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EDUCATION

J.D., Duke University School of Law, 1999
BBA in accounting *summa cum laude*, University of Houston, 1996

EMPLOYMENT

January 2011 – present	The Law Office of Pamela D. Orsak	Victoria, Texas
January 2006 – June 2010	Anderson, Smith, Null & Stofer Associate	Victoria, Texas
October 2004 – January 2006	Ware, Jackson, Lee & Chambers Associate	Houston, Texas
June 2002 – October 2004	Ware, Snow, Fogel & Jackson Associate	Houston, Texas
September 2000 – June 2002	Harris County Probate Court Number Three Litigation & Mental Health Staff Attorney	Houston, Texas
September 1999 – August 2000	Fourteenth Court of Appeals Briefing Attorney for The Honorable Kem T. Frost	Houston, Texas

PROFESSIONAL ACTIVITIES AND HONORS

Board Certified, Estate Planning and Probate Law, Texas Board of Legal Specialization
Victoria Area Estate Planning Council, President 2009-2010, Member 2008 – present
Victoria County Bar Association, President 2008-2009, Member 2007 – present
College of the State Bar, Member 2002 – present
Junior League of Victoria, Texas, Inc., Treasurer 2010-2011, Membership Development Chair 2012-2013, Public
Relations Chair 2013-2014, Member 2006-present
Victoria Professional Express Network, a chapter of the American Business Women's Association, Member 2008-
2012
Presbyterian Day School, Secretary 2011-2012
Houston Livestock Show and Rodeo, Lifetime Member
Junior League of Houston, Member 2002-2006

AUTHOR/SPEAKER

Author/Speaker, "Transfer Techniques for Real Estate That Can Avoid Probate: Old Foundations, New Foundations,
or Wrecking Balls," Notre Dame Estate Planning Institute, 2017
Speaker, "Administering the Estate," State Bar of Texas Building Blocks of Wills, Estates and Probate Course, 2013-
2018
Author/Speaker, "Save Me from Probate: Transfer on Death Deeds and Lady Bird Deeds," Stanley M. Johanson Estate
Planning Workshop, 2016
Author/Speaker, "Save Me from Probate: Transfer on Death Deeds and Lady Bird Deeds," State Bar of Texas 40th
Annual Advanced Estate Planning & Probate Course, 2016
Author/Speaker, "Use and Abuse of Show Cause Motions in Probate Proceedings," State Bar of Texas 39th Annual
Advanced Estate Planning & Probate Course, 2015
Speaker, "Estate Planning: Who, What, Why & How," Victoria College Foundation, Victoria, Texas 2015
Speaker, "Unintended Consequences of TOD, POD and Other Beneficiary Designations," Victoria Area Estate
Planning Council, Victoria, Texas September 2014
Speaker, "Estate Planning Post 2010," First Victoria National Bank, Victoria, Texas 2011
Speaker, "Trusts: Who Needs Them," Victoria Professional Express Network, Victoria, Texas 2010
Speaker, "Why Do I Need a Will," Victoria Professional Express Network, Victoria, Texas 2008

**TECHNIQUES FOR
AVOIDING PROBATE
FOR REAL ESTATE:
OLD FOUNDATIONS,
NEW FOUNDATIONS,
OR WRECKING BALLS**



**Traps for the Unwary
Personal Property**

- PODs
- TODs
- JTWRORS
- Beneficiary Designation for Vehicles

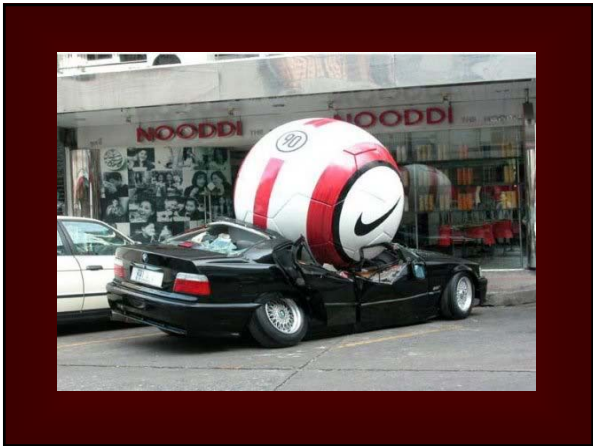
All Goes According to Plan



Until It Doesn't











URPTODA/TRPTODA



While the transfer on death deed is a welcome benefit for all Texans, it brings substantial relief to low-income homeowners.

