



WLTA – Wenatchee Education Seminar 2017

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Lesser Known Title & Vesting Issues

Minors in Title, Guardianships, Transfer on Death Deeds

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Scenario

Grandma Mary owns a vacant lot in town. She wishes to give it to her grandson with the hope that he may build a home on it someday for his family. As a 13th birthday present, she deeds the property to him as:

Christopher Jones, as his separate estate



Issues?

- Can Christopher legally take title to the property?

Yes! Minors can hold title to real property and do so more than you might think.

- Gift
 - Inheritance – will, trust names minor as beneficiary
 - Payment of obligor
- **BUT...**



Issues? Cont'd

- Can Christopher transfer title or borrow using the property as collateral?
 - No!
 - Until Christopher reaches the age of majority (18 yrs), it is considered a type of disability for he is lacking the capacity to enter into a binding contract.
 - Once interest is transferred, it can't be revoked
- Christopher decides he doesn't want the property a year later. Now what?
 - Guardianship
 - Open guardianship in court
 - Appoint a guardian
 - Get court order authorizing the transaction
 - Guardian executes document on behalf of minor



Alternatives for Minors

- Trust

Title is held in the name of a trust with an adult appointed trustee and child is named as a beneficiary

- Will

Instead of changing title to the property, title remains vested in the owner's name with the minor named in the will as receiving the property via a testamentary trust with a trustee and specifications outlined.



Example:

In the event that my child, EMMA DALE OLSON, is under the age of TWENTY-FOUR (24) years at the time of my death, I hereby give, devise and bequeath all of my property, of whatsoever nature and wheresoever situated, both real and personal, now or hereafter owned by me, to DALE G. BARTZEN as Trustee (“Trustee”) to be held, administered and distributed as outlined below.

A

1. The Trust Estate shall be for the sole benefit of my child, EMMA DALE OLSON (also known as “my child” and/or “beneficiary”).
2. When EMMA DALE OLSON is under the age of TWENTY-FOUR (24) years, the Trustee shall use so much of the income from the fund for the care, maintenance, health, and education of my child, as the Trustee determines to be required for those purposes, adding to principal any income not so used.

Alternatives for Minors Cont'd

Washington Uniform Transfers to Minor Act

WA RCW – 11.114

- Allows minors to hold title to real property without a guardianship
- Custodian is named to act on behalf of the minor
- Benefits parties under the legal age of majority – until 18, 21 or 25 depending on the circumstances of the transfer per the RCW (later)
- The act is enforceable in this state if at the time of the transfer, the transferor, the minor, **or** the custodian is a resident of the designated state **or** the custodial property is located in the designated state
- No documentation necessary to validate custodian other than their identity
- Custodian has fiduciary responsibility to minor
 - Can't dispose or use property for personal gain
 - Proceeds will belong to minor
- Notarization would be representative capacity



Custodians



- A custodian may decline to serve or resign at any time by delivery of notice in writing
- If a custodian is ineligible, dies, or becomes incapacitated and no successor is designated, the minor may appoint successor (family member, guardian or trust company) if they are over the age of 18
- If under 18 or if failing to act after 60 days of notice, the minor's guardian becomes successor custodian
- If there is no guardian or guardian declines, an adult member of the minor's family or any other interested person may petition the court to designate one



Taking Title under the Uniform Transfers to Minors Act

Chapter 11.114 RCW - UNIFORM TRANSFERS TO MINORS ACT

- The language below (and more) is required on the deed in order to qualify:

“TRANSFER UNDER THE WASHINGTON UNIFORM TRANSFERS TO MINORS ACT”

- I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Washington uniform transfers to minors act, the following:
- (insert a description of the custodial property sufficient to identify it).

