

# SELLING REAL ESTATE WHEN ONE OR MORE OF THE OWNERS HAVE DIED

By *Steven Troup and Edward Farrell*



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There are many issues encountered in selling real estate when one or more of the owners have died. At the inception of the transaction, prior to the execution of a contract of sale, we must ascertain (i) how title to the property was held: individually, by tenants in common, as joint tenants with rights of survivorship, or as tenancy by the entirety between husband and wife; and (ii) whether the decedent died with a will or without. In all cases, a copy of the death certificate is required. When we represent the estate of a deceased owner, we have much to do before a closing may be scheduled. If our client is purchasing real estate from an estate, we need to assure that the

seller's attorney is aware of all of the steps needed and that he or she does not wait until the eve of a scheduled closing to start addressing issues, as it frequently takes several weeks or more to accomplish all that is necessary.

If there was a will, we must determine whether a probate proceeding was initiated since a will is not operative, and has no force and effect, until it is filed and admitted to probate. The transfer of title of real property cannot occur until the will has been admitted and recognized by the Surrogates Court. If there was no will, the intestate heirs of the decedent must be identified, and it must be determined who among them have the authority to sign the deed and other transfer documents. The appointment of an executor or administrator may or may not be required, depending on how title to the real property is held. The seller's attorney should, promptly after the contract of sale is executed, obtain a New York State transfer tax waiver as well as New

York State and federal releases of lien with respect to the property being conveyed. Failure to do so could result in title to the property being conveyed subject to payment of any estate taxes that may become due since an estate tax lien remains.

If the property is a co-op apartment, while the approval of the board of directors is required to transfer occupancy rights, a board cannot prevent an owner from transferring ownership of the shares allocated to the apartment pursuant to a will unless the proprietary lease contains express survivor rights. The board may prevent an heir from occupying the apartment. The separate issues concerning transfer of ownership and the right to occupy a co-op apartment are unique in cooperative transactions, not condominiums where an owner of a condo does not need the approval of the board of directors to occupy the apartment. The most important factor is starting the process at the earliest possible time in order to avoid last minute surprises with unnecessary delays and expense. This article is an excerpt from a longer article published by the authors in the New York Law Journal last year.

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