



PRESIDENT'S MESSAGE

Fall 2011



Greetings OLTA Members,

There's a chill in the air, the leaves are turning and falling from the trees and the weather is perfect for football, soccer and other outdoor sports. Isn't fall a beautiful time of year? I have to say it is one of my favorite times of the year. Again, I have been very busy the last few months representing our association at conventions, regional meetings and schools.

In September, I traveled to Nebraska for their convention and I have to say they like to have a good time. Barry and I have many friends in Nebraska (mostly Cornhusker friends) and we were treated very well. They have mostly continuing education during their convention and had some excellent speakers who talked about probate proceedings, trusts, life estates. They also have a Marketable Title Affidavit that was interesting, and the usual, claims chronicles, county court issues, ethics and privacy issues for the office and a "day in the life of an escrow officer". One of the things their association does, which we might consider in the future, is they give Scholarship Awards to children of members of their association. I will do further research on this.

During my visit to Nebraska, our association was well represented at another state convention in Missouri. A special thank you to our President-Elect, Charles Holleman for attending the Missouri convention, which conflicted with the Nebraska convention. I heard he represented Oklahoma very well, from some of my sources in Missouri.

Also in September, we had our 5 Regional Meetings, which were a great success. A special thank you to our hosts: in Lawton, Southwest Abstract & Title; in Oklahoma City, Cleveland County Abstract Company, First American Title & Trust, The Oklahoma City Abstract Company, Old Republic Title Insurance Company, and Stewart Abstract & Title; in Enid, Guarantee Abstract Company; in Poteau, Adams Abstract Company; and in Tulsa, American Eagle Title Group and Tulsa Abstract Company. Also, a very special thank you to Kathy Smith and Scott Luna who made all the arrangements for the meetings. My only regret was I had to miss the Poteau and Tulsa meetings because I was in Nebraska.

Oklahoma very well, from some of my sources in
Our on-line auction for "Okie Tipac" was again

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PRESIDENT'S MESSAGE -Continued

successful this year and hopefully, people had fun bidding and trying to get some of the great items that were donated. Thanks to all of you that donated, bid and won items.

In October, I traveled to the national convention of the American Land Title Association, in Charleston, SC. Charleston is a very lovely city and full of history, parts of which were almost like walking back in time, with cobblestone streets. The convention was fabulous with dynamic speakers and interesting break-out sessions. My week started with the State Advocacy Meeting, where you have officers of state association from all over the U.S. brain-storming and discussing their problems and some solutions. ALTA staff asked me to speak for about 3-5 minutes on how we do our Legislative "day at the capitol" and legislative reception. Afterwards, I had several people come up and ask me more about how we do it. They loved the idea. Staff also asked me to serve on a newly formed Task Force to try to set up a Grassroots effort on the State level similar to the way it is done on the National level. This will be great for our state associations and will get people involved in the legislative effort across the U.S. The speakers this year were an economist, who told us the recession will probably continue for another 5 years, but we are on the downhill slide of it. We heard from a lady who told us how to communicate with impact and influence, your message to your customers. Another speaker was a Navy Seal, and he stressed how the "seals" work together as teams and how important it is for team and team leadership not only in their jobs, but in your businesses. There was also an Industry Panel, led by Phil Schulman, who is hilarious. The panel consisted of the current ALTA president, incoming ALTA president, a mortgage banker and a realtor. This was very interesting and informative to hear the aspects of the mortgage banker and realtor's opinions on the economy. I would strongly suggest if you have never gone to an ALTA meeting, you should consider going to either the Federal Conference in Washington, DC in the spring or the Annual Convention in the fall.

We have also completed our Advanced Abstractors School and Advanced Closing School, both of which were very good, with excellent speakers. The Basic Abstractor's School is coming up on November 8-9, 2011 and should be good again this year. Your education committee is working very hard on its schools and I hope everyone will try to send your people to these schools.