Property Transfer Upon Age of Majority:

Age of Minor's property acquisition is defined as:

- (1) Subject to RCW 11.114.220 (Custodial property prior to 7/1/91), the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:
 - (a) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW 11.114.040 - Transfer by gift. or 11.114.050- Transfer authorized by will or trust.;
 - (b) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW 11.114.060 - Other transfer by fiduciary (in the absence of a will or under a will or trust that does not contain an authorization to do so) or 11.114.070 - Transfer by obligor – example - debtor to minor; or
 - (c) The minor's death.
- (2) The transferor may, in the initial nomination of custodian, extend the custodianship to the earlier of the minor's attainment of twenty-five years of age or the minor's death
 - There are some instances where this doesn't apply

Once the designated age has been reached, the custodian is to convey the property to the then adult who may deal with it in their own name. ◇



Scenario 2



Mother, Margaret, and father, George, acquired property together in 1981 as husband and wife. In early 2002 George died. The family home remained the same with no transfers or debt. Record title showed them both vested as husband and wife. On or about January 2012, Margaret was diagnosed as displaying signs of dementia from her family doctor after running into a ditch, sustaining injuries and not knowing where she was.

Scenario 2 cont'd

It all came to light that sometimes she was getting lost on her way home from running errands and couldn't always remember upcoming events or details and was behind on her bills. She didn't mention it to her daughter as she was embarrassed and feared her driving and unsupervised living privileges would be taken from her.

Margaret didn't like to think about getting old or planning for the future. She just wanted to enjoy her days and her family.

The condition progressed at a rapid rate and she was not able to care for herself without the possibility of physical and financial harm. It was time to consider a home care facility. That meant selling the family home...

- Can Margaret execute a Power of Attorney now?
- Does she have the capacity to transfer title?

RCW 11.88 - Guardianships

RCW 11.88.005

Legislative intent.

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.



Guardianships defined...

- Guardianship is a legal relationship where the court gives one person (the guardian) the power to make personal and/or financial decisions for another (the incapacitated person or ward). In some cases regarding financial issues they are called a conservator.
- A Guardian can be appointed to care for a minor or for an adult to promote independence and self-reliance or when vulnerability or impaired judgment as demonstrated by a pattern of conduct that poses a significant risk to a person's welfare
 - Note: An adult may be appointed a guardian due to physical incapacity rather than mental incompetency.
- In the State of Washington, a General “Guardian” or a “Limited Guardian” can be appointed
 - A General Guardian more often has powers to handle financial affairs due to a mental incompetency while a limited guardian may be assigned very specific powers due to disability



The details...

- How is it done?

The court appoints a guardian ad litem to conduct an investigation after the petition is entered. They prepare a report assessing the scope and need of the possible guardianship. Notice and a copy of the petition are mailed to family members, care givers and ward. A court hearing is held and the judge determines whether a guardian should be appointed, who should be appointed, how much authority the guardian should have and whether a bond must be posted

- What does a guardian do?

- Account for the ward's income, expenses and create an inventory list of assets
- Establish a personal care plan
- Make decisions and advocates in the best interest of the ward
- File a report with the court detailing expenses and income and updates on care

- Who pays?

Typically the estate of the ward pays the expenses of a guardianship, BUT a petitioner may have to advance the costs and attorney fees until one is deemed necessary and established

Transfer of Real Property

A court order is required authorizing the guardian to sell or encumber the property on behalf of the protected person

RCW 11.92.110 - Sale of real estate.

The order directing the sale of any of the real property of the estate of the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale

RCW 11.92.115 - Return and confirmation of sale.

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incapacitated person and of the person's estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.



4 And it further appearing that the Guardian received an offer to purchase the Woods
5 for One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) from ALEXANDER [REDACTED],
6 ALISON [REDACTED], DONNA [REDACTED], and STAN [REDACTED] hereinafter referred to as Purchaser #2,
7 which the guardian countered at One Hundred Seventy Thousand and No/100 Dollars (\$170,000.00).
8 Purchaser #2 accepted the counter-offer. The Counter-Offer Addendum, the Vacant Land Purchase
9 and Sale Agreement, and various addendums were attached as Exhibit A to the Return of Sale

