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## NOTICE TO CLIENTS

### LADY BIRD DEED

On occasion, a client will call and say, "Mom (or Dad) doesn't have much of an estate other than her house. How about preparing a simple Quit Claim Deed to her kids? That way the house will avoid probate at Mom's death."

At first glance, this simple plan may sound smart. However, on closer scrutiny, the plan may cause Mom some problems. For example:

1. Depending on the value of the house, Mom may have to file a gift tax return when she signs the deed.
2. The transfer triggers a Medicaid penalty of almost 28 months, meaning that Mom cannot qualify for Medicaid during those months. Further, if Michigan ever adopts estate recovery, the house would be subject to estate recovery on Mom's death should she ever qualify for Medicaid.
3. Mom may lose the homestead exemption, thereby increasing her property taxes.
4. The kids' basis for income tax purposes is the value at the date this deed is signed, thereby probably resulting in a capital gain tax when the house is sold upon Mom's death.

### THE TRADITIONAL RETAINED LIFE ESTATE

In order to avoid these problems, and in the misplaced hope that senior citizens could "avoid probate" and make things "simple" for their loved ones upon their deaths, many Michigan residents traditionally signed a Quit Claim Deed of their home to their children while retaining a life estate interest. The language used in such a deed is some variation of "Mary Jones, an unmarried woman, as Grantor, to Mary Jones, an unmarried woman, FOR LIFE, with the remainder interest to Jack Jones and Steven Jones, both married men, collectively as the Grantees." This form of conveyance creates an estate for life in Mary Jones and a remainder interest (that which remains after Mary's death) of the home in her two sons.

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Unfortunately, the Retained Life Estate method still results in some potential problems. For example, Mary Jones could not sell or encumber (e.g., mortgage) her property without the consent of both her sons, Jack Jones and Steven Jones. Then, too, Mary's sons' creditors could place a lien upon Mary's home, because they may not be able to claim the home as their homestead property. Moreover, since both sons are married, their respective wives can claim an interest in the property, either upon a son's death or in the event of a divorce. If Mary and one of her sons have a falling out, that son could impair Mary's right to sell, or otherwise dispose of her home. Since there are remaindermen who have an interest in Mary's home (her two sons), Mary owes her sons a duty to not commit waste as to the home (this term, "waste," is a legal term which means that Mary cannot freely use her home as she may wish). These are just some of the potential problems with the traditional form of life estate.

### **THE ENHANCED LIFE ESTATE DEED**

Fortunately, a new form of conveyance of real property, the "enhanced life estate deed," has been gaining popularity. Michigan title underwriters now fully recognize this type of deed. But what is an "enhanced life estate deed"?

The enhanced life estate (termed the "Lady Bird deed" because President Johnson once used this type of deed to convey some land to his wife, Lady Bird) provides that Mary is not liable for legal waste and that Mary retains the right to dispose of her home as she sees fit, without the requirement that the remaindermen join in such disposition. This means that Mary Jones can mortgage, sell or otherwise change title to her home at any time in the future, without the need of even notifying her remaindermen (either of her two sons, Jack or Steven). If the arrangements under the Lady Bird deed are not cancelled by Mom during her lifetime, then when Mom dies, the life estate expires automatically. The remainder interest matures into full, unrestricted ownership in Jack and Steven. The ownership change happens without probate and the problems of a simple Quit Claim Deed are avoided.

Since Michigan title companies now accept this form of conveyance, the Lady Bird Deed is highly recommended as an alternative to the traditional life estate deed.

If you would like to discuss this technique further or know of a situation where this technique would be useful, we would be happy to help you with implementation.

Very truly yours,

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