For the next few months, we will be working on gearing up for the legislative session and bills will start coming out, so we will be busy watching and keeping up with the upcoming legislative session. If you happen to see anything affecting our industry, please contact myself, someone on the board or our legislative co-chairs, which are Chaney Haynes, Jeff Noble or Tracy Row. The more eyes we having looking at these items, the better for our association.

We are also starting to work on the convention, which will be next April 19-21, 2012 at the Embassy Suites & Convention Center in Norman, OK. More information will be coming in the Winter Title Gram, so be on the lookout.

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PRESIDENT'S MESSAGE -Continued

As we come upon the holidays in November and December, please remember to be "Thankful" for all our blessings and the holidays are not just for giving gifts, but giving of your time and energy to help those in need by donating to charities. God Bless You all and I wish you a very Happy Holiday season.

Sincerely,



Donna Schmulbach
President
OLTA

TITLEGRAM CHALLENGE

As we come upon the holidays in November and December, please remember to be "Thankful" for all our blessings and the holidays are not just for giving gifts, but giving of your time and energy to help those in need by donating to charities. God Bless You all and I wish you a very Happy Holiday season.

The first five OLTA members to respond with the correct answer will win \$25 in OLTA Bucks answer the Bonus Question and get an additional \$10 in OLTA Bucks! Email your answer to admin@oklahomalandtitle.com today!

We have recently lost two of our long standing KEGS the past few months. Howard Cotner, who was President in 1968-1969 and also Glenn Nichols, who was President in 1976-1977, who have both passed away. They will both be missed. Howard's son, Steve Cotner works for First American Title & Trust Company in Moore, OK. Glenn's son, Charles Nichols works for and owns Abstract & Guaranty Co. of Lincoln County in Chandler, OK.

This month's Trivia question is tied to one of these men who both were instrumental in many of the traditions in the O.L.T.A.

QUESTION: Who was instrumental in starting an Ice Breaker prior to the annual convention on Thursday evening?

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BONUS QUESTION:

lands abutting the 98th Meridian (a correction meridian) will be described by
in 1976-1977, who have both passed away.

- a. The Quarter Section, Township and Range
- b. The Quarter Section, Township and Range lying (East or West) of the 98th Meridian
- c. Government Lot # __ in Section, Township and Range
- d. Government Lot # lying East of the 98th Meridian

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PUBLIC RELATIONS/MEMBERSHIP COMMITTEE REPORT

Danita Francis-Witt

The new membership directory will be available at the Owners/Managers meeting. The information will be placed on the website for printing and small 3-ring binders imprinted with the OLTA logo will be available for purchase @ \$5.00 each.

This is the 2nd year of the OLTA Leadership Program and we think it has been a great addition for our members. There are currently 5 leadership participants. In November we will be sending out letters to our member companies asking for nominations for the 2012-2013 Leadership Program. If you are interested or have someone in your office you would like to nominate, please do – it is a great way to get involved with OLTA.

The Public Relations and Membership Committee members have been placing calls to non-members encouraging their participation. There's strength in numbers, so if you have the opportunity, please promote membership benefits to a non-member and let's try to get our whole industry involved.

AN INTRO TO THE TRANSFER ON DEATH ACT & CHANGES

Kraettli Q. Epperson

Partner at Mee Mee Hoge & Epperson

PART I: OVERVIEW OF CONCEPT AND PROCESS

Usually—upon execution and delivery to the grantee—a deed vests title immediately in the grantee, and the grantor loses all legal and equitable interests in the title.



As of November 1, 2008, the Oklahoma Legislature enacted the Nontestamentary Transfer of Property Act (the "Act"). This Act created a new conveyancing document—the Transfer on Death Deed ("TOD Deed")—and a new process (58 O.S. Section 1251-1258).

This Act was developed and adopted to provide an additional mechanism to allow property owners to avoid the perceived excessive time and expense associated with using a probate proceeding. This non-testamentary tool was added to the existing list including: joint tenancy deeds, life estate deeds, and intervivos trusts (both revocable and irrevocable). In 2010 and again in 2011 (as of November 1, 2011), this original Act was amended in several substantive ways.