16 NOW THEREFORE, IT IS HEREBY

17 1. ORDERED, ADJUDGED and DECREED

18 A. Pursuant to the Residential Purchase and Sale Agreement dated August 2,
19 2017, from ALEXANDER [REDACTED], ALISON [REDACTED], DONNA [REDACTED], and STAN [REDACTED], a
20 copy of which was attached to the Return of Sale as Exhibit "A" and as authorized by the Orders of
21 the Court entered herein on December 3, 2015, and on May 25, 2017, the sale by the Guardian to
22 Purchaser #2 for a selling price of One Hundred Seventy Thousand and No/100 Dollars
23 (\$170,000.00) for the following described real property, to wit:

24 Lot 1, as delineated on Hedeem Short Plat No [REDACTED], Chelan
25 County Washington, recorded October 17, 1989, in Book SP-
26 [REDACTED] of Short Plats, Page [REDACTED].

27 is hereby in all things and in all respects fully confirmed and approved.

5 2. ORDERED, ADJUDGED and DECREED that the Guardian is authorized and
6 directed to execute to ALEXANDER [REDACTED], ALISON [REDACTED], DONNA [REDACTED] and STAN
7 [REDACTED], or alternate purchaser if the sale of the subject real property fails, a proper Deed together
8 with all other documents necessary to complete said sale in accordance with the terms of the Real
9 Estate Purchase and Sale Agreement;

10 3. ORDERED, ADJUDGED and DECREED that the Guardian is hereby authorized and
11 directed to pay, out of the proceeds realized from the sale of said property or out of the estate, the
12 customary and reasonable expenses for title insurance, real estate taxes, revenue stamps, excise tax
13 and brokerage fees in connection with said sale;



Scenario 3

Sally knew when she died her kids would fight over the house. Billy, her son, was missing, living on the streets and addicted to drugs. Mary, her daughter, was a battered wife with a scary and controlling husband and had no voice of her own. And then there was Jamie. Jamie had always taken care of her and the house. He had a great job and she wanted to give the house to him as a final “thank you.”



The problem was that Sally lived on a fixed income without many discretionary funds. Hiring an attorney was simply out of the question. What could she do to make sure the person she wanted to have the house would get it? And could they enjoy it without legal battles or going to court?

Transfer of Death (TOD) Deeds

RCW 64.80 – SEHB 1117 – May 27, 2014

RCW 64.80.020

Authorized—Prohibited use.

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed. A transfer on death deed may not be used to effect a deed in lieu of foreclosure of a deed of trust.

RCW 64.80.060

Requirements.

A transfer on death deed:

- (1) Except as otherwise provided in subsection (2) of this section, must contain the essential elements and formalities of a properly recordable inter vivos deed;
- (2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death
- (3) Must be recorded before the transferor's death in the public records in the office of the auditor of the county where the property is located.



The Details



- TOD Deeds are exempt from excise tax
- Effective only upon death
- When transferor dies - an excise affidavit is required, REET would be paid (if applicable), and recordation of a certified copy of the death certificate in properties' county to perfect title is necessary.
- Transferor(s) can only be individual in capacity
- The Designated Beneficiary or grantee can be an individual, couple, corporation, joint venture, trust, partnership, LLC, governmental agency, etc.
- It's revocable by either:
 - Later executed TOD deed
 - Recorded Revocation
 - Conveyance of property
- Transferor must have same mental capacity as required for a will to grant or revoke a TOD deed and both must be recorded
- TOD deed must be recorded prior to the death of the Transferor
- Effective without notice, delivery or acceptance of the designated beneficiary

The Details cont'd

- Requires no consideration
- Transferor may execute deeds, encumber property or change beneficiaries without notice, acknowledgement or participation of designated beneficiary
- Deed has no impact on secured or unsecured creditors
- Property is not subject to the claims of creditors of the designated beneficiary
- Grantee must survive Transferor otherwise interest lapses
- If more than one designated beneficiary - interest is in equal, undivided shares
- A beneficiary may disclaim the interest in the property passing pursuant to the TOD deed within nine months of the transferor's death
- The TODD, after recorded, may not be revoked by a revocatory act on the deed
- If multiple TODS are recorded, validity is based on date of execution, not date of recording
- Not limited to residential property
- Effective after 6/12/2014
- Deed could've been created/recorded prior to date above, but death must be on or after 6/12/2014



Valid TOD?

