

## **How to Avoid Uncapping Property Tax Assessments**

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Tax assessors look for opportunities to “uncap” property assessments so they can raise the property taxes on your client’s property. These tips will help you avoid problems.

### **Tip 1: Don’t throw the deed in the drawer**

In the past to avoid uncapping, lawyers would execute a deed and delay recording it until the client died. This strategy no longer works. The Michigan Tax Tribunal has held that there is a transfer of ownership when the deed is signed that triggers an uncapping. *Nelson v Village of Leroy*, No 311866 (Mich Tax Trib Feb 28, 2006). The property owner will have to pay increased adjusted taxes, interest, and penalties back to the date of the signing.

### **Tip 2: Use a Ladybird deed**

The use of a Ladybird deed to transfer real property with the grantor retaining an enhanced life estate does not cause an uncapping under [MCL 211.27a\(7\)\(c\)](#). As an added advantage, there is no change in the status of the home to cause a rescission of the principle residence exemption.

### **Tip 3: Beware of LLCs**

Transferring property into and out of a limited liability company (LLC) will cause an uncapping. Many practitioners believe that when the members of the LLC are also the individuals to whom the property is conveyed, the transfer is exempt as among “commonly controlled entities.” However, the Michigan Tax Tribunal has ruled that the transfer of a property into or out of an LLC fully uncaps the property taxes. *Lakewood Cottages, LLC v Township of Sanilac*, No 302715 (Mich Tax Trib Jan 6, 2005). (See “More on this topic” for a link to this case.)

### **Tip 4: Buy insurance**

If a proposed transaction is being considered for creditor protection and the transaction could lead to an uncapping, consider obtaining increased insurance as an alternative creditor protection device. For example, if a client owned rental property with numerous apartment units and is concerned about liability issues, he or she should consider buying more insurance instead of transferring it into an LLC, which would result in uncapping. The insurance may be less expensive than the tax consequences of an uncapping.

### **Tip 5: Don’t forget the property transfer affidavit**

You should always on any transfer, even if it is exempt, file your property transfer affidavit. If there is an uncapping and you or your client delay in filing the affidavit, your client will have to pay not only the retroactive increase in taxes due to the uncapping but also the \$5 per day fine (maximum penalty of \$200) and interest and penalties.

### **Tip 6: Death of an owner can uncap**

For example, a Ladybird deed to Son with a life estate reserved by Mom will result in uncapping when Mom dies.

### **Tip 7: Remember: joint tenants good, tenants in common bad**

A transfer that adds a joint tenant to the property does not result in any uncapping as long as the original owner remains on the title. For instance, if a widow transfers property from herself to herself and son as joint tenants, there will be no uncapping. If the transfer is from the widow to herself and son as tenants in common, there will be an uncapping of the entire property.

**Tip 8: Don't put your faith in the guidelines**

Taxpayers cannot always rely on the Transfer of Ownership and Taxable Value Uncapping Guidelines issued by the Michigan Department of Treasury, State Tax Commission/Property Tax Division for a safe harbor regarding uncapping issues. For example, the guidelines provide that transfers to or from an LLC do not result in an uncapping, but the court disagreed. Notwithstanding, the [guidelines](#) are the closest thing to a comprehensive source, and most assessors follow them most of the time.

**Tip 9: Be careful when transferring property into a trust**

If the grantor or the grantor's spouse are the sole present beneficiaries of the trust, transferring property into the trust does not cause an uncapping. Some assessors take the position that if distributions can be made to children if the grantor is disabled, the transfer uncaps. Review the trust and fix the language so that only the grantor and the grantor's spouse get the benefit of the house during the grantor's disability.

**Tip 10: Review the Property Transfer Affidavit (L-4260)**

The Property Transfer Affidavit (L-4260) has a list of exemptions. Get to know them but remember that it is not an exclusive list. Also review [MCL 211.27a\(7\)\(a\)–\(n\)](#).

More on this topic

- [Lakewood Cottages, LLC v Township of Sanilac, No 302715 \(Mich Tax Trib Jan 6, 2005\)](#)
- [Homeowner's Principal Residence Exemption, Uncapping and Transfer Taxes](#), Robert P. Tiplady, II, in *49th Annual Probate and Estate Planning Institute* (ICLE seminar held May 14, 2009) (available to ICLE Partners through the Partnership On-Demand Seminars& Materials collection)
- [Drafting Lady Bird Deeds](#), Harley D. Manela and Robert C. Anderson, in *17th Annual Drafting Estate Planning Documents* (ICLE seminar held Jan 24, 2008) (available to ICLE Partners through the Partnership On-Demand Seminars& Materials collection)
- [Housing and Living Arrangements: Issues, Rights, and Options](#), James P. Lampertius et al, ch 8 in *Advising the Older Client or Client with a Disability* (ICLE 4th ed 2009)