

Using ladybird deeds to transfer real estate and avoid probate

Sharan L. Levine

A large part of estate planning is finding ways to keep your assets out of probate. Non-probate assets, such as life insurance policies and retirement accounts, allow you to add beneficiary designations directing who should inherit those accounts upon your death. Such designations let those assets be distributed to your heirs without the necessity of a probate proceeding. However, you may also make provisions to transfer real property and avoid probate.



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In Michigan, a property owner can transfer property via an “enhanced life estate,” also known as a ladybird deed. This kind of deed acts like a “transfer on death” or “pay on death” designation commonly used to transfer bank or investment accounts to beneficiaries at death. An owner of real property (the grantor) prepares a deed designating a beneficiary (the grantee) to receive the property upon the grantor’s death. At the same time, the grantor retains the power to sell, gift, lease or otherwise transfer the property without the grantee’s permission. If the grantor still has possession of the property upon death, then the grantee takes possession without needing a probate proceeding. Please note: this is not a deed to prepare on your own. These deeds must be carefully considered and prepared by competent counsel.

In addition to retaining control of the property, the ladybird deed also provides many other benefits. A ladybird deed can be used to transfer real estate not only to individuals, but also into a revocable trust. It can also be an effective tool in Medicaid planning. Since a ladybird deed is considered a transfer-on-death document, it is not counted as part of a probate estate and is therefore exempt from Medicaid recovery proceedings.

There are a couple potential drawbacks to be considered, however. Since the grantor retains

control over the property, the ladybird deed does not provide any creditor protection, meaning the property could still be attached to satisfy a judgment or claim of a creditor against the grantor. Additionally, sometimes financial institutions refuse to finance or re-finance a mortgage if the property has a ladybird deed in place. This occasionally results in needing to dissolve the ladybird deed to obtain the financing and then preparing a new ladybird deed when the financing is complete.

If you think a ladybird deed could be beneficial to your estate plan, Levine & Levine is here to advise and assist.

Randall Levine says government is playing games in ongoing Flint Water case

Randall Levine, defense attorney for Rich Baird in the Flint Water Crisis case, is among seven attorneys representing those facing the most serious water crisis charges who told a Circuit Court judge they intend to challenge the slow-moving measures since their clients have been indicted.



Randall Levine

During a hearing in front of Genesee Circuit Court Judge Elizabeth A. Kelly, several attorneys for those charged, including Levine, said they planned to file motions to force the release of documents related specifically to their case.

“We are light years away from beginning any trials,” Levine told Judge Kelly during the hearing. “The government is playing games. Until we get past some of this gamesmanship ... we cannot move anywhere.” Levine has filed two motions to dismiss the charges against Baird which are pending before Judge Kelly. According to Levine, “Rich Baird has done nothing wrong. Unfortunately, the government has chosen to single him out in an effort to mollify the citizens of Flint who are justifiably angry over the many failures of government officials who decided to use the Flint River to supply the community with

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water. Baird worked tirelessly for the citizens of Flint during the water crisis. A native of Flint, Baird volunteered to go there in an effort to help Governor Snyder remediate the problem. This is a political prosecution, which is an example of government at its worst. I expect after all of the evidence is received that he will be exonerated.”

Randall Levine and Anastase Markou achieve important victory in prohibiting short-term rentals on Duck Lake

Anastase Markou and Randall Levine won their case after filing a civil action to stop short-term rentals on Duck Lake on behalf of their client, land owners Jack and Debra Weirich. The Weirichs were forced to file suit against their neighbor, Shafer Family Cottage LLC to stop them from operating a short-term vacation rental business which had disrupted the peaceful enjoyment of their lake front home.

Doug Shafer testified that he formed Shafer Family Cottage LLC in 2019 while purchasing the property on Duck Lake. His plan was to strictly use it as a short-term vacation rental property.



Randall Levine

Anastase Markou

“The Weirichs purchased their vacation home on Duck Lake in 2012,” said Levine. “All properties within the Zebell Plat are encumbered by restrictive covenants. These covenants require that one’s home be limited to use as a single-family residence. The property may not be used for trade or business or any other, non-residential use.

