's complete freedom to sell, refinance, rent, or redirect the property.

Florida homestead rules still apply

Florida's Constitution restricts how a homestead may be *devised* (left at death) when the owner is survived by a spouse or a minor child, and requires a spouse's joinder to alienate (transfer or encumber) a homestead. See [Article X, Section 4, Florida Constitution](#), together with [§ 732.401](#) and [§ 732.4015, Fla. Stat.](#) A Lady Bird deed does not override these rules. This is one reason a married couple's homestead deed is normally signed by both spouses, and why anyone with a minor child should read these provisions carefully before relying on any deed-based plan.

4. Homestead Exemption, Save Our Homes, Creditors, and Documentary Stamps

Property-tax homestead exemption continues

Because the owner retains a life estate and continues to reside on the property, the owner remains the person entitled to claim the homestead exemption. Florida law expressly extends the homestead exemption to persons holding legal or beneficial title, including a **life estate**. See [§ 196.031](#) and [§ 196.041, Fla. Stat.](#) Owners should confirm their exemption status with their county property appraiser.

Save Our Homes assessment cap

Florida's "Save Our Homes" cap limits annual increases in the assessed value of homestead property and is reset upon a "change of ownership." The statute defining what is — and is not — a change of ownership is [§ 193.155, Fla. Stat.](#) Because a Lady Bird deed transfers no present beneficial interest, the general understanding in Florida practice is that recording one does not, by itself, trigger reassessment during the owner's life. Readers should review the statute and may contact their county property appraiser for that office's position.

Creditor protection: homestead vs. non-homestead

A Lady Bird deed is a **probate-avoidance** tool, **not** a lifetime asset-protection device. Florida homestead property enjoys strong constitutional protection from most judgment creditors ([Art. X, § 4\(a\), Fla. Const.](#)), and that protection continues whether or not a Lady Bird deed is recorded. Non-homestead property (a rental, a second home, vacant land) remains fully exposed to the owner's own creditors during life, including recorded judgment liens under [§ 55.10, Fla. Stat.](#) The deed changes nothing about that. What the deed does is keep the property out of the probate estate at death, which affects the creditor-claims process described in Section 5.

Documentary stamp tax

Florida imposes documentary stamp tax on deeds that transfer an interest in real property for consideration, including an outstanding mortgage balance. See [§ 201.02, Fla. Stat.](#), and [Rule 12B-4.014, F.A.C.](#) (conveyances not subject to tax). In two published Technical Assistance Advisements issued in 2020, the Florida Department of Revenue concluded that a properly drafted enhanced life estate deed transfers no present beneficial interest and therefore is **not subject to documentary stamp tax regardless of any consideration**, including an existing mortgage. See [Florida DOR TAA 20B4-004](#). In practice, county clerks collect only the minimum stamp (currently \$0.70) when the deed is recorded.

5. Medicaid and Medicare: What the Law Actually Says

This is the area where the most misinformation circulates, so this section is organized around the specific rules and cites each one. Please read the sources. **Medicaid rules are complex, fact-specific, and change frequently; nothing here is Medicaid-planning advice.**

5A. Medicare is not Medicaid

Medicare is the federal health-insurance program for people 65 and older and certain disabled individuals. Medicare has **no asset test, no income test, and no estate-recovery program**. Owning a home, selling a home, or signing any kind of deed has no effect on Medicare eligibility or benefits. See [Medicare.gov — Get started with Medicare](#). Everything that follows concerns **Medicaid** — the joint federal–state program that pays for long-term nursing home and home-based care for people with limited income and assets. In Florida, eligibility is determined by the Department of Children and

Families (DCF) and the program is administered by the Agency for Health Care Administration (AHCA).

5B. Eligibility — is the home a countable asset?

Florida's Medicaid asset rules for the aged and disabled are in Rules [65A-1.712](#) and [65A-1.716, F.A.C.](#), and are applied through the DCF [ESS Program Policy Manual, Chapter 1600 \(Assets\)](#). Under that manual:

- An applicant's **home** — the principal place of residence — is **excluded** as an asset regardless of value, and the exclusion continues during a nursing-home stay if a spouse or dependent relative lives there or the applicant states an intent to return (passages 1640.0534 and 1640.0543.01).
- Property held under a Lady Bird deed is treated **exactly like property owned outright** — counted if it is not the home, excluded if it qualifies as the home (passage 1640.0305.03). The deed neither helps nor hurts eligibility.
- A separate **home-equity limit** applies to long-term-care applicants without a spouse or dependent child in the home (passage 1640.0307.04 and Appendix A-9). The deed does not change that calculation.

