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## ***Re: Transfer on Death Deeds – An Important Oklahoma Estate Planning Case***

Dear Clients, Colleagues, and Friends:

This Legal Update discusses the *Carlson* case, a 2016 Oklahoma Supreme Court case relating to Transfer on Death Deeds (“TODDs”). The Oklahoma TODD statutes are fairly new. *Carlson* demonstrates care must be exercised when mortgaged property is transferred with a TODD.

The idea behind a TODD is simple. It is a deed type document allowing an individual upon their death to transfer real property to a beneficiary without using a Will or Trust and it avoids Oklahoma’s expensive and cumbersome probate laws. Thus, a TODD is similar to the ease of a joint tenancy deed with rights of survivorship; and it solves common problems relating to the complex legal rules of *present* and *future* interests when using deeds in estate plans. However, subject to some exceptions, the joint tenancy laws are well settled. Generally if a surviving joint tenant wants the property, they are responsible for any mortgage burdening the property.

The same mortgage rule seemingly applied to TODDs. The TODD statutes state: “the [TODD property passes]...subject to all...mortgages, liens, [etc.]...”<sup>1</sup> Thus it even appeared the new law spelled out that a TODD beneficiary inherits their property subject to any debts against it. However, because of language in a Will, the *Carlson* case concluded differently.

In *Carlson*, a probate estate beneficiary (the beneficiary of a Will), had to pay the mortgage on TODD property inherited by another person. Ms. Carlson’s Will stated: “I hereby direct that all my debts, including the expenses of my last illness and burial and the expenses of administration of my estate, be paid by [the probate estate] except that the payment of any debts secured by mortgage or pledge of real or personal property may be postponed until payable by its terms.” From this Will language, and two other facts, the Oklahoma Supreme Court held even though the beneficiary of the probate estate and the TODD were different people, it was the unambiguous intent of Ms. Carlson that the TODD beneficiary was not responsible for the mortgage on the property he inherited.<sup>2</sup> The Supreme Court backed up its reasoning stating the Will and the

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<sup>1</sup> 58 O.S. §1255(A). Oklahoma TODD statutes were enacted in 2008 and amended in 2011.

<sup>2</sup> The value of the probate estate after the mortgage can also be evidence of intent. The case opinion does not mention the size of the probate estate. One of the lawyers working the *Carlson* case informed me the mortgage

TODD were signed on the same date, apparently evidencing the documents were coordinated.<sup>3</sup> In addition, the lawyer who prepared the TODD and the Will indicated in an affidavit that it was Ms. Carlson's intent for the probate estate to pay the mortgage.<sup>4</sup> Thus, based on the Will, the dates, and the affidavit, the Court held it was unambiguous that Beneficiary #1 had to pay the mortgage on Beneficiary #2's property.

Although footnotes #2 to #4 in this update suggest ambiguity may exist to conclude differently, two important TODD estate planning rules now exist in Oklahoma: (1) TODD's should be carefully coordinated with Wills and Trusts, especially when the beneficiaries are different; and (2) a TODD beneficiary inheriting a mortgaged property should insist on copies of the Will and/or Trust because those documents could shift the responsibility of a mortgage to a different beneficiary. Thus, it is important to engage the right professional for your estate planning needs.

### ***Top 5 Reasons You Should Hire an Attorney-CPA for your Tax & Estate Planning Needs***

1. **Unparalleled Perspective:** Dually-licensed Attorney-CPAs have training in accounting and law allowing them to view your matter from more angles than many professionals.
2. **Uniquely Qualified:** Only a small number of professional achieve dual licensing, setting Attorney-CPA's apart from their peers in both professions due to the continuing education demands of a dual license.
3. **First-Class Education:** An Attorney-CPA especially values education, as such Attorney-CPAs tend to be up to speed on the latest developments in their practices.
4. **Best of Both Worlds:** Two professions in one professional who bridges the gap between your legal and financial requirements.
5. **A Practical Solution:** Save time and money by hiring a single dually-licensed Attorney-CPA who is qualified to handle diverse business responsibilities including taxation, accounting, legal, and estate planning.



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consumed the vast majority of the probate estate leaving little to the Will's beneficiary. It is unusual for a decedent to name a Will beneficiary only for the beneficiary to discover their inheritance is really that of another's.

<sup>3</sup> Although the Will and TODD were dated the same, the Will's language regarding mortgage responsibility appears "boilerplate." Many Wills have similar generic debt payment language as the Carlson Will did. The case did not mention if the lawyer drafting the Will had the same mortgage deferral language in other Wills that he prepared.

<sup>4</sup> A different perspective is if Ms. Carlson intended the probate estate to pay for the mortgage, the lawyer drafting the Will would have referenced the TODD mortgage specifically, especially in light of 58 O.S. §1255(A) per FN #1.