

COA Opinion: A bank's perfected security interest in a decedent's certificate of deposit account has priority over all other estate claims.

24. January 2011 By Jeffrey Birkhold

In the case of *In re Estate of David Gary Lundy*, the Court of Appeals held that a security interest perfected under Article 9 of the Uniform Commercial Code, MCL 440.9101 *et seq.*, has priority over all other estate claims made under the Estate and Protected Individuals Code (EPIC).

In 2005, decedent David Lundy personally guaranteed a mortgage and promissory note that were executed by Lundy's Lane LLC. David Lundy granted the bank a security interest in a CD account as collateral for the loan. Lundy died testate in 2008. The loan went into default, and the bank exercised its rights under the security agreement and liquidated the CD account.

Petitioner Bridget Lundy, the personal representative of David Lundy's estate, filed the instant action asserting that, under EPIC, the bank's security interest in the CD account was subject to the surviving spouse's claim for reimbursement of reasonable funeral expenses, homestead allowance, family allowance, and exempt property. The bank asserted that its perfected security interest had priority over all estate claims to the same collateral. The trial court reasoned the bank's interest did indeed have priority over all other claims prior to the appointment of the personal representative, but concluded once the personal representative was appointed, the surviving spouse's right to homestead and family allowance were superior to the bank's interest under EPIC.

The Court of Appeals reversed and held a secured creditor's interest in the collateral is superior to all other estate claims as to the collateral. The Court of Appeals referenced EPIC commentary, which states that the EPIC statute treats secured creditors differently than other estate claims, to support its decision. It concluded the bank has a priority position to the secured property without even making a "claim" against the estate. However, the Court went on to state that "the bank is in the same position as other creditors with respect to any claim against the estate for the amount of any deficiency existing after exhausting the security."