N2K: From Beyond the Grave

Death and Real Estate

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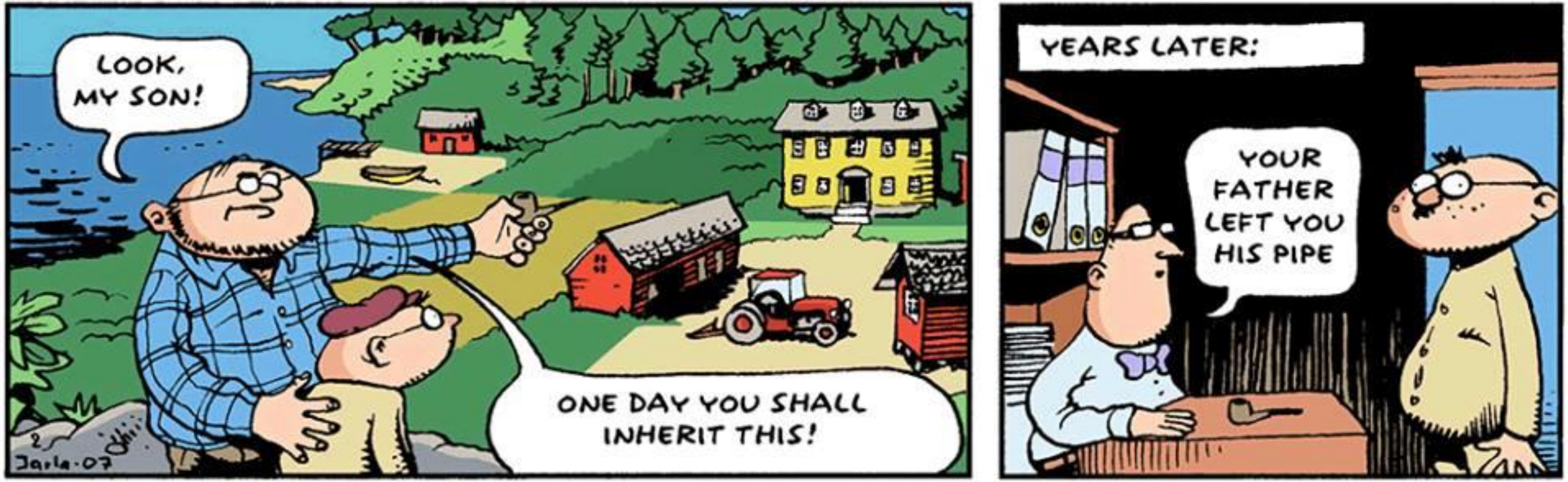
Learning Objectives

- ✓ Identify how different forms of ownership affect title following the death of an owner.
- ✓ Distinguish between testate and intestate estate administration and understand the impact on real property transfers.
- ✓ Determine the documents and underwriting requirements needed to convey title from an estate.
- ✓ Recognize common estate transaction red flags and underwriting concerns.
- ✓ Evaluate inheritance tax, estate tax, and escrow requirements impacting closings in New Jersey.


LOOK, MY SON!
ONE DAY YOU SHALL INHERIT THIS!
YEARS LATER:
YOUR FATHER LEFT YOU HIS PIPE

Types of Ownership in NJ

- Tenants in Common
- **Joint Tenants with Right of Survivorship**
- Tenants by the Entirety
- **Life Estate**
- Business Entities

Types of Ownership in NJ

Tenants in Common

- Separate ownership interests
- No survivorship rights
- Interest do not need to be equal in value or duration
- Owner may convey their share independently

Joint Tenancy

- Equal ownership interests
- Right of survivorship - no probate necessary
- No dower of curtesy

Tenants by the Entirety

- Married couples/Civil unions only
- Survivorship rights
- Ends by death, divorce, or conveyance.

Types of Ownership in NJ

Life Estates

- Created by conveyance or devise
- Life tenant retains present rights
- Remainder interest held by another, aka Remainderman
- Life tenant must sign off on all conveyances or encumbrances
- Death certificate clears title

Entity Ownership

- Title is held by the entity, not an individual

  *** for trusts, the conveyance must be into an individual as Trustee for the Trust

  *** Watch out for revocable trusts!

- Entity documents govern how the entity is managed

Liens and Ownership Issues

Tenants in Common

If property is owned as tenants in common, a judgment against fewer than all co-owners will only constitute a lien on the interest of the debtor.

Joint Tenants or Tenants by the Entirety

If the debtor pre-deceases the other co-tenants, lien of judgment is extinguished against the property.