- Must state that the transfer to the designated beneficiary is to occur at the transferor's death
- Must contain the essential elements and formalities of a properly recordable inter vivos deed – such as a Warranty or QC deed

08/28/2017 03:32:54 PM
Recording Fee \$74.00 Page 1 of 1
Transfer on Death Deed Thomas
County Washington



WHEN RECORDED RETURN TO:

Thomas James ()
6111 West Wind River Drive
WA 99208

DOCUMENT TITLE(S)
Real Estate Transfer on Death

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:
None

GRANTOR(S):
Thomas James ()
6111 West Wind River Drive
WA ()

GRANTEE(S):
If I die before my spouse, I designate my spouse, Debra Jean () 6111 West Wind River Drive, () WA () as the primary grantee.
If my spouse dies before me, I designate my surviving children Michael T. () Catherine C. () and Ann E. () as alternate grantee(s)

ABBREVIATED LEGAL DESCRIPTION:
Wind River Addition, Lot 5, Block 3

TAX PARCEL NUMBER(S):
()

Date: 8/25/17 Signature: [Signature]

STATE OF WASHINGTON; COUNTY OF ()
I certify that I know or have satisfactory evidence that Thomas James () the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the use and purposes mentioned in this instrument.

Date: 8/25/17 Signature: [Signature]

Notary Public in and for the State of Washington, residing at Spokane.
My appointment expires: 12-17-2020



N. E. Excise Tax Exempt
Date 8/28 20 17
County Treas.
By [Signature]



Valid TODD?

07/31/2017 02:02:11 PM
Recording Fee \$75.00 Page 1 of 2
Transfer on Death Deed ANGELA
County Washington



WHEN RECORDED MAIL TO:
Angela
Rockwell Ave.
WA

TRANSFER ON DEATH DEED

Grantor: Angela L. [redacted], an unmarried person
Grantee: Linda Lee [redacted], an unmarried person
Abbreviated Legal: L B LIDGERWOOD ADDN
(Full Legal Below)
Assessor's Tax
Parcel: [redacted]

Grantor: Angela L. [redacted], an unmarried person
Grantor's Address: 614 E. [redacted] Ave, [redacted] WA [redacted]
Designated Beneficiary: Linda Lee [redacted], an unmarried person
Beneficiary's Address: 614 E. [redacted] Ave, [redacted] WA [redacted]

SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, the Grantor ANGELA L. [redacted], for consideration of establishing a Transfer on Death Deed according to the Washington Uniform Real Property Transfer on Death Act, transfers to the beneficiary designated above (the "Designated Beneficiary") all of Grantor's interest, together with any interest therein which Grantor may hereafter acquire, in the following described real estate, situated in the County of [redacted] State of Washington:

Lot [redacted] Block [redacted] Lidgerwood Park Addition as per plat recorded in Volume A, Page 124, situate in the City of [redacted] County of [redacted] State of Washington.

TOGETHER WITH AND SUBJECT TO EASEMENTS, ENCUMBRANCES, RESTRICTIONS, COVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD AND IN VIEW.

BY: [redacted] Tax Exempt
Date: 7-31-2017
County Trusts
By: [redacted]

Page 2 of 2 07/31/2017 02:02:11 PM

The transfer to Designated Beneficiary is to occur at Grantor's death and is contingent on the Designated Beneficiary surviving Grantor. The interest of a Designated Beneficiary that fails to survive the Grantor lapses.

The Grantor shall retain ownership in fee simple of the property described herein during her lifetime and shall retain the right to revoke this Deed until Grantor's death.