If you have any questions or need more information about any of these events, please contact the OLTA office at 405-293-4753 or via email at execsecretary@oklahomalandtitle.com.

As of November 1, 2011, the Oklahoma Legislature enacted the Nontestamentary Transfer of Property Act (the "Act"). This Act created a new conveyancing document—the Transfer on Death Deed ("TOD Deed")—and a new process (58 O.S. Section 1251-1258).

AN INTRO TO THE TRANSFER ON DEATH ACT & CHANGES

Continued

Kraettli Q. Epperson

Partner at Mee Mee Hoge & Epperson, OKC

www.EppersonLaw.com & www.MeeHoge.com

A. General Provisions Before the Grantor's Death

During the lifetime of the grantor, such grantor "remains the legal and equitable owner until the death of the owner and during the lifetime of the owner is considered an absolute owners as regarding creditors and purchasers." (§1257)

"The signature, consent or agreement of or notice to a grantor beneficiary or beneficiaries of a transfer-on-death deed should not be required for any purpose during the lifetime of the record owner." (§1252)

"A designation of the grantee beneficiary may be revoked at any time prior to the death of the record owner" by (1) "recording" an instrument revoking the "designation", or (2) "recording a subsequent transfer-on-death deed". (§1254)

"The deed shall transfer ownership of the interest upon the death of the owner." (§1252)

"A transfer-on-death deed...may not revoked by the provisions of a will.(§1254(C))

B. Operative Provisions After the Grantor's Death

Under the 2008 version of the Act and the amended 2010 version: (1) a Disclaimer of the interest by the grantee must "occur" within 9 months of the death of the grantor or the conveyance to the grantee shall be final, and the Disclaimer must be filed in the local land records (the statute is unclear whether such Disclaimer must be filed in such 9-month period; a representative of the grantee can execute such Disclaimer) (§ 1254); (2) if the grantee exerts "dominion" over the real estate during such 9-month period, any disclaimer is waived (§ 1254) (how the public is expected to learn of such unrecorded actions is unclear); and (3) the death of the grantor is evidenced in the public records by the filing of a Death Affidavit by the grantee (the statute fails to give a deadline for filing the Death Affidavit; only the grantee is authorized to execute the Death Affidavit) (§1255).

Under the amended 2010 version of the Act, a new requirement (§1252 C) was added on top of the existing rules, whereby: "To accept real estate pursuant to a transfer-on-death deed, a designated grantee beneficiary shall execute an affidavit..." (§1252). No deadline for execution or recording this Acceptance Affidavit was included, and no consequence, such as reversion to the grantor's estate, was provided. **Only the grantee is authorized to execute the Acceptance Affidavit.**

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AN INTRO TO THE TRANSFER ON DEATH ACT & CHANGES

Continued

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Under the additional amendments to the Act, effective November 1, 2011, the Disclaimer option, the exertion of dominion as a waiver of a Disclaimer, and the Death Affidavit were all eliminated. Instead, the Acceptance Affidavit, which was first introduced as a 2010 amendment with no deadline for its execution or recording, became the only post-death instrument needed or possible. A deadline was added, whereby the grantee must record such Acceptance Affidavit "within nine (9) months of the grantor's death, otherwise the interest in the property reverts to the deceased grantor's estate." (§1252) Only the grantee is authorized to execute the Acceptance Affidavit.

PART III: OTHER ISSUES UNDER THE ACT

The grantee takes such interest subject to the grantor's conveyance, liens and encumbrances, and executory contract of sale, and other similar interests (§1255(B)) (these interests are not expressly limited to "recorded" interests until the 2011 amendments are effective).

