



# Medicaid-Friendly Estate Planning

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## ***Lady Bird Deed (Enhanced Life Estate Deed)***

- Purposes: (1) Avoid Medicaid estate recovery & (2) Avoid probate
- Common Law invalidated an interest commencing in the future.
- TX Property Code 5.041 makes it valid.
- Some title companies don't follow 5.041.
- Don't do business with them.

Pages 1-4, form in Appendix 2, page 30



## ***Transfer on Death Deed***

- Purposes: Same as LBD-- (1) Avoid Medicaid estate recovery & (2) Avoid probate
- New Chapter 114, Texas Estates Code, eff. 09/ 01/ 2015
- HHSC: Has same effect as LBD on Medicaid eligibility (none) and estate recovery (avoids it)

Pages 4-6, form in Appendix 3, page 33



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## ***Will a TODD Cut Off Title Insurance Protection?***

- Unclear whether beneficiary of a TODD is an “insured” under title policy forms
- Warranty deed would make grantor liable for title defects—therefore protecting interests of grantee by allow grantor to claim on insurance
- LBD can be a warranty deed, TODD *cannot*.

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## ***Agent May Not Sign TODD***

- Title companies dislike any deed signed by an agent—especially if the agent is grantee
- But if a Medicaid beneficiary has lost capacity, deed by an agent may be only way to avoid estate recovery
- Solution: Use power of attorney, provided agent will follow principal's estate plan; clean up title later, e.g. with Afft Hship or Family Settlement Agreement

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## ***TODD Will Not Trigger Due on Sale Clause***

- Garn-St. Germain Act, 1701j-3: A LBD *should* not trigger DOS of seller's residence to a *spouse* or *child* of seller
- Problems: Some lenders threaten foreclosure anyway; Rule at 12 CFR 591(b) excepts reverse mortgages (likely invalid but troublesome)
- Result: If property has a mortgage, TODD will give you more peace of mind

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Title search: Medicaid-Friendly Estate Planning

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[2018 Estate Planning, Guardianship, and Elder Law eConference](#)

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20<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
"Medicaid-Friendly Estate Planning"