

Fw: [EXTERNAL] Update regarding affidavit requirements for filing deeds

Bradley Clark <Bradley.Clark@oag.ok.gov>

Thu 11/30/2023 4:08 PM

To: Richard Winblad <richard@winbladlaw.com>

Cc: Phil Bacharach <Phil.Bacharach@oag.ok.gov>; David Williamson <David.Williamson@oag.ok.gov>

Mr. Winblad:

Phil Bacharach shared your correspondence with me and asked that I respond. Thank you for reaching out to us about this matter.

As I have studied the statute and various deeds, my opinion is that a transfer on death deed (TODD) does not require an affidavit under the provisions of 60 O.S. § 121. My understanding of the statutory requirement is that every deed recorded must have the accompanying affidavit if the following are true: 1) it is a deed; 2) at the time of recording, the deed is transferring ownership or title to the property; and 3) the grantee(s) coming into title or ownership of the land is a person, business or trust. With a TODD, interest in the title is not conveyed until the grantor's death. That is in [58 O.S. § 1252](#). Accordingly, the second element to trigger the affidavit is not met. For an additional reason, I think that conclusion is appropriate. Under a TODD, the grantee is not receiving any interest in the title until the grantor is deceased, such that anyone completing the affidavit is making an incorrect statement to attest that they acquired the property (see paragraph 3 of the individual affidavit form).

These are my thoughts, and any decision to record a deed is ultimately determined locally by the court clerk. That said, I hope this information is helpful to you. If you have additional questions or want to discuss anything otherwise, please do not hesitate to let me know.



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From: Phil Bacharach <Phil.Bacharach@oag.ok.gov>

Sent: Wednesday, November 29, 2023 1:16 PM

To: Bradley Clark <Bradley.Clark@oag.ok.gov>

Cc: David Williamson <David.Williamson@oag.ok.gov>

Subject: Fwd: [EXTERNAL] Update regarding affidavit requirements for filing deeds

Begin forwarded message:

From: Richard Winblad <richard@winbladlaw.com>

Date: November 29, 2023 at 1:09:33 PM CST

To: Leslie Berger <Leslie.Berger@oag.ok.gov>, Phil Bacharach
<Phil.Bacharach@oag.ok.gov>

Subject: [EXTERNAL] Update regarding affidavit requirements for filing deeds

Greetings:

I understand that the AG's office may have issued more directives to county clerks regarding acceptance of Transfer on Death Deeds or similar documents in light of the recently enacted 60 OS Section 121 (codified SB 212). If so would it be possible to share it or post its instructions were they may be seen by myself and other practitioners?

Sincerely

Richard Winblad

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