The Death Affidavit, under the 2008 and 2010 versions of the Act (a) must state (1) fact of death of grantor, and (2) whether grantee was the spouse of grantor; and (3) legal description of the property; and (b) must attach, if grantor and grantee were not married to each other (presumably at the death of the grantor): (1) copy of the grantor's death certificate, and (2) estate tax release. (§1255(A)). The Death Affidavit is eliminated in the 2011 version. Such Acceptance Affidavit "within nine (9) months of the grantor's death, otherwise the interest in the property reverts to the deceased grantor's estate." (§1252) Only the grantee is authorized to execute the Acceptance Affidavit.

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The Title Examination Standard 17.4 (2010) on TOD Deeds provides that due to the Constitutional Marital Homestead interest (OK CONST Art. 12, §2), if the grantor is single when he signed the TOD Deed, there must be proof recorded showing he was single when he signed the TOD Deed, there must be proof recorded showing he was single at his death or there must be a quit claim deed recorded by the later acquired spouse.

The Acceptance Affidavit, under the 2010 version of the Act (a) must state (1) fact of death of grantor, and (2) whether grantee was the spouse of grantor at time of grantor's death; and (3) legal description of the property; and (b) must attach, if grantor and grantee were not married to each other (presumably at the death of the

AN INTRO TO THE TRANSFER ON DEATH ACT & CHANGES

Continued

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Partner at Mee Mee Hoge & Epperson, OKC

www.EppersonLaw.com & www.MeeHoge.com

It should be noted that before the 2011 amendments, the grantee's consensual and non-consensual liens and encumbrances attached to the deceased grantor's estate—if the interest is disclaimed or reverts to the grantor's estate by inaction. Under the 2011 amendments, the grantee's non-consensual liens and encumbrances do not attach if the interest reverts.

Under the Act before the 2011 amendments were effective, the grantee's interest was apparently subject to the grantor's unrecorded liens, encumbrances, executory contracts to sell, and other similar interests. The 2011 amendments restricted such claims to recorded ones.

It appears that delivery of the TOD Deed is not required, but that all three of the following steps: execution, acknowledgment (or jurat) and recordation are necessary to have an effective deed, instrument or affidavit.

A joint tenant grantor can successfully vest title in the TOD Deed grantee only if the grantor is the last surviving joint tenant.

If there are multiple grantees, either tenants in common or joint tenants, and if one or more grantees predecease the grantor, questions exist as to whether and what portion of such grant lapses. This is due to the inability, by law, for a joint tenancy to come into existence unless the interest to the joint tenants vests in all of the grantees at the same time, which is impossible if one of them is already dead. The 2011 amendments try to address this issue as to joint tenant grantees by expressly allowing the surviving joint tenant grantees to acquire their interests, even if one or more of them predecease the grantor. However, the question remains as to how to handle pre-deceased tenants in common and joint tenant grantees as to what portion of the original interest passes to the survivors: 100% of the interest being conveyed or just their original (usually undesignated) prorata shares? If there are multiple grantees, either tenants in common or joint tenants, and if one or more grantees predecease the grantor, questions exist as to whether and what portion of such grant lapses. This is due to the inability, by law, for a joint tenancy to come into existence unless the interest to the joint tenants vests in all of the grantees at the same time, which is impossible if one of them is already dead. The 2011 amendments try to address this issue as to joint tenant grantees by expressly allowing the surviving joint tenant grantees to acquire their interests, even if one or more of them predecease the grantor. However, the question remains as to how to handle pre-deceased tenants in common and joint tenant grantees as to what portion of the original interest passes to the survivors: 100% of the interest being conveyed or just their original (usually undesignated) prorata shares?

Another question which remains unanswered is because Subsequent TOD Deeds are permitted, which of such multiple Subsequent TOD Deeds would be the latest expression of the grantor's intent where a deed is recorded out of order, for instance, if an earlier executed deed is recorded after a subsequently executed deed?

NOTE: This is an abbreviated overview of the actual article. To view it in its entirety, please see the attached PDF or contact the OLTA office at 405-293-4753 or via email at execsecretary@oklahomalandtitle.com.