5C. The five-year look-back — is signing the deed a “transfer”?

Federal law imposes a penalty period when a Medicaid applicant gives away assets for less than fair market value within the 60-month look-back period. See [42 U.S.C. § 1396p\(c\)](#). Florida's manual addresses life estates directly in passage 1640.0613.01 (Property Transferred and Life Estate Retained). Because the owner of an enhanced life estate keeps the power to sell and keep the proceeds, DCF policy is that no transfer of assets has occurred when a Lady Bird deed is signed. By contrast, a **traditional** life estate deed *does* give away a remainder interest and can trigger a penalty. Readers should review the manual passage at the link above.

5D. Estate recovery after death — the heart of the matter

Federal law requires every state to seek recovery of Medicaid long-term-care payments from the **estate** of a deceased recipient age 55 or older. See [42 U.S.C. § 1396p\(b\)](#), [42 C.F.R. § 433.36](#), and the overview at [Medicaid.gov — Estate Recovery](#). Federal law lets each state choose how broadly to define “estate.” A state may use the narrow **probate estate**, or may expand the definition to reach non-probate assets such as jointly held property and life estates.

Florida uses the narrow definition. Florida's Medicaid Estate Recovery Act, [§ 409.9101, Fla. Stat.](#), provides that recovery is accomplished by AHCA **filing a statement of claim against the decedent's estate** under the creditor-claims procedure of Part VII of Chapter 733 (the probate code). The statute further provides that **protected homestead** is not sold to satisfy a recovery claim. Because real property that passes by Lady Bird deed vests in the beneficiary at death by operation of the deed and is **never part of the probate estate**, there is no estate asset against which the claim can be enforced as to that property. This is the legal basis for the statement that a Lady Bird deed “protects the home from Medicaid.”

Honest caveats you should understand:

- The protection flows from *Florida's current statutory choice* to limit recovery to the probate estate. Federal law already permits Florida to expand that definition. If the Legislature ever amends § 409.9101, the analysis could change for deaths occurring after the amendment.
- Estate recovery is only one piece of Medicaid. The deed does not affect eligibility, income rules, patient responsibility, or the home-equity limit, and it does nothing for assets other than the specific real estate described in the deed.
- Non-homestead property passing by Lady Bird deed is likewise outside the probate estate, but the owner's *lifetime* creditors are unaffected (Section 4), and AHCA may pursue other estate assets.
- The agency may also assert claims under [§ 409.910, Fla. Stat.](#) (third-party liability, e.g., personal-injury settlements), which operates separately from estate recovery.

6. Federal Tax Notes (Information Only — Not Tax Advice)

- **No completed gift.** Because the owner can revoke the deed and keep all sale proceeds, the IRS generally treats the transfer as incomplete for gift-tax purposes; no gift-tax return is typically filed when the deed is signed.
- **Included in the owner's estate; stepped-up basis.** Property in which the decedent retained possession, enjoyment, or the right to income for life is included in the gross estate under [26 U.S.C. § 2036](#). The usual consequence is that the beneficiary receives a “**stepped-up**” **income-tax basis** equal to fair market value at death under [26 U.S.C. § 1014](#), which can eliminate capital-gains tax on lifetime appreciation. Compare this with an outright lifetime gift, which carries over the donor's original basis.
- **Mortgaged property and “due-on-sale” clauses.** Federal law restricts a lender's ability to call a residential mortgage due upon certain transfers, including transfers to a relative resulting from the borrower's death. See [12 U.S.C. § 1701j-3\(d\)](#). Owners with a mortgage should read this section and may wish to discuss their situation with their lender or a professional.
- Florida has no state estate, inheritance, or gift tax.

7. Limitations and Things to Think About

No single document fits every family. Some points frequently discussed in connection with Lady Bird deeds:

- **Incapacity.** The deed does nothing to manage the property if the owner becomes incapacitated. A durable power of attorney with real-estate authority, or a trust, addresses that separately.
- **A beneficiary who dies first.** Depending on how the deed is written, the share of a remainder beneficiary who predeceases the owner may lapse, pass to that beneficiary's descendants, or go to the other named beneficiaries. The deed's wording controls.
- **Multiple beneficiaries.** Several children taking as tenants in common must all agree in order to sell or manage the property after the owner's death. A trust may offer more flexibility for complex families.
- **Beneficiary's creditors and divorces.** Until the owner dies, the beneficiary holds only a defeasible expectancy with little practical value to the beneficiary's creditors. After death, the property is the beneficiary's and is exposed like any other asset.