Texas Access for Justice Commission website

URPTODA/TRPTODA



TODDs
Other non-testamentary techniques to transfer real property
Title companies reaction
Unintended consequences
When to use each technique

TODD
Emerging trend starting in Missouri in 1989
Uniform Law Commission completed URPTODA in 2009
Twenty-five states and District of Columbia have TODD statute

What is a TODD
Non-testamentary instrument to transfer individual's interest in real property to one or more beneficiaries; effective at transferor's death

What is a TODD

- (1) Must contain essential elements of a recordable inter vivos deed except as provided in paragraph (2)
- (2) Must state that the transfer of an interest in real property to the designated beneficiary is to occur on the death of the owner
- (3) Must be recorded in the deed records prior to transferor's death

What is a TODD

Unlike a traditional deed, no notice or delivery to or acceptance by the designated beneficiary during the transferor's life is required

Who Can Sign a TODD

Anyone with capacity to make a Will

Anyone with contractual capacity in Texas

No agent under a power of attorney in Texas

Who Can Revoke a TODD

Anyone with capacity to make a Will can revoke

In Texas, anyone with contractual capacity, possibly including an agent under a power of attorney

Can JTWRORS Owner Do a TODD?

Yes but it will be effective at the transferor's death only if she is the sole surviving owner

Who Can Benefit from TODDs

Any person or legal entity

Can name alternates

Who Can Benefit from TODDs

URPTODA suggests extending rules governing survival and simultaneous death, anti-lapse, and elective share to harmonize rules governing probate and non-probate

Who Can Benefit from TODDs – Survival and Simultaneous Death

In Texas, the designated beneficiary has to survive by 120 hours just like Will beneficiary

Who Can Benefit from TODDs -Anti-Lapse

In Texas, anti-lapse statute applies
Can opt-out

Who Can Benefit from TODDs –Elective Share

In Texas, no mention of elective share in TODD statutes

Could avoid surviving spouse's homestead election by using TODD??

Who Can Benefit from TODDs –Multiple Beneficiaries

In Texas, if one beneficiary dies and anti-lapse statute does not apply, then his/her share transfers to other beneficiary or beneficiaries

Who Can Benefit from TODDs –Disclaimer

A beneficiary can disclaim

Still disqualified for Medicaid in Texas

What Can Be TODDed

Any real property interest located in the state

No warranty of title – only get what Transferor had and not what Transferor thought had

Always Revocable

Even if it says it is not

In Transferor's gross estate, so basis adjustment

How to Revoke

- (1) Subsequent TODD that expressly revokes or by inconsistency revokes
- (2) Instrument of revocation that expressly revokes all or part of the TODD

How to Revoke

(3) An inter vivos deed expressly revoking the TODD or part of the TODD

Revoking Instrument

Must be acknowledged after the TODD being revoked and recorded prior to transferor's death

Harmony



Harmony

Harmonize rules governing probate and non-probate by extending rules governing revocation by divorce or homicide

How to Revoke

- (4) For Texas, recording notice of Final Judgment in divorce proceeding in county clerk's office prior to transferor's death
- (5) No mention of effect of homicide in Texas

How Not to Revoke

A Will cannot revoke a TODD in Texas

Problems when Multiple Owners Try to Revoke

- (1) When there are multiple owners, revocation only effects interest passed by that owner; all owners must revoke to be full revocation

Problems when Multiple Owners Try to Revoke

- (2) JTWRORS must all revoke to be effective
- (3) If only one JTWRORS tenant revokes and is survivor, is revocation effective?