UPCOMING EVENTS

Basic Abstractors School

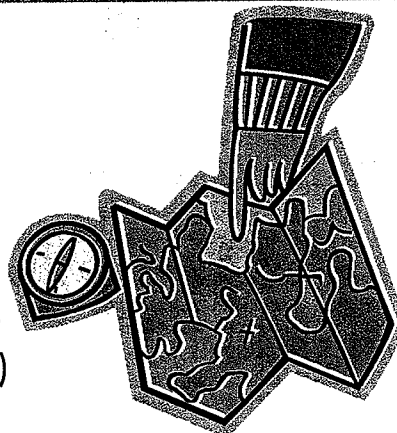
November 8th and 9th, 2011

OSU/OKC

900 N. Portland

Conference Center, 3rd Floor

Time: 8-5 (Registration 7:30)



Owners Managers Meeting 2012

President's Day, February 20, 2012

Oklahoma History Center

800 Nazih Zuhdi Drive

Oklahoma City, OK

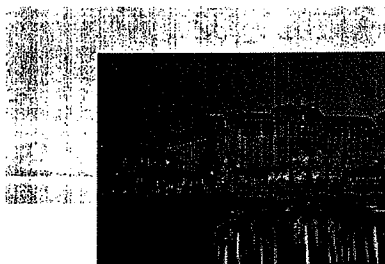
OLTA Annual Convention 2012

"Anchors Away Aboard the USS OLTA!"

April 21-23, 2012

Embassy Suites

Norman, OK



Owners Managers Meeting 2012

President's Day, February 20, 2012

2012 Summer Meeting

July 13th and 14th, 2012

Gaylord Texan

Grapevine, TX

OLTA Annual Convention 2012

"Anchors Away Aboard the USS OLTA!"

SEE YOU THERE!

2012 Summer Meeting

July 13-14, 2012

Gaylord Texan

An Introduction to the Transfer on Death Act & Changes Coming in 2011

by Kraettli Q. Epperson, Partner at Mee Mee Hoge & Epperson, OKC

(See: www.EppersonLaw.com & www.MeeHoge.com)

PART I: OVERVIEW OF CONCEPT AND PROCESS

Usually—upon execution and delivery to the grantee—a deed vests title immediately in the grantee, and the grantor loses all legal and equitable interests in the title.

As of November 1, 2008, the Oklahoma Legislature enacted the Nontestamentary Transfer of Property Act (the “Act”). This Act created a new conveyancing document—the Transfer on Death Deed (“TOD Deed”)—and a new process (58 O.S. Section 1251-1258).

This Act was developed and adopted to provide an additional mechanism to allow property owners to avoid the perceived excessive time and expense associated with using a probate proceeding. This non-testamentary tool was added to the existing list including: joint tenancy deeds, life estate deeds, and intervivos trusts (both revocable and irrevocable). In 2010 and again in 2011 (as of November 1, 2011), this original Act was amended in several substantive ways.

A. Terminology

The following is a list of the unique terms used under the Act:

1. **Nontestamentary Transfer of Property Act, informally referred to as the Transfer on Death Deed Act (§1251)**
2. **owner, or record owner, or grantor owner, used interchangeably (§1252)**
3. **grantee, or beneficiary, or grantee beneficiary, or designated grantee, or designated grantee beneficiary, used interchangeably (§1252)**

4. “interest in real estate”, which includes “any estate or interest in, over or under land, including surface, minerals, structures and fixtures.” (§1252(A))
5. transfer-on-death deed (§1252(A))
6. revocation instrument, revoking the earlier transfer on death deed, informally referred to herein as the Revocation Instrument (Section 1254(A))
7. subsequent transfer on death deed, which conveys the same interest to a different grantee and thereby revokes the first conveyance, informally referred to herein as the Subsequent TOD Deed (Section 1254(B))
6. an affidavit by the grantee evidencing the death of the grantor (similar to an affidavit terminating joint tenancy under 58 O.S. §912), informally referred to herein as the Death Affidavit (§1255(A))
7. an affidavit by the grantee formally accepting the interest, executed, notarized (by jurat) and recorded after the death of the grantor, informally referred to herein as the Acceptance Affidavit (§1252(C))
8. an instrument acknowledged by the grantee (or a representative) disclaiming such interest, informally referred to herein as a Disclaimer, with the interest reverting to the deceased grantor's estate