Dated: 7/26/2017

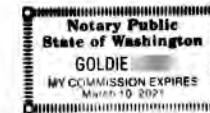
GRANTOR:

Angela L.
Angela L. [redacted]

STATE OF WASHINGTON)
COUNTY OF [redacted]) ss.

I certify that I know or have satisfactory evidence that ANGELA L. [redacted] is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 7/26/2017



Goldie
Notary Public in and for the State of Washington
Residing at [redacted]
My appointment expires 3/10/2021



Example:

Revocation Deed

06/08/2017 02:38:50 PM
Recording Fee \$74.00 Page 1 of 2
Revocation FOSTER PEPPER PLLC
Washington



RETURN ADDRESS

Foster Pepper PLLC
Riverside Avenue, Suite 300
Washington
777-1600

REVOCATION OF TRANSFER-ON-DEATH DEED

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation

Robert L. Craig Road
WA

Barbara L. Craig Road
WA

Legal Description of the property: Reference No. Related

Document:

Tax Parcel No.

The North half of the North half of the Northeast quarter of the Southeast quarter of Section , Township North, Range East, W.M., in County, Washington.
EXCEPT Craig Road.

Subject to easements, restrictions, reservations and covenants of record.

Craig Rd., WA.

REVOCATION

I revoke all my previous transfers of this property by Transfer-on-Death Deed.

SIGNATURES OF OWNER OR OWNERS MAKING THIS REVOCATION

Robert L. Signature Date MAY 25, 2017

Barbara L. Signature Date MAY 25, 2017

REVOCATION OF TRANSFER-ON-DEATH DEED -1-

R. E. Excise Tax Exempt
Date 6/6 2017
County Treas.
By MWC



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Possible Issues

- Property is taken subject to all conveyances, encumbrances, assignments, contracts, mortgages, estate taxes, liens such as medical assistance (24 mos), and other interests to which the property is subject.
 - Heirs may have to payoff the loan or refinance as the lender may call the note due upon death
 - DSHS – Medical Assistance liens
 - Meth House
- No notice, delivery, acceptance or consideration is required for an effective TOD Deed
 - Neither a designated beneficiary nor any of the transferor's heirs, spouse or even other concurrent owners of the property are required to be notified of the recording or revocation of a TOD Deed
- If property is subject to community property, and Transferor's spouse did not join, the transferor's interest is transferred to the designated beneficiary upon their death and spouse retains their interest.
 - Co-ownership - Step child/Step parent
- TOD deed is executed by both spouses/partners, is community property, transfer to beneficiary doesn't happen until surviving spouses' death.
- If a TOD has more than one transferor, is not community property or JTWRROS, revocation by one transferor does not revoke the other transferor's interest.
 - Paul & Sally own property, execute a TOD as described above. Sally dies. Her interest goes to the designated beneficiary even if Paul had revoked his interest.



Possible Issues cont'd

- Parent executes a TOD to daughter and son-in-law. Daughter pre-deceases parent. Deed would still vest in son-in-law if not revoked prior to parent's death. Even if he remarried.
 - Parent executes TODD as described above. Parent's capacity deteriorates. Therefore they cannot revoke the TOD.
- *"Superwill" statute does not apply.* The "superwill" statute allows gifts of non-probate assets. Thus, a valid TOD deed cannot be overridden by a contrary provision in the transferor's will.
- If there are multiple designated beneficiaries, and the share of one lapses or fails, the remaining interest is transferred to the others.
 - What if the intention was for it to transfer to the heirs of the deceased designated beneficiary?
- 3 Transferor's are in title as JTWRROS. They execute a TOD jointly to one beneficiary. Two decide to revoke it. It is not effective unless all three revoke it. And, the property doesn't transfer to the designated beneficiary until all are deceased.
- Omitted Spouse – If prior to marriage a person executes a TOD deed to a friend/boyfriend and later remarries, the subsequent marriage does not affect the validity of the prior TOD deed.
- Can be executed by an attorney in fact if it is authorized in the POA.
 - Self serving acts



The End