After a two-day trial, Calhoun County Circuit Court Judge Sarah S. Lincoln found that the use of property as a short-term rental violated the restrictive covenants contained in the Zebell Plat Lake Association deed.

“This is a simple case where the Weirichs bought a home to enjoy without the disruptions of commerce surrounding them,” Levine said. “Seven years later, they became neighbors to multiple short-term renters who had no interest in the property, which was clearly a violation of the neighborhood’s restrictive covenant. We are gratified by the court’s decision. The Weirichs are relieved to have the solitude of their lakefront home restored.”

Sarissa Montague applauds new Michigan law that gives first-time convicted drunken drivers a chance for a clean slate, starting in February 2022

Criminal Defense Attorney Sarissa Montague commends a new Michigan law that gives one-time offenders a chance to wipe drunken driving convictions, beginning in early 2022.

“It applies to people who made a bad judgement call on a particular night and who have made the changes that they need to make in order to prevent that from happening again,” Montague said during an interview with WOOD TV8.

Gov. Gretchen Whitmer signed the last bill in a package into law in September, allowing one-time offenders to petition the court for expungement.

Under the new law, one-time offenders become eligible for expungement five years later. The case cannot have resulted in serious injury or death. It’s then up to a judge to decide whether the conviction is removed from the person’s records.

After years of defending clients in drunken driving cases, Montague told WOOD TV8 she is excited about the new opportunity that an estimated 200,000 people will become eligible for when the law takes effect in February 2022.

“People are really happy that maybe for the first time they’re going to have the chance of living whatever the rest of their lives is criminal conviction-free,” Montague said. “If someone is trying to get a job and they’re competing against a candidate that does not have a conviction on their record, there’s a good chance that the company will go with the one who does not have the conviction instead of the person who does.”

Happy 25th anniversary to our Legal Assistant Mary Ann Ackley

In November, we held a special surprise in our office for our Legal Assistant Mary Ann Ackley, who celebrated 25 years at Levine & Levine on Nov. 11. Mary Ann is more than a legal assistant in our firm. She is a dedicated colleague who encompasses all that we represent at Levine & Levine.

Mary Ann is a big part of our law firm family. Here are a few accolades about Mary Ann from her Levine & Levine colleagues:



"There have been a lot of people who have worked here over the years, and I have to say that Mary Ann is the consummate professional. It's been a joke in our household that over the years when clients call, they really don't want to talk to me, they don't want to talk to Sharan, they want to talk to Mary Ann – and that's a great thing for our office." – Randall Levine

"When I jokingly say to clients, 'Mary Ann's my right arm and my left arm,' I mean it. She manages our clients and everything in our office with grace and courtesy. It's been a long time and I'm just thrilled that she stayed for 25 years." – Sharan Levine

"Mary Ann is one of the reasons why I love working at Levine & Levine, and I really appreciate what she does for me and everyone in the office. She's meant a great deal to me over the years as a friend and I enjoy working with her." – Anastase Markou

"Mary Ann is one of the best people I know. She's kind, she's considerate, she's thoughtful, and she's a bit stubborn. Over the years, she has shown me what it is to be an amazing co-worker, to be an amazing person and to be an amazing mother. Thank you, Mary Ann, for everything you've done for me. I'm so happy for you." – Sarissa Montague

We appreciate everything Mary Ann has done for us throughout the years! Congratulations on 25 years! We welcome you to watch the video of Mary Ann's 25th anniversary surprise celebration on the Levine & Levine Facebook page.

Kent County Office of Defender Chief Kirsten Holz joins Levine & Levine

In September, Levine & Levine welcomed Kirsten Holz, the former district court chief attorney at the Kent County Office of the Defender, as part of its criminal defense team.

As a licensed attorney in Michigan and Florida, Holz has expertise in criminal trial litigation, risk mitigation, and contract negotiation. She had worked with the Kent County Office of the Defender since 2019, serving as district court chief and an attorney handling both felony and misdemeanor matters. Prior to relocating from Orlando, Florida, she served five years as assistant public defender, handling felony, juvenile, misdemeanor, and mental health cases. Prior to working in the public sector, Holz was an associate attorney at Wicker Smith in Florida (formerly Wicker, Smith, O'Hara, McCoy & Ford, P.A), and a senior contracts negotiator at Maryland-based Lockheed Martin Corporation's global training and logistics unit.



