

**Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2871**

**Date:** 17-Mar-21

**From:** Steve Leimberg's Estate Planning Newsletter

**Subject:** Mary Vandenack on Dawn Strobe-Robinson v. State Farm Fire and Casualty: Insurance Risk for Transfer on Death Deeds

*“In [Dawn Strobe-Robinson v. State Farm Fire and Casualty](#), Strobe-Robinson became the owner of a home owned by her uncle pursuant to a transfer on death deed. Several days after her uncle’s death, her uncle’s ex-spouse intentionally started the house on fire. Strobe-Robinson filed a claim against the insurance company with whom her uncle held a policy. The insurance company denied the claims related to the real property. The Eighth Circuit ruled in favor of the insurance company on the basis that transfer to Strobe-Robinson occurred immediately upon death, that Strobe-Robinson was not covered under her uncle’s policy and that her uncle’s estate had no insurable interest in the property.*

*To the extent this case stands as law, it has a chilling effect on the use of transfer on death deeds as an estate planning tool. It does seem that this case has imposed a drafting issue on estate planning attorneys that ought to be an insurance industry issue. Legislative solutions are likely required in those states that have statutory language comparable to Minnesota.*

*Estate planners will certainly need to discuss this issue with clients who prefer to use transfer on death deeds. Perhaps insurers will allow insureds to name beneficiaries of transfer on death deeds as additional insureds. The prudent estate planner will certainly have written advice in the record in this regard if a transfer on death deed is used.”*

**Mary E. Vandenack** provides members with commentary on the Eighth Circuit case, [Dawn Strobe-Robinson v. State Farm Fire and Casualty](#) in which the Eighth Circuit ruled that the beneficiary pursuant to a transfer on death deed was not covered by the insurance of the deceased.

**Mary E. Vandenack** is founding and managing member of **Vandenack Weaver LLC** in Omaha, Nebraska. Mary is a highly regarded practitioner in the areas of tax, benefits, trusts and estates, business exit planning, asset protection planning, executive compensation, equity fund development, business and business succession planning, tax dispute resolution, and tax-exempt entities. Mary's practice serves high net worth individuals, businesses and business owners, executives, real estate developers and investors, health care providers, companies in the financial industry, and tax-exempt organizations. Mary is a member of the American Bar Association Real Property Trust and Estate Section where she serves as a member of Council and the Planning Committee. Mary is a member of the American Bar Association Law Practice Division where she currently serves as Vice Chair of Law Practice Magazine and Division Secretary. Mary was named to ABA LTRC 2018 Distinguished Women of Legal Tech, received the James Keane Award for e-lawyering in 2015, and serves on ABA Standing Committee on Information and Technology Systems. Mary is a frequent writer and speaker on tax, benefits, asset protection planning, and estate planning topics as well as on practice management topics including improving the delivery of legal services, technology in the practice of law and process automation.

Here is her commentary:

#### **EXECUTIVE SUMMARY:**

In the case, [\*Dawn Strobe-Robinson v. State Farm Fire and Casualty\*](#),<sup>iii</sup> Strobe-Robinson became the owner of a home owned by her uncle pursuant to a transfer on death deed. Several days after her uncle's death, her uncle's ex-spouse intentionally started the house on fire. Strobe-Robinson filed a claim against the insurance company with whom her uncle held a policy. The insurance company denied the claims related to the real property. The Eighth Circuit ruled in favor of the insurance company on the basis that transfer to Strobe-Robinson occurred immediately upon death, that Strobe-Robinson was not covered under her uncle's policy and that her uncle's estate had no insurable interest in the property.

#### **FACTS:**

David Strobe owned a home in Orr, Minnesota. Strobe executed a transfer on death deed in August 2017 conveying the property to his niece, Dawn Strobe-Robinson upon his death. Such deed was recorded August 11, 2017.

Strobe had homeowner's insurance on the home through State Farm and Casualty Company. Strobe died on August 14, 2017. On August 20, 2017, Strobe's ex-wife intentionally set the house on fire. The home, as well as personal property inside, was damaged.

Strobe-Robinson was appointed as special administrator and personal representative of Strobe's Estate. In such capacity, she filed a claim with State Farm for coverage of the loss of the house, loss of use for the fair rental value of the house, and loss of personal property. The claim was granted on the loss of personal property but claims for loss of the house and loss of use for fair rental value were denied. The basis for the denial of claims was that Strobe-Robinson was not a named insured under the policy and that the named insured, David Strobe, **had no insurable interest** in the home at the time of the fire.

The district court granted summary judgment to State Farm on the basis that the Estate did not have an interest in the property at the time it burned and that Strobe-Robinson was not a named insured under the policy. Strobe-Robinson appealed to the Eighth Circuit.

