

Jim's Perspective...

Real Estate Deed and Insurance Coverage

The Nebraska Legislature, in 2012, adopted a new method of transferring ownership of real estate upon the death of the owner. Effective January 1, 2013 real estate owners may use a Transfer on Death Deed (TOD Deed) for real estate located in Nebraska. The beneficiary named in the TOD Deed does not have any ownership interest in the property during the life of the owner (transferor) and will only receive ownership when the owner dies (or in the case of joint tenancy ownership) when all of the owners have died. One obvious benefit of the TOD Deed is that it will pass outside of probate, and avoid the costs associated with that process. The owner of the real estate does not need to be a resident of Nebraska. The owner of the real estate can revoke the TOD Deed and the owner can, at any point, decide to sell the real estate to any potential buyer, in which case the TOD Deed is terminated. The beneficiary of a TOD Deed will get the "stepped up basis" (date of death value) in the real property.

I have not heard much about this type of real estate transfer, but perhaps many of you have clients that have told you about their use of this type of deed. There is a homeowners insurance coverage problem involving the TOD Deed that I want to share with you. I recently learned about the problem at the Nebraska State Bar Association annual meeting.

There was a recent unpublished 8th Circuit Court of Appeals (local federal district court cases in Nebraska are within the jurisdiction of the 8th Circuit) case styled Strope-Robinson v. State Farm Fire & Casualty Co. that involved the question of whether the State Farm homeowners policy provided coverage for the beneficiary of a TOD Deed when the home, which was the subject of the TOD Deed, was totally destroyed by fire. In this case, Mr. Strope executed and recorded a TOD Deed that would transfer his home to his niece, Ms. Strope-Robinson. The home was insured by State Farm at the time of the signing of the TOD Deed, and Mr. Strope was the named insured in the State Farm policy. Mr. Strope died on August 14, 2017, effectively transferring the home to Ms. Strope-Robinson pursuant to the TOD Deed. Unfortunately, on August 20, 2017, just mere days after the death of Mr. Strope and the transfer of the property to Ms. Strope-Robinson, Mr. Strope's ex-wife purposefully set the home ablaze and burned it to the ground. Ms. Strope-Robinson filed an insurance claim with State Farm for the destruction of the home. The probate court eventually appointed Ms. Strope-Robinson as the Personal Representative of the Estate on September 17, 2018. State Farm provided coverage for loss of personal property and paid this benefit to the Estate, but denied the claim of Ms. Strope-Robinson for coverage for the house. Ms. Strope-Robinson sued State Farm to recover benefits under the homeowners policy for destruction of the house.

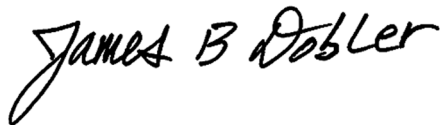
The Court of Appeals held that the homeowners policy is a contract that is personal to the insurer and the named insured, and that this contract does not attach to, or run with, the insured house. The homeowners policy simply does not transfer with the property. Therefore, because Ms. Strope-Robinson was not a party to the homeowners insurance contract, and because Mr. Strope no longer owned the house due to his passing which immediately triggered transfer of ownership of the house to Ms. Strope-Robinson (and therefore Mr. Strope did not have an insurable interest

in the house), at the time of the fire, there was no named insured under the policy with an interest in the dwelling, and no homeowners insurance coverage for loss of the house by fire was available to Ms. Strobe-Robinson. This decision makes sense to me. Ms. Strobe-Robinson had no insurable interest in the real estate prior to Mr. Strobe's death. Subsequent to his death, she did have an insurable interest, but simply failed to bind homeowners coverage on the house before it burned down.

This type of claim will probably seldom occur. How often will the home conveyed to a new owner by TOD Deed be destroyed within 6 days of transfer? Even though Ms. Strobe-Robinson had no insurable interest in the home prior to transfer of title pursuant to the TOD Deed, perhaps there might be some form of extension of coverage under her own homeowners policy or Mr. Strobe's policy for the contingency of ownership of the house at some point in the future, but I am just not sure about that. I doubt there is any homeowners policy endorsement that would add Strobe-Robinson as an additional insured because, again, until she owns the home, she doesn't have an insurable interest.

I am not familiar with Nebraska divorce law, and whether that might impact a TOD Deed. I would assume, however, that after the divorce is final, the former husband or wife, who is now sole owner of real estate formerly owned jointly with a spouse, could now execute a TOD Deed on real estate he or she now owns. Nebraska's Transfer On Death Deed law can be found at Nebraska Revised Statutes, Section 76-3404. The 8th Circuit case involved application of Minnesota law. Consequently, it can't be assumed that Nebraska law would lead to the same outcome as the 8th Circuit case, but the basic concepts of insurance law (including insurable interest) used in this case would likely also apply in Nebraska.

I think the best course of action for an agent is to make sure the beneficiary of a TOD Deed understands that they need to obtain or bind insurance coverage immediately upon acquiring title to real estate.



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