Kirsten Holz

"After seven years of serving as a public defender, I'm excited to return to the private sector with the talented team at Levine & Levine," Holz said. "I pride myself on being an analytical problem solver and I love working with clients to achieve the best possible outcome based on the specific nuances of their unique case."

Upon graduating from Cornell University in New York with a double major B.A. degree in government and Spanish, Holz went on to earn her juris doctorate degree from American University in Washington D.C. Additionally, she is a graduate of the nationally renowned National Criminal Defense College's annual Trial Practice Institute, and served the Orange County Bar Association in multiple capacities.

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"Kirsten possesses a strong background in serving both the private and public sector of law, successfully defending complex matters," said Managing Partner Randall Levine. "It is our privilege to welcome Kirsten to our team of already accomplished lawyers who are dedicated to cultivating client relationships, legal strategy, and advocacy."

How Sarissa Montague has become a dependable defense attorney for law enforcement officers

Our nation's police officers take an oath to serve and protect their community and its citizens. While their everyday job is to honor and enforce the law, there are times when officers find themselves in need of an experienced and talented criminal defense attorney. In Michigan, Sarissa Montague has become an attorney who police officers rely upon to defend them and to protect their constitutional rights.



Sarissa Montague

Throughout the past few years, Montague has had great success in the defense of police officers facing criminal charges.

Most recently, Montague has been called upon to defend Richard Trask, the lead FBI agent in the case against the persons accused of plotting to kidnap Gov. Gretchen Whitmer. Trask is charged with one felony charge of assault with intent to do great bodily harm less than murder stemming from an alleged domestic incident in his home. Montague, who recently appeared on Trask's behalf stressed the need for grace and privacy for the Trask family, and the importance of the case being tried in the courtroom, not the media.

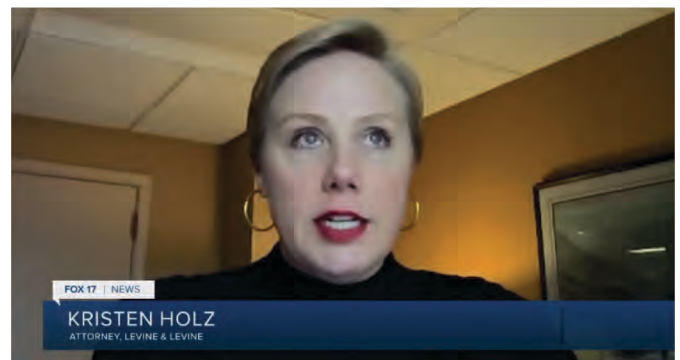
In 2019, Montague convinced a jury that her client, former Mattawan police officer Chelsey Omilian, was justified in firing her gun at a reported stolen car while trying to stop a dangerous fleeing felon. Omilian was charged with reckless use of a firearm after firing five shots as the reported stolen vehicle fled from her. During her trial, the jury found that

Omilian was justified in using force to attempt to stop a fleeing felon, whom she had reason to believe was armed and dangerous.

Additionally, Montague successfully defended another police officer who had been charged with domestic violence and disturbing the peace as a result of an alleged altercation with his parents in 2021. The parents retracted their initial report against their son; however, the government insisted on moving forward with the case. On the day the case was scheduled for trial, the government was not prepared to proceed and sought an adjournment. The judge ordered the case to proceed. Montague persuaded the court to dismiss the case with prejudice. This allowed her client and his family to have immediate closure, allowing them to move forward with their lives.

Montague strongly believes in the presumption of innocence and that every person, regardless of their occupation, has the right to fight for justice when they are accused by the government. Nonetheless, if a police officer is charged, Montague is prepared to vigorously defend them as she does with all of her clients. Police officers across West Michigan know this and have come to rely on her expertise when the need arises.

