

# **Enhanced Life Estate Deed a/k/a Lady Bird Deed to Avoid Probate on Real Estate BOOKLET**

If you pass away owning a piece of real estate in your name only, it must go through probate upon your death in order to get the property out of your name and into the names of your beneficiaries. This includes your home, rental property, investment property, commercial property and vacation home. However, there is a way to have your real estate automatically go to your beneficiaries upon your death with no headaches, hassle or probate using an Enhanced Life Estate Deed.

An Enhanced Life Estate Deed (ELD) states that, as long as you are alive, you have the sole and exclusive use and benefit of the property and, upon your death, it will automatically pass to your children, family or favorite charity that you have named in the ELD. An ELD is a tool used to avoid probate on real estate.

## **Benefits of an Enhanced Life Estate Deed**

- You (or you and your spouse) have the sole and exclusive use and benefit of your home during your lifetime(s).

- You keep your homestead real estate tax exemption which saves you about \$750 per year in real estate taxes.
- The ELD does not change ownership and, therefore, it will not cause an increase in your real property tax bill.
- You can change your mind at any time. Even after you do the ELD, you may sell, refinance, or change who gets your home upon your death without your beneficiaries' knowledge, signature or consent. (A standard Life Estate deed requires all of the beneficiaries' signatures and consent to accomplish these things.)
- Your beneficiaries have no rights to your home during your lifetime and, therefore, their creditors will not be able to place a lien against your home. (If you simply own your home jointly with your children, their creditors may have a right to place a lien against your home.)
- **An ELD Avoids Probate** – Your home will automatically pass to your children (or family, friends or charity) at your death, without the time and expense of probate. All your children need to do is record your

death certificate in the public records of the county where the property is located.

- An ELD gives your beneficiaries a stepped-up basis in your home upon your death for capital gains tax purposes, **which saves your children capital gains taxes** when they sell it.

### ***WHAT IS AN 'ORDINARY' LIFE ESTATE DEED?***

An ordinary life estate deed states that you have the sole use and benefit of the property during your lifetime and, upon your death, it will go to the persons stated in the deed (the “remaindermen”) without the need for probate. An ordinary life estate deed does avoid probate but it **cannot** be changed by you at a later date without the written joinder and consent of all of the remaindermen.

### ***WHAT IS AN 'ENHANCED' LIFE ESTATE DEED?***

An enhanced life estate deed also states that you have the sole use and benefit of the property during your lifetime and, upon your death, it will go to the persons stated in the deed (the “remaindermen”) without the need for probate. However, an ELD **can** be changed at a later date without the signature, knowledge or consent of the remaindermen. This means that you are free to sell or mortgage your property, or change who the remaindermen are without the knowledge, signature or consent of the remaindermen.

## ***ARE ENHANCED LIFE ESTATE DEEDS USED IN EVERY STATE?***

The answer is “No”, but Florida and several states do recognize the validity and use of an ELD. Check with your state to determine if this deed is available.

## ***CAN I PREPARE MY OWN ENHANCED LIFE ESTATE DEED?***

There is no law that states that an attorney must prepare this or any other deed for you. However, we do recommend that an attorney prepare all deeds, including ELD's.

## ***QUESTIONS, COMMENTS, SUGGESTIONS?***

If you have any questions, comments or suggestions please contact us at Olsen on Law Radio Show:

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