

# Medicaid Asset Protection: Lady Bird Deeds in Texas



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## **Medicaid Asset Protection: Lady Bird Deeds in Texas**

Every state is required to maintain a Medicaid estate recovery program as a condition to continued receipt of federal Medicaid funds. This federal requirement, passed down to the states for implementation, has resulted in the widespread use of various Medicaid asset protection planning strategies. In Texas, perhaps no single strategy is more important than the Lady Bird Deed.

A Lady Bird Deed, also known as an Enhanced Life Estate Deed, a Deed with a Power of Appointment, and a Transfer-On-Death Deed, is a legal document in which the grantor transfers property to his or her heirs while at the same time retaining a life estate with powers including the right to sell the property.

Texas is one of just a few states which permit the use of Lady Bird Deeds and only nine states (Arizona, Arkansas, Colorado, Kansas, Missouri, Nevada, New Mexico, Ohio and Wisconsin) have actually adopted the planning technique by statute.<sup>1</sup>

Fundamentally, the Lady Bird Deed is what elder law attorneys use to protect a Medicaid recipient's home and other real property from the Medicaid Estate Recovery Program (MERP). Other devices such as the revocable living trust have been used in the past, but as established in this white paper, planning tools often fall out of favor as Medicaid eligibility rules are modified.

This paper begins by examining the Medicaid eligibility rules concerning home ownership and other commonly held interests in real property. The paper continues by discussing the Texas Medicaid Estate Recovery Program to lay the foundation for determining whether or not a Lady Bird Deed is necessary to protect the home or other real property from estate recovery. Finally, this white paper pulls together the Texas Medicaid long-term care eligibility and estate recovery rules to discuss how the Lady Bird Deed provides asset protection and its drawbacks.

### **Medicaid Long-Term Care Eligibility and Real Estate**

In order to qualify and maintain eligibility for Medicaid long-term care services, the applicant/recipient must satisfy a number of criteria. Oftentimes the most difficult criterion to meet is the countable resource limit. If a Medicaid applicant's "countable resources" exceeds the applicable Medicaid eligibility resource limit as of 12:01 a.m. on the first day of the month, the applicant is ineligible for services for the entire month.<sup>2</sup>

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<sup>1</sup> Comparing Key Strategies in Owning the Home: Estate Planning, Tax and Medicaid Considerations – Part One, 219 Elder L. Advisory 1 (May 2009).

<sup>2</sup> 1 Texas Administrative Code §358.321(c).