Tenancy by the Entirety

Federal tax liens against one spouse attaches to the delinquent taxpayer/spouse’s interest in the property and can be enforced by non-judicial sale of the property or by judicial foreclosure and are extinguished upon death of the debtor and do not transfer to the surviving spouse

Life Estates

Lien against holder of a Life Estate is extinguished against the property upon death.
*** Judgment holder can only execute against Life Estate, not the remainder interest.

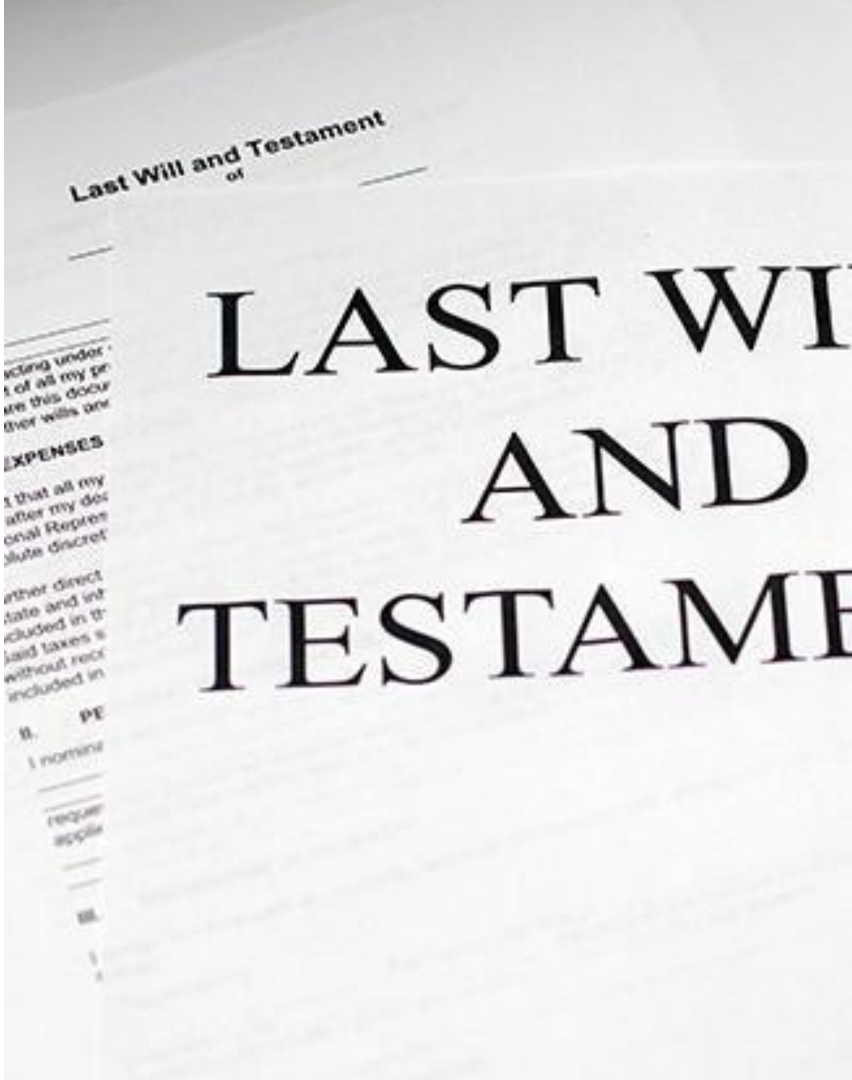
Testate vs. Intestate

Testate	Intestate
Valid Will	No Will
Executor	Administrator
Devisees	Heirs at Law

Devolution of Property Upon Death

N.J.S.A. 3B:1-3 provides that real and personal property **passes upon the death of a person** (the decedent), to the persons to whom the property is devised by will or, in the absence of a will, to the decedent's heirs at law.

- If property passes by will, it may be by specific devise or residuary devise.
- A deed from the Estate to the heir/devisee is required.



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Estate Procedures

Testate Procedure

- Probate of Will
- Appointment of Executor
- Appointment of Administrator c.t.a. (*cum testamento annexo*)
- Marshalling of assets/Payment of estate debts
- Payment of NJ Inheritance Tax , NJ Estate Tax, and/or Federal Estate Tax, if applicable and Obtain ITW
- Sale of assets
- Distribution of estate assets to devisees
- Final accounting of estate **

Intestate Procedures

- Administration of estate
- Appointment of Administrator
- Marshalling of assets/Payment of estate debts
- Payment of NJ Inheritance Tax, NJ Estate Tax and/or Federal Estate Tax) and Obtain ITW
- Sale of assets
- Distribution of estate assets to heirs at law
- Final accounting of estate **

**** Lien of Estate Debts**

Disclaimer of Interests

- A person who is an heir, devisee, or beneficiary of an estate may disclaim in whole or in part any property or interest therein by filing a disclaimer (N.J.S.A. 3B:9-2)

- A surviving joint tenant may also disclaim an interest to any property devolving to them by right to survivorship.