B. Forms

While there is a statutory form for the TOD Deed (shown below), there is not a suggested statutory form for the Revocation Instrument, the Subsequent TOD Deed, the Death Affidavit, the Acceptance Affidavit, or the Disclaimer. A TOD Deed (§1253), must be replicated “substantially” as follows:

_____ (name of owner) being of competent mind and having the legal capacity to execute this document, as owner transfers on death to _____ (name of

beneficiary) as grantee beneficiary, the following described interest in real estate: (here insert description of the interest in real estate). THIS TRANSFER-ON-DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE. THE GRANTOR HAS THE RIGHT TO WITHDRAW OR RESCIND THIS DEED AT ANY TIME. ANY BENEFICIARY NAMED IN THIS DEED IS HEREBY ADVISED THAT THIS DEED MAY BE WITHDRAWN OR RESCINDED WHETHER OR NOT MONEY OR ANY OTHER CONSIDERATION WAS PAID OR GIVEN.

THE STATE OF OKLAHOMA
COUNTY OF _____

Before me, on this day personally appeared _____, _____, and _____, the owner of the land described in this deed, and the witnesses, respectively, whose names are subscribed below in their respective capacities, and the owner of the land declared to me and to the witnesses in my presence that the deed is a revocable transfer-on-death of the real estate described therein, and the witnesses declared in the presence of the owner of the real estate and in my presence that the owner of the land declared to them that the deed is a revocable transfer-on-death of the real estate described therein and that the owner of the land wanted each of them to sign it as a witness, and that each witness did sign the same as witness in the presence of the owner of the land and in my presence.

(name of owner)

(witness)

(witness)

Subscribed and acknowledged before me by _____, the owner of the land, and _____ and _____, witnesses, this _____ day of _____ (month), _____ (year).

(signature of notary public)

(Seal)

My commission expires _____ (date).

Note that this Section provides: *Instead of the words "transfer-on-death" the abbreviation "TOD" may be used.*

C. General Provisions Before the Grantor's Death

During the lifetime of the grantor, such grantor “remains the legal and equitable owner until the death of the owner and during the lifetime of the owner is considered an absolute owners as regarding creditors and purchasers.” (§1257)

“The signature, consent or agreement of or notice to a grantor beneficiary or beneficiaries of a transfer-on-death deed should not be required for any purpose during the lifetime of the record owner.” (§1252)

“A designation of the grantee beneficiary may be revoked at any time prior to the death of the record owner” by (1) “recording” an instrument revoking the “designation”, or (2) “recording a subsequent transfer-on-death deed”. (§1254)

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"A transfer-on-death deed...may not revoked by the provisions of a will.(§1254(C))

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Under the additional amendments to the Act, effective November 1, 2011, the Disclaimer option, the exertion of dominion as a waiver of a Disclaimer, and the Death Affidavit were all eliminated. Instead, the Acceptance Affidavit, which was first introduced as a 2010 amendment with no deadline for its execution or recording, became the only post-death instrument needed or possible. A deadline was added, whereby the grantee must record such Acceptance Affidavit “within nine (9) months of the grantor’s death, otherwise the interest in the property reverts to the deceased grantor’s estate.” (§1252) Only the grantee is authorized to execute the Acceptance Affidavit.

