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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY — JANUARY 10, 2020

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TRANSFER ON DEATH DESIGNATION AFFIDAVITS AND INSURANCE CLAIMS

CHRISTOPHER VONAU
Decker Vonau

The Transfer on Death Designation Affidavit (TODDA) is a valuable estate planning tool. As authorized under ORC 5302.23, estate planning practitioners commonly recommend that a client who owns real estate, whether commercial or residential, execute a TODDA that essentially acts as a non-probate beneficiary designation naming who the current owner would like to be the successive owners for a particular piece of real estate. Like all non-probate beneficiary designations, TODDAs can be implemented to avoid complex and time-consuming probate administrations. Avoiding unnecessary probate by using TODDAs is appealing to clients as it saves their loved ones time and money administering their estates.

However, there is a potential "glitch" in its use when it comes to property insurance coverage. A recently decided case out of Hamilton County, Ohio, specifically Walker on behalf of Estate of Walker v. Albers Insurance Agency, states that using TODDAs may cause a "gap" period in terms of the coverage provided by the property insurance company. While the case deals with a Release from Administration situation, which in general will be discussed as one of the highlights of the 2020 Probate Law Institute scheduled on May 20, the Ohio Court of Appeals 1st District seems to suggest that the decedent's property insurance policy purchased and maintained during their life may not cover losses incurred after death if the decedent chose to transfer the property by way of a TODDA instead of positioning the fiduciary of their estate to transfer the property through a full administration in probate court.

So, where do we go from here? Does naming TODDA beneficiaries as additional insureds under a client's present policy solve the problem? And if so, will insurance providers even accept them as additional named insureds? Assuming they will allow this, doing so may cause other problems should it become necessary to file a claim before the affiant's death. In such a case, the affiant and current owner might need to get all of the beneficiaries' signature on any claim for a loss during their lifetime.

One planning tactic seems to be clear at this point: in order to eliminate any "gaps" in coverage, it is essential for the TODDA beneficiaries to purchase a new policy naming them as insured and owners immediately upon the death of the person who signed the TODDA to ensure that the real estate is covered by insurance for casualties the occur after that individual's death. ■

EDUCATION & EVENTS

Committees and Cocktails
Wednesday, Jan. 15 • 5 - 7 p.m.
This event is free for Columbus Bar members

Webinar: Microsoft Word Styles-Word's Most Powerful Feature
Thursday, Jan. 16 • 9 – 11:45 a.m.
This event is free and exclusively for CBA members

HB 595: Jurisdictional Changes to Custody & Support Actions
Friday, Jan. 17 • 1:30 – 3:30 p.m.
2.0 CLE Hours

Title Insurance Basics (Video Replay)
Wednesday, Jan. 22 • 12 – 1:30 p.m.
4.0 CLE Hours

2020 MLK Symposium: Can We See Clearly Now?
Friday, Jan. 24 • 9 a.m. – 4:15 p.m.
6.0 CLE Hours

All classes listed are offered at the Columbus Bar Associations offices, 175 S. Third St. Ste. 1100. To register, call 614-221-4112 or enroll online at **www.cbalaw.org.**

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DIVORCE, BONUSES AND THE IRS, OH MY!

JOANNE S. BEASY
Isaac Wiles

It's that time of year. Time for celebration, gift-giving and holiday merriment. You may even receive a year-end bonus, which can be a great way to kick of the 2020 New Year. For some, though, the often-celebrated year-end bonus can serve as a reminder of how divorce not only impacts your current financial status, but your future one as well.

Under Ohio law, a bonus is income, and if you are in the middle of a divorce, that bonus income is generally not all yours; it's 50 percent yours and 50 percent your spouse's. The court can order a division of the bonus as part of the court's "temporary orders." Or, if your divorce is concluded, and you were ordered to share a percentage of future bonuses with your ex-spouse (which is not uncommon if bonuses are a "regular" part of your compensation), you may find yourself having to share that bonus with your ex-spouse.

Now, from the other side of things, if you are the ex-spouse receiving a share of that bonus, you have the opposite reaction -- getting your share of that bonus is well-deserved. I'm not here to judge either side of that debate. Instead, my advice to all is to consult the court's order that terminated your marriage and make sure you follow it when that bonus comes in the door. If you must pay, then pay. If you are to receive a share of your ex's bonus, make sure you get copies of the gross and net pay information to be sure you received your "fair share."

The kicker in all of this is the IRS. As much as you may dislike your ex-spouse, you may dislike the IRS even more because of the tax treatment of bonuses. Generally, bonuses are taxed at 22 percent, which can be a shock if your normal, withholding tax rate is much lower. ■