LEVINE & LEVINE IN THE MEDIA



KIRSTEN HOLZ

Shares how the 4th Amendment protects our bodies and the technology we use when it comes to unreasonable search and seizures

The Michigan Supreme Court is reviewing a case stemming from two lawsuits filed against the

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Grand Rapids Police Department and several of its officers on whether or not the practice of photographing and fingerprinting an individual during contact with the police when they are not carrying identification and no probable cause exists violates a person's 4th Amendment rights.

As the Supreme Court heard arguments in November, Criminal Defense Attorney Kirsten Holz told FOX 17: "The 4th Amendment protects all of us from unreasonable searches and seizures, and most people are familiar with that, in the context of their homes. "A lot of people don't realize that the 4th Amendment also protects us with regard to the technology we use, and with regard to our bodies."

The two incidents resulting in the lawsuits that brought the case to the state Supreme Court occurred in 2011 and 2012. In 2011, a GRPD officer stopped a 15-year-old boy who the officer claimed was looking into vehicles at an athletic club on the city's southeast side. A year later, GRPD stopped a 16-year-old boy who he said had passed off a toy train engine to another boy, claiming the exchange seemed suspicious, and that is why GRPD had contacted the boy. In both incidents, the boys were photographed and fingerprinted because they were not carrying identification.

GRPD's policies and procedures allow officers to do so, even when there is no probable cause to suspect the individual has recently been involved in criminal activity, when they are not carrying state-issued ID. Families of both boys ended up filing lawsuits against the police department, saying the interactions violated their rights. A lower court previously heard the lawsuits and ruled in favor of the police department, but they were appealed, sent to Michigan's Court of Appeals, and are now in front of Michigan's State Supreme Court.

"I think it has much bigger implications than just how we interact with police officers," Holz said during her interview. "The entire government — state government, county government, local government, the federal government — all of those would be impacted by cases like this. Many people think that these types of issues only apply to criminals, or people that are arrested, or people that get in trouble, and the reality is, it applies to every single one of us."

Identifies reasons why Kyle Rittenhouse verdict could have become a mistrial

During the November jury deliberations in the case against Kyle Rittenhouse in connection with the August 2020 shooting in Kenosha, Wisconsin, that left two men dead amid protests against police brutality, Holz spoke with FOX 17 about how the case could have become a mistrial.

"The defense had moved twice for a mistrial. The first one was with prejudice, which means, if the judge granted it, it wouldn't come back," Holz said in her interview on Nov. 18 — a day before jurors ultimately announced their verdict. "Yesterday, the defense moved for another mistrial — that one was without prejudice, which, to attorneys, signals that the defense wants a new trial really no matter what."

Rittenhouse, who claimed self-defense, had been charged with first-degree intentional homicide, first-degree reckless homicide, attempted first-degree intentional homicide and two counts of first-degree recklessly endangering safety in connection to the shooting.

Holz further identified why the verdict could lead to a mistrial: "Some people think that it might be because the deliberations were taking so long and that they were getting worried. Self-defense cases are so complicated. On the surface, they really seem very simple — the reality is they were asking jurors to evaluate whether Mr. Rittenhouse's sense of mortal danger was reasonable, and everyone has such different perspectives on what's reasonable and what they would do in any given situation. So it's really a difficult question to answer. But that's my suspicion — that the defense started getting worried and that it's taking so long to return a verdict."

On Nov. 19, the fourth day of deliberations, jurors had reached a verdict and found Rittenhouse not guilty on all counts.

"I think the videos were particularly important, and we saw that the jurors wanted to see them again," Holz told FOX 17 following the verdict. "I also think Kyle Rittenhouse's testimony itself was probably one of the most crucial pieces of evidence. In self-defense cases, jurors love to hear from the defendant."



SARISSA MONTAGUE

Examines whether or not police had the right to destroy Kalamazoo home after standoff

Criminal Defense Attorney Sarissa Montague spoke with WZZM 13 about whether police had the right to destroy a house in Kalamazoo where a standoff took place, but the homeowner had no known ties to the suspect involved.

“It’s an objective standard,” Montague said during her interview. “Was it objectively reasonable? Maybe, depending on the circumstance.”