PART II: HISTORY OF AMENDMENTS TO THE ACT: 2008, 2010, & 2011

The original Act was approved in 2008, with amendments following in 2010, and 2011. The following is a list of the Sections of the Act, with a notation as to whether and how each Section was amended:

Nontestamentary Transfer of Property Act

58 O.S. §1251. Short Title (*unamended*)

§1252. Real Interest Titled in Transfer-on-Death Form - Acceptance by Designated Grantee Beneficiary (*amended in 2010: adding need for Acceptance Affidavit in addition to Death Affidavit*); *amended in 2011: adding definition of interest in real estate to include minerals;*

adding need for death certificate from all grantees, not just non-spouses; dropping need for estate tax release (because Oklahoma repealed the estate tax as of December 31, 2009); adding 9-month deadline to record Acceptance Affidavit; adding approval of recording the Acceptance Affidavit with a jurat rather than an acknowledgment)

§1253. Transfer-on-Death Deed form *(unamended)*

§1254. Revocation or Change of Grantee Beneficiary Designation - No Revocation of Deed by Will *(Amended in 2011: dropping ability to disclaim interest, which was replaced with the Acceptance Affidavit)*

§1255. Vesting of Interest - Interest Taken Subject to Liens, Conveyances, etc. - Lapse if Grantee Beneficiary and Alternates Predecease Record Owner – Condition if Joint Tenants with Right to Survivorship *(Amended in 2011: dropping recording of Death Affidavit, which was duplicated by the addition (in 2010) of an Acceptance Affidavit; adding relief from 84 O.S. Section 44 spousal election; adding protection so that grantee takes title subject only to grantor's recorded liens and encumbrances; adding protection so that upon reversion to estate such title is free of non-consensual liens of grantee; adding protection for surviving joint tenancy grantees against lapse of interest due to pre-deceased grantee)*

§1256. Joint Record Owners *(unamended)*

§1257. Record Owner Absolute Rights *(unamended)*

§1258. Deed in Conformity with Nontestamentary Transfer of Property Act – Need Not Conform to Probate Titles *(unamended)*

PART III: OTHER ISSUES UNDER THE ACT

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The Death Affidavit, under the 2008 and 2010 versions of the Act (a) must state (1) fact of death of grantor, and (2) whether grantee was the spouse of grantor; and (3) legal description of the property; and (b) must attach, if grantor and grantee were not married to each other (presumably at the death of the grantor): (1) copy of the grantor's death certificate, and (2) estate tax release. (§1255(A)). The Death Affidavit is eliminated in the 2011 version.

The Acceptance Affidavit, under the 2010 version of the Act (a) must state (1) fact of death of grantor, and (2) whether grantee was the spouse of grantor at time of grantor's death; and (3) legal description of the property; and (b) must attach, if grantor and grantee were not married to each other (presumably at the death of the grantor): (1) copy of the grantor's death certificate, and (2) estate tax release. (§1255(C)) Under the 2011 amendment, the death certificate must be attached, regardless of marital relationship of grantor and grantee, and the need to attach a death certificate was removed (because the Oklahoma estate tax was eliminated for deaths arising after December 31, 2009).

The Title Examination Standard 17.4 (2010) on TOD Deeds provides that due to the Constitutional Marital Homestead interest (OK CONST Art. 12, §2), if the grantor is single when he signed the TOD Deed, there must be proof recorded showing he was single at his death or there must be a quit claim deed recorded by the later acquired spouse.

It should be noted that before the 2011 amendments, the grantee's consensual and non-consensual liens and encumbrances attached to the deceased grantor's estate—if the interest is disclaimed or reverts to the grantor's estate by inaction. Under the 2011 amendments, the grantee's non-consensual liens and encumbrances do not attach if the interest reverts.

Under the Act before the 2011 amendments were effective, the grantee's interest was apparently subject to the grantor's unrecorded liens, encumbrances, executory contracts to sell, and other similar interests. The 2011 amendments restricted such claims to recorded ones.

It appears that delivery of the TOD Deed is not required, but that all three of the following steps: execution, acknowledgment (or jurat) and recordation are necessary to have an effective deed, instrument or affidavit.

A joint tenant grantor can successfully vest title in the TOD Deed grantee only if the grantor is the last surviving joint tenant.