Effect on Mortgages and Liens

TODD beneficiary takes subject to conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor's death

Texas - Effect on Mortgages and Liens
Secured creditor of property conveyed by TODD has rights similar to rights of secured creditor when property conveyed by Will

Effect on Mortgages and Liens
(1) Entitled to notice

(2) Entitled to elect matured secured claim status

Effect on Mortgages and Liens
If creditor elects matured secured claim status, PR can collect the amount of the debt from the beneficiary or sell the property if the beneficiary cannot pay the debt

Effect of Insolvent Probate Estate on TODD

If transferor's estate is insolvent, PR can use TODDED property to satisfy claims against the estate, expenses of administration, estate taxes, allowance in lieu of exempt property, or family allowance

Effect of Insolvent Probate Estate on TODD

PR brings proceeding to enforce liability against real property

2 year SoL unless secured creditor electing matured secured status

Effect of Insolvent Probate Estate on TODD

Court may award costs and reasonable and necessary attorney's fees in amounts the court considers equitable and just

TODD Does Not

- (1) Affect interests or rights of owner, including right to transfer or encumber, homestead rights, and ad valorem tax exemptions

TODD Does Not

- (2) Affect interest or right of a transferee of the real property, even if transferee has actual or constructive notice

TODD Does Not

- (3) Affect interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice

TODD Does Not

- (4) Affect the eligibility of the transferor or designated beneficiary for any form of public assistance, subject to applicable federal law

TODD Does Not

- (5) Trigger a “due on sale” clause or similar clause
- (6) Invoke statutory real estate notice or disclosure requirements

TODD Does Not

- (7) Create a legal or equitable interest in favor of the designated beneficiary
- (8) Subject the real property to claims or process of a creditor of the designated beneficiary

Medicaid Qualification & Recovery

Principal residence not a countable resource

Transfer of any interest of home, including remainder interest, nullifies exclusion

Medicaid Qualification & Recovery

Transfer can postpone or terminate qualification

TODD does not affect Medicaid by statute

Medicaid Qualification & Recovery

States required to have Medicaid Estate Recovery Program (“MERP”)

In Texas, MERP only recovers probate estate

Medicaid Qualification & Recovery

Texas TODDs avoid MERP as pass outside probate

Federal law allows MERP to recover non-probate assets so Texas could change MERP

How to do a TODD

(1) Form TODD in TRPTODA

(2) Texas Access to Justice Commission has a toolkit which provides a form

How to do a TODD

(3) Draft your own

Lady Bird Deed



Lady Bird Deed The Myth

Type of deed used by President Johnson to transfer property to Lady Bird Johnson

Lady Bird Deed The Truth

Lady Bird was the name of a fictional character used by Jerome Ira Solkoff, the Florida attorney who drafted the first Lady Bird Deed, to explain how the deed works

Not statutory

Lady Bird Deed
What is It?

- (1) transfers grantor's interest
- (2) retains a life estate for grantor with the ability to occupy and use the property for the grantor's lifetime with no liability for waste

Lady Bird Deed
What is It?

- (3) retains grantor's ability to sell, convey, lease, or mortgage without the consent of the remainder beneficiaries without sharing the proceeds

Lady Bird Deed What is It?

(4) retains grantor's right to revoke or change beneficiaries

Lady Bird Deed Advantages

(1) Revocable so not a complete gift – no tax or Medicaid implications

Lady Bird Deed Advantages

Texas Medicaid caseworkers are supposed to have all Lady Bird Deeds reviewed by the regional attorney because they may not be drafted properly

Lady Bird Deed
Advantages

- (2) Grantor maintains homestead creditor protection
- (3) Grantor maintains property tax exemptions – such as homestead and over 65

Lady Bird Deed
Advantages

- (4) Part of Grantor’s gross estate so still receives a basis adjustment
- (5) Relatively low cost option

Lady Bird Deed
Advantages

- (6) Does not pass through probate – file an affidavit of death in official public records to document transfer of title

Lady Bird Deed Advantages

- (7) Should not be subject to remaindermen's creditors while Grantor alive
- (8) No prohibition against Grantor warranting title or being executed by agent under power of attorney

Lady Bird Deed Advantages

- (9) Not a probate asset so not subject to MERP
- (10) May not be subject to probate creditors like TODD is

