

Enhanced Life Estate Deeds — Effective Planning Tool in Florida

The Elias Law Firm constantly receives inquiries from clients regarding the avoidance of probate for certain of their assets – particularly the Florida home. Probate in Florida has been described as an expensive, time-consuming, and uncertain process and hence the desire for probate avoidance. Moreover, probate is also a public process that some wish to avoid for their beneficiaries.

Perhaps the best legal tool for probate avoidance in the context of the Florida home is the “Enhanced Life Estate Deed”, also known as an “Lady Bird Deed”. Essentially, the owner executes a deed transferring the property to himself and/or herself for their lifetime with a remainder to specifically named beneficiaries (i.e. children, for instance). Upon the death of the owner(s), the remainder beneficiaries simply record a certified copy of the death certificate with the county in which the property is located. Thereafter, title to the property automatically becomes vested

in the remainder beneficiaries and hence the asset avoids the cost, expense and uncertainty associated with probate.

In addition to probate avoidance, other key benefits/considerations of Enhanced Life Estate Deeds are as follows:

- Unlike a standard life estate deed, in a properly drafted Enhanced Life Estate Deed, the owner retains complete control over the deeded property including the ability to derive sole economic benefit from selling, mortgaging, or renting the property without consent from any remainder beneficiaries.
- A properly drafted Enhanced Life Estate Deed will not affect the owners’ Florida homestead tax exemption or Save Our Homes cap.
- Obtain lender consent for the Enhanced Life Estate Deed if the property is mortgaged so as not to trigger a technical default and/or due on transfer clause.
- The Florida Department of

Revenue does not assess a full documentary stamp taxes if the person who transfers the property is the same person that retains the life interest. Instead, the deed is only assessed a minimum documentary stamp tax at the time that the property is first conveyed. If the property is not sold by the date of the grantor’s death, it becomes subject to full documentary stamp taxes at that time.

- Potential avoidance of triggering the Federal Gift Tax on the transfer during the owner’s lifetime as conveyance of property through an enhanced life estate deed is not considered to be a completed gift until the grantor’s death.
- Enhanced Life Estate Deeds must meet all of the Florida statutory formalities required for the deed to be valid. If not, the primary goal of transferring title upon death without the need for probate will not be achieved.
- If, at the date of death the



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property is worth more than when it was acquired, it may provide the remainder beneficiaries a step-up basis for capital gains tax purposes.

Incidentally, the name “Lady Bird Deed” derives from Lady Bird Johnson, the wife of the late President Lyndon Johnson. Law professors who first discussed the concept of an enhanced life estate deed simply used President Johnson’s family in examples to discuss the

concept and name stuck.

The Elias Law Firm can help

If you have any questions about your Florida real estate transaction and/or the use of an Enhanced Life Estate Deed to avoid probate, feel free to contact The Elias Law Firm at 305-823-2300, via email at relias@eliaslaw.net, or visit us on the web at www.eliaslaw.net.

About the Author

Robert Elias, Esq. leads a boutique law firm specializing in all aspects of residential and commercial real estate transactions, corporate law and asset protection/estate planning. He is active in a variety of charitable and civic endeavors throughout South Florida and maintains an AV PreEminent Lawyer Rating from Martindale-Hubbell, the highest peer rating for professional excellence. Mr. Elias was named to the exclusive list of South Florida’s Top Rated Lawyers by American Lawyer Media.

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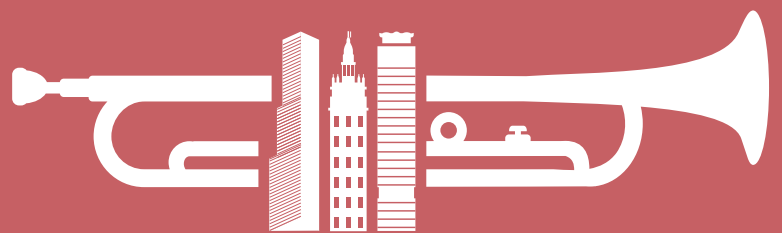


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