- **Title and lender practices** during the owner's life (Section 2) vary by company.
- **It covers only the real estate described.** Bank accounts, vehicles, investments, and personal property are not affected.
- **Drafting matters.** Because no statute spells out the required language, the specific words reserving the enhanced powers are what make the deed work. A deed that omits them is a traditional life estate with very different consequences.

8. Do Your Own Research — Primary Sources

Each link below goes to an official or primary legal source. If you are reading a printed copy, the full web address is shown.

[Florida Constitution, Article X, § 4 — Homestead; exemptions and devise restrictions](https://www.flsenate.gov/Laws/Constitution#A10S04)

<https://www.flsenate.gov/Laws/Constitution#A10S04>

[§ 689.01, Fla. Stat. — How real estate is conveyed \(two witnesses\)](https://www.flsenate.gov/Laws/Statutes/2025/689.01)

<https://www.flsenate.gov/Laws/Statutes/2025/689.01>

[§ 695.26, Fla. Stat. — Requirements for recording instruments](https://www.flsenate.gov/Laws/Statutes/2025/695.26)

<https://www.flsenate.gov/Laws/Statutes/2025/695.26>

[§ 732.401 & § 732.4015, Fla. Stat. — Descent and devise of homestead](https://www.flsenate.gov/Laws/Statutes/2025/732.4015)

<https://www.flsenate.gov/Laws/Statutes/2025/732.4015>

[Chapter 731 and Chapter 733, Fla. Stat. — Florida Probate Code \(Ch. 733 Part VII: creditor claims\)](https://www.flsenate.gov/Laws/Statutes/2025/Chapter733)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter733>

[§ 735.201, Fla. Stat. — Summary administration](https://www.flsenate.gov/Laws/Statutes/2025/735.201)

<https://www.flsenate.gov/Laws/Statutes/2025/735.201>

[§ 193.155, Fla. Stat. — Homestead assessments \(Save Our Homes; change of ownership\)](https://www.flsenate.gov/Laws/Statutes/2025/193.155)

<https://www.flsenate.gov/Laws/Statutes/2025/193.155>

[§ 196.031 & § 196.041, Fla. Stat. — Homestead exemption; life-estate holders](https://www.flsenate.gov/Laws/Statutes/2025/196.041)

<https://www.flsenate.gov/Laws/Statutes/2025/196.041>

[§ 201.02, Fla. Stat. — Documentary stamp tax on deeds](https://www.flsenate.gov/Laws/Statutes/2025/201.02)

<https://www.flsenate.gov/Laws/Statutes/2025/201.02>

[Rule 12B-4.014, Florida Administrative Code — Conveyances not subject to doc stamp tax](https://www.flrules.org/gateway/ruleno.asp?id=12B-4.014)

<https://www.flrules.org/gateway/ruleno.asp?id=12B-4.014>

[Florida Dept. of Revenue, Technical Assistance Advisement 20B4-004 \(Lady Bird deed; no doc stamps\)](https://floridarevenue.com/TaxLaw/Documents/20B4-004.pdf)

<https://floridarevenue.com/TaxLaw/Documents/20B4-004.pdf>

[§ 55.10, Fla. Stat. — Judgment liens on real property](https://www.flsenate.gov/Laws/Statutes/2025/55.10)

<https://www.flsenate.gov/Laws/Statutes/2025/55.10>

[§ 409.9101, Fla. Stat. — Medicaid Estate Recovery Act](https://www.flsenate.gov/Laws/Statutes/2025/409.9101)

<https://www.flsenate.gov/Laws/Statutes/2025/409.9101>

[§ 409.910, Fla. Stat. — Medicaid third-party liability](https://www.flsenate.gov/Laws/Statutes/2025/409.910)

<https://www.flsenate.gov/Laws/Statutes/2025/409.910>

[Rule 65A-1.712, F.A.C. — SSI-Related Medicaid resource eligibility criteria](https://www.flrules.org/gateway/ruleno.asp?id=65A-1.712)

<https://www.flrules.org/gateway/ruleno.asp?id=65A-1.712>

[Rule 65A-1.716, F.A.C. — Income and resource criteria](https://www.flrules.org/gateway/ruleno.asp?id=65A-1.716)