Lady Bird Deed Disadvantages



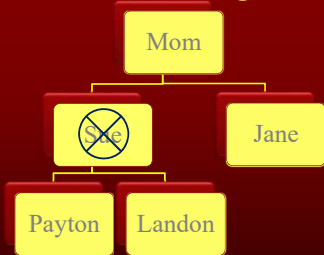
Lady Bird Deed Disadvantages

- (1) Not as flexible as a Will or trust
 - (a) Cannot adapt if remainderman is mentally disabled or a minor

Lady Bird Deed Disadvantages

- (1) Not as flexible as a Will or trust
 - (b) No statute authorizing anti-lapse statute to apply

Lady Bird Deed Disadvantages



Mom signs Lady Bird Deed with remainder to daughters; Sue dies before Mom; Jane gets 100% with nothing to Sue's kids

Lady Bird Deed
Disadvantages

- (1) Not as flexible as a Will or trust

- (c) No alternate beneficiaries

Lady Bird Deed
Disadvantages

- (2) Vested right for beneficiaries?

“The Grantor reserves a life estate with full power and authority, without the joinder of any other person to sell, convey, mortgage, lease or otherwise dispose of the property in fee simple with or without consideration...”

Lady Bird Deed
Disadvantages

- (2) Vested right for beneficiaries?
 - (a) Sign new deed

 - (b) Grantee’s creditors

JTWROS Deed

Not statutory

JTWROS Deed
What is It?
Multiple individuals own undivided
interest in property with survivor
having 100% interest

**JTWROS Deed
Advantages**

- (1) Grantor maintains homestead creditor protection if lives in home
- (2) Grantor maintains property tax exemptions – such as homestead and over 65 for share of home

**JTWROS Deed
Advantages**

- (3) Part of Grantor’s gross estate so still receives a basis adjustment
- (4) Relatively low cost option

**JTWROS Deed
Advantages**

- (5) Does not pass through probate – file an affidavit of death in OPR to document transfer of title
- (6) No statute authorizing PR to reach to pay creditors in insolvent estate

**JTWROS Deed
Advantages**

- (7) No prohibition against warranting title
- (8) No prohibition against execution by an agent under a power of attorney

**JTWROS Deed
Advantages**

- (9) Not a probate asset so not subject to MERP

**JTWROS Deed
Disadvantages**

- (1) Creditors of joint tenants can reach
- (2) Irrevocable – so gift tax and Medicaid implications



JTWROS Deed
Disadvantages

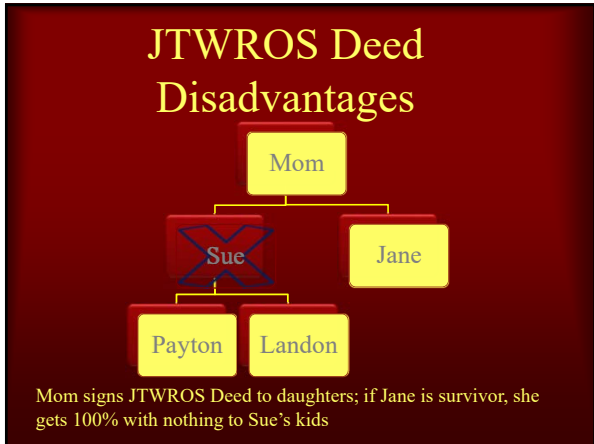
(3) Not as flexible as Will or trust

(a) Cannot adapt if remainderman is mentally disabled or a minor

JTWROS Deed
Disadvantages

(3) Not as flexible as a Will or trust

(b) No statute authorizing anti-lapse statute to apply



JTWROS Deed Disadvantages

(3) Not as flexible as a Will or trust

(c) No alternate beneficiaries

JTWROS Deed Disadvantages

(4) Lose part of ad valorem tax exemptions if gift to kids under 65 and who do not live in home

(5) Grantees will likely recognize capital gain on sale of house because "use" test not satisfied