Police say gunfire was involved in the standoff, potentially putting officers in danger. Does that make the decision to bulldoze the home justifiable? Montague said: “That certainly could be one of the circumstances where police could enter a home without a warrant.”

Reveals to WWMT- News Channel 3 that most on personal recognizance bonds take it very seriously

After the shooting death of Kalamazoo County Sheriff Sgt. Ryan Proxmire, Montague revealed to WWMT- News Channel 3 that most people on personal recognizance bonds take it very seriously.

Proxmire was shot and killed by Kyle Goidosik during a chase in August. Goidosik, who died in the shootout, was out of jail on a second personal recognizance bond during the time of the shooting.

“People who are under bond, most of the time, take it very, very seriously,” Montague said in

an interview with WWMT. “On every single bond there are provisions that every single person must comply with.”

While the incident that resulted in Proxmire’s and Goidosik’s deaths is a tragedy, Montague said the system in place still works.

“It’s a system of human beings and that sometimes we can do every single thing right and sometimes things still will go wrong and it’s tragic and it’s devastating and it is terrible. But the vast majority of the time it works.”

Explains why evidence in the investigation of Y Bar & Bistro owner for drink drugging or tampering is significant to the case during FOX 17 interview

In an interview with FOX 17, Montague discussed the role evidence plays in criminal investigations, including the accusations of drink drugging or tampering against the owner of the Y Bar & Bistro in Kalamazoo.

“It is the job of law enforcement to do a thorough investigation whenever anybody comes forward claiming they have been a victim of a crime,” she told FOX 17. “The police are supposed to investigate.”

Kalamazoo Department of Public Safety had investigated the Y Bar & Bistro co-owner Jon Rockwood and a bartender after two college students’ TikTok video went viral in April alleging Rockwood and the bartender tampered and drugged theirs and 14 other friends’ drinks.

Montague, who was not involved in the case, said cases like this are based on the evidence presented to the prosecutor’s office to ensure there is proof beyond reasonable doubt the person being accused committed a crime.

“I think that many times, and I will say in this case, I commend the prosecutor’s office for reviewing the information and making sure that the person who or people who are being accused of this offense are not just being slandered,” Montague said.

ANASTASE MARKOU

Outlines potential legal issues of Allegan County Health Department COVID warning notice during interviews with WWMT-News Channel 3 and FOX 17

Criminal Defense Attorney Anastase Markou outlined potential legal issues of an Allegan County Health Department COVID warning letter that had been issued to a parent and went viral on social media.

The letter that was sent to a parent or guardian in Allegan County stated that their “son or daughter has come in close contact with a COVID-positive individual and has determined that he or she is a ‘carrier’ and is a ‘source of infection.’” It also noted that the person is required to cooperate with the department to prevent transmission and if they don’t comply, they’ll consequently be “taken into protective custody.”

Markou, who reviewed the letter, shared potential challenges with FOX 17 and WWMT- News Channel 3.

“I think there are multiple challenges to that statute,” Markou said in an interview with FOX 17. “The first challenge of the statute is who’s a carrier? So, if somebody is actually a carrier of a disease that is communicable, that caused other people to be in serious risk of their health including death, then I could see there possibly being a government role in telling them, ‘Hey, you know this is your notice.’”

Markou explained that the term, “carrier,” is too broad, and could see parents and lawyers challenging the definition of it. Another challenge Markou foresees is what happens if a person chooses not to comply, questioned if the consequences are “reasonable” and said people’s freedoms should be considered.



Ty Garbin's cooperation in Gov. Gretchen Whitmer kidnapping case during FOX 17 interviews

Upon Ty Garbin's decision to cooperate with the prosecution regarding his involvement in the alleged plot to kidnap and kill Michigan Gov. Gretchen Whitmer, Markou told FOX 17 he suspects there is a lot of evidence in order for Garbin to have made that decision.

“How strong that evidence is to show they’re actually going to go forward with the plan – that’s something else,” Markou said during his interview. “Unfortunately, in federal prosecutions involving conspiracies of any kind, drug cases and conspiracies like this, one thing that does happen is that certain people are essentially offered cooperation deals and that can sometimes strongly support the government’s case.”