<https://www.flrules.org/gateway/ruleno.asp?id=65A-1.716>

[DCF ESS Program Policy Manual, Chapter 1600 \(Assets\) — see passages 1640.0305.03, 1640.0534, 1640.0543.01, 1640.0307.04, 1640.0613.01](https://ffic.myflfamilies.com/manual/1630.pdf)

<https://ffic.myflfamilies.com/manual/1630.pdf>

[42 U.S.C. § 1396p — Liens, adjustments and recoveries, and transfers of assets \(federal Medicaid\)](https://www.law.cornell.edu/uscode/text/42/1396p)

<https://www.law.cornell.edu/uscode/text/42/1396p>

[42 C.F.R. § 433.36 — Liens and recoveries \(federal regulation\)](https://www.law.cornell.edu/cfr/text/42/433.36)

<https://www.law.cornell.edu/cfr/text/42/433.36>

[Medicaid.gov — Estate Recovery overview](https://www.medicaid.gov/medicaid/eligibility/estate-recovery/index.html)

<https://www.medicaid.gov/medicaid/eligibility/estate-recovery/index.html>

[Medicare.gov — Get started with Medicare \(no asset test\)](https://www.medicare.gov/basics/get-started-with-medicare)

<https://www.medicare.gov/basics/get-started-with-medicare>

[26 U.S.C. § 2036 — Transfers with retained life estate \(estate inclusion\)](https://www.law.cornell.edu/uscode/text/26/2036)

<https://www.law.cornell.edu/uscode/text/26/2036>

[26 U.S.C. § 1014 — Basis of property acquired from a decedent \(step-up\)](https://www.law.cornell.edu/uscode/text/26/1014)

<https://www.law.cornell.edu/uscode/text/26/1014>

[12 U.S.C. § 1701j-3 — Preemption of due-on-sale prohibitions; exempt transfers](https://www.law.cornell.edu/uscode/text/12/1701j-3)

<https://www.law.cornell.edu/uscode/text/12/1701j-3>

[§ 454.23, Fla. Stat. — Unlicensed practice of law \(penalties\)](https://www.flsenate.gov/Laws/Statutes/2025/454.23)

<https://www.flsenate.gov/Laws/Statutes/2025/454.23>

[Rules Regulating The Florida Bar, Chapter 10 — Unlicensed practice of law; nonlawyer form assistance \(Rules 10-2.1 and 10-2.2\)](https://www.floridabar.org/rules/rtrfb/)

<https://www.floridabar.org/rules/rtrfb/>

[In re Amendments to Fla. Family Law Rules of Procedure and Rule Regulating The Florida Bar 10-2.2, No. SC2026-1262 \(Fla. Sept. 10, 2026\) — nonlawyer form-assistance disclosure](https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf)

https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf

9. Required Disclosures

- **Nonlawyer disclosure.** Jonathan Rexford is a nonlawyer. He is not an attorney, he is not a paralegal as defined by Rule 10-2.1(h) of the Rules Regulating The Florida Bar, and he cannot call himself a paralegal. He may not give legal advice, cannot tell you what your rights or remedies are, cannot tell you how to testify in court, and cannot represent you in court. He may only type the factual information you provide to him in writing into the blanks on a form. Except for typing, he may not tell you what to put in the form and may not complete the form for you. However, if the form is one approved by the Supreme Court of Florida, he may ask you factual questions to fill in the blanks on the form and may also tell you how to file the form. Before he assists you in completing any form, he will give you a written disclosure containing these terms, signed by both of you, for you to keep. As Rule 10-2.2(c) of the Rules Regulating The Florida Bar requires, as amended by the Supreme Court of Florida in [Case No. SC2026-1262](https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf) (effective October 1, 2026), any form he helps complete will state “This form was completed with the assistance of:” followed by his name, title, business name, address, telephone number, and email address. This report is general educational information only; reading it is not form assistance and does not create an attorney-client relationship.

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- **Not tax, financial, insurance, or Medicaid-planning advice.** Medicaid eligibility rules are applied case-by-case by DCF, change often, and depend on facts not addressed here.
- **Accuracy and currency.** This report summarizes the law in good faith and in plain English. Summaries are necessarily incomplete. The linked statutes, rules, and decisions control over anything written here. No warranty of any kind is made as to completeness, accuracy, or fitness for any particular purpose.
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Respectfully prepared for your education,

Jonathan Rexford

Jonathan Rexford

Nonlawyer Document Preparer and Florida Notary Public

Phone: 772-321-2290

Email: jonathan@notarynearmenow.com

Website: www.NotaryNearMeNow.com