Revocable Trust

A trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income

Black's Law Dictionary

Revocable Trust Advantages

- (1) Revocable so not a complete gift – no tax implications
- (2) Settlor can maintain property tax exemptions – such as homestead and over 65

Revocable Trust Advantages

- (3) Part of Settlor's gross estate so still receives a basis adjustment
- (4) Does not pass through probate

Revocable Trust

Advantages

- (5) Should not be subject to remaindermen's creditors while Settlor alive
- (6) No prohibition against Settlor warranting title or being executed by agent under power of attorney

Revocable Trust

Advantages

- (7) Title insurance will transfer to Settlor's trust
- (8) Not a probate asset so not subject to MERP in states where MERP only recovers probate assets

Revocable Trust

Advantages

- (9) May not be subject to probate creditors like TODD is
- (10) Grantor's dispositive plan has a better chance of being carried out – already in place

**Revocable Trust
Advantages**

(11) Flexible beneficiary
designations

(a) can adapt if remaindermen is
mentally disabled or a
minor

**Revocable Trust
Advantages**

(11) Flexible beneficiary
designations

(b) can adopt anti-lapse statute

**Revocable Trust
Advantages**

(11) Flexible beneficiary
designations

(c) can designate alternate
beneficiaries

**Revocable Trust
Disadvantages**

- (1) Cost and time required to create and fund
- (2) Home in revocable trust will prevent Medicaid qualification

**Revocable Trust
Disadvantages**

- (3) Law unsettled as to whether a home in a rev trust retains its homestead protection against creditors

**Revocable Trust
Disadvantages**

- (4) Law unsettled as to whether a surviving spouse can make a homestead election – may be advantage depending on whom you represent

TITLE COMPANIES REACT

TODDs

- (1) Underwriting Guidelines Being Developed
- (2) Title Insurance Coverage Continues?

Unclear whether designated beneficiary under a TODD is covered by definition of Insured in Tex. Ins. Code or Basic Manual for Title Insurance

Lady Bird Deeds
(1) Underwriting Guidelines
Death certificate
Affidavit of Facts regarding
death and payment of all debts
of the debtor's estate

Lady Bird Deeds
(2) Title Insurance Coverage
Continues?
Probably – Warranty Clause

Good reasons to revoke
TODD or Lady Bird Deed





Other good reasons to
"revoke"

- (1) If remainderman's creditors threaten action
- (2) If designated beneficiary/ remainderman qualifies for or may soon qualify for Medicaid & already has a house

POTENTIAL
LANDMINES FOR
NONTESTAMENTARY
TRANSFERS

(1) Designated beneficiary
selling TODDED property

What Does Title Company
Want to Insure?

- Affidavit from DB that all debts paid or there are sufficient assets to pay debts
- Affidavits from all heirs or beneficiaries – may not all agree

(2) PR exercises right to sell
TODDed property in insolvent
estate

What Does Title Company
Want to Insure?

Affidavit from PR that estate
is insolvent

Dec action for IA

(3) Unintended Consequences

EPIC FAIL
TODD #1

Widower deeds home through
a TODD to daughter and
husband who subsequently
divorce

EPIC FAIL
TODD #1

Action: Widower files notice
of final judgment in county
clerk's office

EPIC FAIL
TODD #1

Result: Ex son-in-law owns
undivided one-half interest
with daughter when dad dies
(only works when transferor
married to designated
beneficiary)

EPIC FAIL
TODD #2

Widow deeds home through a
TODD to son who later
develops dementia and
qualifies for Medicaid

EPIC FAIL
TODD #2

Problem: Widow thinks home
will not disqualify son; but he
already owns a home

EPIC FAIL
TODD #2

Result: son is disqualified for
Medicaid until house sold and
proceeds spent (better off
creating SNT for son under
Will)

EPIC FAIL
TODD #3

Mom uses TODD to deed her home to two children and one stepchild wanting all of their descendants to share equally

EPIC FAIL
TODD #3

Problem: Stepchild dies but Mom thinks anti-lapse statute applies after talking to her cousin who talked to a lawyer about a TODD once