In August, federal prosecutors filed a motion in court asking the judge to grant Garbin a “4-level downward departure” from the typical sentencing guidelines in the case of the alleged plot to kidnap and kill Whitmer, reducing the amount of time he would serve behind bars. Garbin, along with four other men, has been federally charged for the alleged plot.

“Now the government has somebody who’s on the inside and not working for the government prior to the charges, saying that, in fact, what the government claims to be true is true,” said Markou. “The other side of that coin is that the person is saying it in exchange for extraordinary consideration and possible sentencing down the road.”

Agrees with national media about releasing FBI recordings in Whitmer kidnap plot case

Markou told media he believes the federal judge overseeing the alleged Gov. Gretchen Whitmer kidnapping plot should release the secretly-made FBI audio recordings to the public.

“If it was entered as an exhibit in an open court, I believe the press has a fair and legitimate opportunity for obtaining those recordings,”

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Markou said in an interview with MLive. “Once it happens in a public forum and evidence is introduced, there really isn’t any confidentiality or privileges or privacy rights any more to that information.”

Markou, who is not involved in the case, agreed with BuzzFeed, the Detroit News and Scripps Media, an owner of multiple Michigan TV news stations, which have filed a motion asking the judge to release the FBI recordings. The U.S. Attorney’s Office had declined a request for the recordings, leading BuzzFeed to file a motion to compel their release on May 20. The Detroit News and Scripps Media filed similar motions the following day.

Based on the First Amendment, Markou, who’s practiced federal criminal defense for 27 years, told MLive it’s “clear” the portions of the recordings played in court should be made public. He said the remainder of the recordings that were entered into the record but not played during the hearing are a “closer call.”

In a separate interview with FOX 17 the day before Garbin’s sentencing, Markou added:

“One thing that does happen is that certain people are essentially offered cooperation deals, and that can sometimes strongly support the government’s case. Other times those cooperation deals just point out that this whole entire case is built on the government creating, essentially, a false narrative or a false crime.”

RANDALL LEVINE

Randall Levine calls case of accused Grand Haven schools assistant superintendent embezzling nearly \$1M a ‘crime of secrecy’

Managing Partner Randall Levine, a white-collar criminal defense expert, spoke with WZZM 13 about a former Grand Haven Area Public Schools’ assistant superintendent who stands accused of reportedly embezzling nearly \$1 million over several years, calling the case “a crime of secrecy.”

Brian Wheeler, a 20-year veteran of the Grand Haven Area Public Schools, is accused of



embezzling \$900,000 from the school district. He was fired after a weeklong investigation by the Grand Haven Department of Public Safety. Wheeler was arrested on Nov. 24 after evading police overnight.

“It’s a crime of secrecy, and it involves coming into possession of funds when you have a position of trust,” said Levine. “What we know is that over a period of time, this person was, through the use of a corporation that he created, diverting funds that did not belong to him, and taking them for his own use.”

According to court documents obtained by WZZM, Wheeler used a computer at work to create false invoices for a company called “Infinity Electric” for amounts around \$7,000. Investigation shows the company did not exist. Wheeler would turn in the invoices to a woman who worked in accounts payable, who issued him checks. Wheeler then put the money into his own account, which he would later transfer via a cash app, reported GHDPs Det. Dana Beekman, according to WZZM. Police started looking into this when the district realized some of the money from a bond set aside for the technology department went missing. Court documents show the alleged embezzlement began in 2014 and is believed to have taken around \$900,000.

“Embezzlers, in general, can be very cunning about how they misappropriate funds,” Levine told WZZM. “And oftentimes because there’s a relationship of trust that’s developed over years, no one really is motivated to dive into the inner machinations of what they’re doing.”

“The amount of money alleged to have been taken here would put the crime in the most severe category of embezzlement,” Levine added. “He is innocent until proven guilty. But we would hope in a civilized society, that somebody who was a school official, who was motivated to help children, would think better about depriving those children from funds, which would further their education.”