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ARE THE SELLERS HEIRS OF THE RECORD OWNERS?

When the last owner who acquired title to the property “by a deed” is deceased, there are several variations on what to do. This is a quick reference, and is not intended to cover all situations, or to provide extensive detail. Please call our office to discuss your particular circumstances.

1. WILL PROBATED IN COUNTY IN WHICH PROPERTY LOCATED. Last owner “of record” has died, and (1) had a Will, and (2) the Will is being probated, or has been probated in the county in which the property is located. The Will identifies the heirs who take the property. The heirs named in the Will acquired the property at the moment of the death of the owner of record. Closing can occur AFTER notice to creditors has been published.

a. If the estate is still “open” then the deed will need to be signed by (1) each of the heirs, and their spouses, and (2) the executor of the estate. And the heirs will have to sign an “Open Estate Indemnification Agreement.”

b. If the estate has been “closed” then only the heirs and their spouses sign the deed.

c. Add information about estate to the deed (last record owner, estate file number, etc)

2. WILL PROBATED IN A DIFFERENT NORTH CAROLINA COUNTY. Last owner “of record” has died, and (1) had a Will, and (2) the Will is being probated, or has been probated in a North Carolina county that is different from the county in which the property is located. The Will identifies the heirs who take the property. The heirs named in the Will acquired the property at the moment of the death of the owner of record. Closing can occur AFTER notice to creditors has been published.

a. A COPY OF THE WILL, CERTIFIED BY THE CLERK OF COURT IN THE COUNTY IN WHICH THE ESTATE IS OPEN, HAS TO BE FILED IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

b. If the estate is still “open” then the deed will need to be signed by (1) each of the heirs, and their spouses, and (2) the executor of the estate. And the heirs will have to sign an “Open Estate Indemnification Agreement.”

c. If the estate has been “closed” then only the heirs and their spouses sign the deed.

3. NO WILL. Last owner “of record” has died, but did not have a Will. An estate file has been opened in the county in which the property is located. The heirs will be determined by North Carolina’s intestate succession rules, and they acquired the property at the moment of the death of the owner of record. Depending on the circumstances, there may need to be some explanatory statements or affidavits to verify the heirs. Please call our office to discuss the circumstances. But generally, closing can occur AFTER notice to creditors has been published.

a. If the estate is still “open” then the deed will need to be signed by (1) each of the heirs, and their spouses, and (2) the executor of the estate. And the heirs will have to sign an “Open Estate Indemnification Agreement.”

b. If the estate has been “closed” then only the heirs and their spouses sign the deed.

4. OUT OF STATE WILL*.** Last owner “of record” has died, and (1) had a Will, and (2) the Will is being probated, or has been probated in another STATE. The Will identifies the heirs who take the property. The heirs named in the Will acquired the property at the moment of the death of the owner of record.

a. An ANCILLARY ESTATE will need to be opened in the county in which the property is located. Please bear in mind that our office does not handle ancillary estates, so another attorney will need to be involved in handling that aspect of the closing.

b. If the estate is still “open” then the deed will need to be signed by (1) each of the heirs, and their spouses, and (2) the executor of the estate. And the heirs will have to sign an “Open Estate Indemnification Agreement.”

c. If the estate has been “closed” AN ANCILLARY ESTATE IS PROBABLY STILL NEEDED. But only the heirs and their spouses need to sign the deed.

d. Add information about estate to the deed (last record owner, estate file number, etc)

5. LAST OWNER DIED MORE THAN TWO YEARS AGO, BUT NO ESTATE WAS EVER OPENED. The heirs will be determined by North Carolina’s intestate succession rules, and they acquired the property at the moment of the death of the owner of record. There will probably NOT need to be an estate opened, but it depends on the circumstances. Also, there may need to be some explanatory statements or affidavits to verify the heirs Please call our office to discuss the circumstances.

Again, the above are just an outline of various scenarios, and are provided for general guidance. Please call our office to discuss details! Thanks!

Jeff Porter