EPIC FAIL
TODD #3

Result: Stepchild's children get nothing

EPIC FAIL
TODD #4

Widow uses TODD to deed
home to two children

EPIC FAIL
TODD #4

Problem: One child is a minor
when widow dies and the
children cannot afford
property taxes and insurance

EPIC FAIL
TODD #4

Result: May need guardianship
to sell the house

EPIC FAIL
LBD #1

Mom uses LBD to deed home to her 2 kids wanting each of kid's families to have interest in home

EPIC FAIL
LBD #1

Problem: Kid #1 dies while mom alive but mom doesn't know Kid #2 doesn't plan to share with Kid #1's family

EPIC FAIL
LBD #1

Result: Kid #2 torpedoed Mom's plan and Kid #1's family gets nothing

EPIC FAIL
LBD #2

Dad uses LBD to deed home
to his 4 kids

EPIC FAIL
LBD #2

Problem: Dad can't afford the
upkeep and wants to downsize;
finds a potential buyer; title
company insists 4 kids sign
off; black sheep refuses to sign

EPIC FAIL
LBD #2

Result: Dad doesn't remember
he can revoke (or title
company refuses to honor
revocation)
and deal falls through

EPIC FAIL
LBD #3

Mom lives on the coast and signs a LBD for her home to her children

EPIC FAIL
LBD #3

Problem: Cat 4 hurricane hits; no insurance & needs FEMA to rebuild; FEMA says kids are also owners & won't give her money unless she is the sole owner

EPIC FAIL
LBD #3

Result: Mom has to undo LBD

EPIC FAIL
JTWROS DEED
#1
Mom deeds interest in home to
two kids

EPIC FAIL
JTWROS DEED
#1
Problem: Mom has to sell
house to downsize to a home
in a retirement community

EPIC FAIL
JTWROS DEED
#1
Result: Mom has no capital
gain on sale of house but kids
will have capital gain

EPIC FAIL
JTWROS DEED
#2
Dad and second wife have two homes which they owned prior to marriage which they want other to have

EPIC FAIL
JTWROS DEED
#2
Problem: Dad dies and second wife develops dementia

EPIC FAIL
JTWROS DEED
#2
Result: Second wife forced to sell one home

EPIC FAIL
JTWROS DEED
#3
Dad and Mom want to convey
their second home on the bay
by JTWROS deed to their only
child who has a home of his
own to avoid probate

EPIC FAIL
JTWROS DEED
#3
Problem: Child rear ends
school bus

EPIC FAIL
JTWROS DEED
#3
Result: Mom and dad are
forced to sell bay home or pay
off child's creditor to save bay
home

EPIC FAIL
REVOCABLE
TRUST

Mom deeds home to rev trust
to protect from soon to be new
husband

EPIC FAIL
REVOCABLE
TRUST

Problem: Mom dies before
new husband and does not
leave him right to live in house

EPIC FAIL
REVOCABLE
TRUST

Result: New Husband sues and
with law unclear, tens of
thousands of dollars are spent
on legal fees before settlement
is reached

(4) Discrepancies with Will

Ask about TODDs & LBDs

Caution about unintended consequences

Ensure Will and deeds are consistent

Caution that if client chooses to revoke TODD or LBD, needs to see you again to possibly amend Will

WHEN TO USE EACH
TECHNIQUE

TODDS and LBDs

Truly low-income clients - won't
consult you

Client of modest or large wealth
– create more problems than
solve

Middle income clients without
long term care insurance and who
can't pay long term care for long
– prime candidates

But still can backfire
Potential for Exploitation
Increases?

Grantor lacks capacity - LBD
Concern about title problems -
LBD

Want to sell house right away
when grantor dies and not kids or
spouse - LBD

Grantor may decide to sell house
prior to death - TODD

JTWROS DEED

Couple who have children from
prior marriage who want to
ensure spouse gets property

Business partners who want to ensure brick and mortar store goes to surviving partner and not spouse of deceased partner

REVOCABLE TRUST

Clients who live in states with high probate costs, clients who have assets in more than one state, clients with financial institutions who don't honor powers of attorney, and clients whose kids are likely to contest



CYA letter