The Eighth Circuit first rejected Strobe-Robinson's argument that the transfer on death deed is directly connected to a decedent's estate and the probate process. The Court noted that the provisions of Minnesota's transfer on death statutes do not include a provision that prevents the property from passing upon death. Minnesota's transfer on death deed statute<sup>(iii)</sup> provides that the deed "transfers the interest to the grantee beneficiary upon the death of the grantor owner upon whose death the conveyance or transfer is stated to be effective, but subject to the survivorship provisions and requirements of section 524.2-702." The survivorship provision treats a beneficiary as having predeceased the transferor in the event that the beneficiary does not survive the decedent by 120 hours. The court noted that the survivorship provision does nothing to delay transfer or to place property in probate.

The Eighth Circuit also rejected Strobe-Robinson's argument that the deed was still executory at the time the home burned because a certificate as clearance for public assistance claims and liens had not been received. The court indicated that the language regarding obtaining a lien was permissive in nature and thus precluded the argument.

Strobe-Robinson also argued that the state statutes allow certain medical liens and encumbrances on the property despite the transfer on death. The Court stated that the

existence of a lien did nothing to prevent the transfer of the property. Instead, the statutes providing for the same simply result in an encumbrance on the property.

Regarding the insurance contract Strobe had with State Farm, the court noted that Minnesota's rules concerning insurance contracts allow for parties to contract as they desire as long as the coverage does not contravene applicable statutes. The court stated that policies of insurance do not attach to or run with the property in the absence of an express agreement between the insured and the insurance company.

The court noted the following provisions of the policy:

- Insured was defined as “you and, if residents of your household: (a) your relatives, and (b) any other person under the age of 21 who is in the care of a person described above.”<sup>[iii]</sup>
- If any person shown in the Declarations or the spouse, if a resident of the same household, dies: (a) we insure the legal representative of the deceased. This condition applies only with respect to the premises and the property of the deceased covered under this policy at the time of death; (b) insured includes: (1) any member of your household who is an insured at the time of your death, but only while a resident of the residence premises; and (2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.<sup>[iv]</sup>

The Court concluded that because David Strobe's death triggered the transfer of the property to Strobe-Robinson, Strobe's estate had no interest in the home at the time of the fire. The fact that State Farm did not cancel the policy nor return a pro rata premium did not impact the court's conclusion.

#### **COMMENT:**

Insurable interest is a concept that requires that those who seek to protect an investment from financial loss are those who will incur financial loss or hardship in the event of loss or damage. Insurance is taken out to protect someone with an interest to protect. Insurance mitigates the risk of loss. Homeowners insurance provides compensation to a policyholder who suffers a financial loss if a destructive force destroys some or all of his or her home. Because losing one's home creates a catastrophic loss for a policyholder, the homeowner has an insurable interest in the property.

Someone who will not experience financial loss does not have an insurable interest. While a homeowner may buy insurance for his or her own home, he or she would not be able to purchase insurance on a neighbor's home. Doing so creates incentive to cause damage to the neighbor's house to collect the insurance.

In this case, the court distinguished a probate situation from a transfer on death situation. The policy specifically extended certain coverage in the event of the death of a homeowner in the case of someone in temporary possession while a legal representative was being appointed.

To the extent this case stands as law, it has a chilling effect on the use of transfer on death deeds as an estate planning tool.

William Lindsay, a respected estate planning attorney in Nebraska has suggested that attorneys may need to incorporate language such as the following in wills for clients using transfer on death deeds:

If I have transferred any real estate by means of a transfer on death deed, I give to the beneficiary or beneficiaries under each transfer on death deed:

1. all policies of property or casualty insurance on the real estate transferred by that particular transfer on death deed; and
2. all undeposited proceeds from such policies and claims on such policies.

I further direct my personal representative to pay for any repair work done on the real estate as a result of the casualty to the extent of any proceeds remaining in my estate.

This is proposed as a possible drafting solution where there exists a state statute that provides that "upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will..." It is not clear that this will work.

It does seem that this case has imposed a drafting issue on estate planning attorneys that ought to be an insurance industry issue. Legislative solutions are likely required in those states that have statutory language comparable to Minnesota.

Estate planners will certainly need to discuss this issue with clients who prefer to use transfer on death deeds. Perhaps insurers will allow insureds to name beneficiaries of transfer on death deeds as additional insureds. The prudent estate planner will certainly have written advice in the record in this regard if a transfer on death deed is used.

The policy in this case would have provided coverage in the event of a personal representative. It is not clear that the coverage would have extended to the trustee of a revocable trust. Given the case's reliance on the terms of the insurance contract, it becomes paramount for planners to review and coordinate insurance with recommended asset transfer documents. It will also be important to consider whether the ruling in this case will extend to other types of assets that pass by beneficiary designation.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!**

Mary Vandenack

**CITE AS:**

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**CITATIONS:**

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<sup>[i]</sup> *United States Court of Appeals Eighth Circuit*, No. 20-1147, February 5, 2021.

<sup>[ii]</sup> Minn. Stat. § 507.071.

<sup>[iii]</sup> D. Ct. Dkt. 42-1 at 17.

<sup>[iv]</sup> *Id.* at 36.