If there are multiple grantees, either tenants in common or joint tenants, and if one or more grantees predecease the grantor, questions exist as to whether and what portion of such grant lapses. This is due to the inability, by law, for a joint tenancy to come into existence unless the interest to the joint tenants vests in all of the grantees at the same time, which is impossible if one of them is already dead. The 2011 amendments try to address this issue as to joint tenant grantees by expressly allowing the surviving joint tenant grantees to acquire their interests, even if one or more of them predecease the grantor. However, the question remains as to how to handle pre-deceased tenants in common and joint tenant grantees as to what portion of the original interest passes to the survivors: 100% of the interest being conveyed or just their original (usually undesignated) prorata shares?

Another question which remains unanswered is because Subsequent TOD Deeds are permitted, which of such multiple Subsequent TOD Deeds would be the latest expression of the grantor's intent where a deed is recorded out of order, for instance, if an earlier executed deed is recorded after a subsequently executed deed?

PART IV: REVIEWING TITLE UNDER ALTERNATIVE SCENARIOS

As noted above, the procedures to follow before the death of the grantor do not change under the original 2008 Act, and the Amendments in 2010 and 2011.

However, also, as noted above, the procedures have changed dramatically, under the Amendments in 2010 and 2011, as to the required steps to follow after the death of the grantor. In addition, certain problematic aspects of the original 2008 Act were corrected, but possibly only on a go-forward basis.

One major unanswered question is which sets of laws under the Act (the 2008, 2010 or 2011 versions) apply to a review of the record title, by either an abstractor or a title examiner? There are three distinct events which arise during the "life" of a TOD Deed which might be the bench mark to use to identify which set of statutes (2008, 2010 or 2011 versions) to apply. These include (A) date TOD Deed is recorded, (B) date of death of grantor, or (C) date of recordation of the Death Affidavit, Disclaimer and/or Acceptance Affidavit, within the 9-month post-death recording period (hereinafter the "Events"). If the Act that is applicable is the one in place when the original (or later Substitute) TOD Deed is recorded (the first of the three Events: A), an analysis of the title is simple and straightforward under the then effective set TOD Deed (or later Substitute TOD Deed) is recorded. These requirements are spelled out above.

On the other hand, if the law which applies is based on which law is in effect on the date of a later Event (B or C), then the analysis becomes more complicated.

Due to the unique concept created by the TOD Act whereby vesting is postponed and delivery is no longer an essential element to the deed's validity, this issue, as to which sets of laws applies is difficult to unravel. It will probably take either legislative correction, to show intent, or judicial decision to resolve this retroactivity issue. There is some law suggesting that the law in effect when the TOD Deed is executed will apply: "The clear and unambiguous deed

will be governed by the laws in force at the time of the [non-TOD Deed] deed's execution."

McDonald Oil and Gas, LLC v Sledd, 2011 OK CIV APP 36, ¶ 5

The chart below identifies the 10 possible combinations of Events (A+B+C).

To determine which steps are allowed or required (i.e., Death Affidavit, Disclaimer, and/or Acceptance Affidavit), review the following chart and pick the combination of facts (1-10) which matches your fact pattern and look at the statutory procedure required (or allowed) at that date to accept title or for it to revert to the deceased grantor's estate:

EVENTS:

	A.	B.	C.
Act	Nov. 1, 2008 Nov. 1, 2009	Nov. 1, 2010	Nov. 1, 2011
1.	A+B+C*		
2.	A+B	+C	
3.	A+B		+C
4.	A	+B+C	
5.	A	+B	
6.	A		
7.		A+B+C*	
8.		A+B	+C
9.		A	+B+C
10.			A+B+C*

[*Note: in these three instances, all three events occur during the tenure of the same set of statutes thereby making the analysis simple]

CLOSING

Efforts to correct the above problems by legislative action will be made in the up-coming 2012 session. Suggestions for legislative corrections and clarifications should be directed to the author of this article.