- Disclaimer must be in writing, signed, and acknowledged by person disclaiming and describe the property being disclaimed (N.J.S.A 3B:9-3)

- Disclaimer may be barred under N.J.S.A 3B:9-9

Intentional Death of Decedent

- Under N.J.S.A. 3B:7-1.1, an individual responsible for the intentional killing of the decedent forfeits all interest in the decedent's estate.

- Revokes any right the killer OR their relative may have had under any governing instrument executed by decedent including trusts, POAs, etc.

- Severs any joint tenancies or tenancies by the entireties and converts the interest to tenants in common

What Happens if an LLC Member Dies?

- Pursuant to N.J.S.A 42:2C-44: If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee.

- The Estate does not become a participating member of the LLC, unless there is unanimous consent of all surviving members (N.J.S.A. 42:2C-31(c)(3))

- The Operating Agreement can include provisions regarding the death of a member.

Conveying Title from the Estate

What do we need to convey title

- ✓ Surrogate Search
- ✓ Estate Questionnaire
- ✓ Estate debts identified and/or paid
- ✓ Tax status confirmed (Federal Estate, Inheritance and NJ Estate)
- ✓ Authority verified

Who Signs the Deed?

The Fiduciary Power Act, N.J.S.A. 3B:14-23 gives executors and administrators the power to convey real property without the need for court order.

Scenario	Signer
Intestate	Administrator
General Devise	Executor
Specific Devise	Executor + Devisee

Testamentary Trusts

- A testator may devise property to a testamentary trust created by the terms of his own will.

- The will itself establishes the trust and sets the boundaries of the trustee's authority.

- The creation of any testamentary trust is dependent upon:
  - The death of the testator
  - Probate of the will.

- An inter-vivos or living trust may be the devisee under a will.

- If property is placed in testamentary trust, the Trustee must join the Executor in signing the deed.

What about Taxes?

Federal Estate Tax

- 10-year lien period
- Verify payment before closing
- Escrow if unresolved
- Applies only to larger estates

New Jersey Inheritance Tax

- 15-year lien period
- ITW required when applicable
- Beneficiary class determines tax
- Escrow may be required

New Jersey Estate Tax

- Applies only to older estates
- Repealed for deaths after January 1, 2018
- Verify waiver requirements
- Escrow if unresolved

Federal Estate Tax

Federal Estate Tax Exemption has been over $5million per individual since 2011

- 2020: $11,580,000
- 2021: $11,700,000
- 2022 $12,060,000
- 2023: $12,920,000
- 2024: $13,610,000
- 2025: $13,990,000
- 2026: $15,000,000

New Jersey Inheritance Tax

Class A

Immediate family members include: parents, grandparents, children (including stepchildren, adopted children, mutually acknowledged children, and certain non-biological children), grandchildren, spouses, domestic partners, civil union partners, and descendants of children

- Fully Exempt from Inheritance Tax

Class C

Brother, sister (including half-brother/sister), son-in-law, daughter-in-law (surviving deceased child):

- First $25,000.00 – Fully exempt
- $25,000 up to $1.1 million – 11%
- $1.1 million up to $1.4 million – 13%
- $1.4 million up to $1.7 million – 14%
- $1.7 million and over – 16%

Class D

Any transferee who isn't Class A, C, or E

- Under $500 – Fully Exempt
- Any amount up to $700,000 – 15%
- Any amount in excess of $700,000 – 16%

Class E

State of NJ, educational institutions, churches, hospitals, etc. (Most charitable conveyances)

- Fully Exempt

New Jersey Estate Tax

- REPEALED for deaths occurring on or after January 1, 2018!!
  - Effective for estates where decedent dies after 12/31/01
- Tax must be paid within 9 months plus 30 days of date of death.
- For estates in excess of $675,000 (DOD Prior to 1/1/2017) or $2,000,000 (DOD 1/1/2017 to 12/31/2017), must have:
  - Proof of payment of New Jersey Estate Taxes
  - Estate Tax Waiver from Division of Taxation to be recorded – If not recorded, you must hold an escrow

Tax Escrows: What if the estate hasn't paid the taxes or hasn't received the ITW?

- If the estate can provide proof that the correct payment was made to the Division of Taxation, no escrow is required.
- Confirm that the amount sent is the correct amount owed.
- If the estate has not sent in the payment, an escrow based on the **gross value** of the estate can be held.
- Funds from this escrow can be used for payment by the estate.

Helpful Links

- Div. of Taxation: Inheritance & Estate Tax Branch
  - http://www.state.nj.us/treasury/taxation/inheritance-estate/inheritance.shtml
  - Provides overviews, instructions, forms, rates, filing requirements, contact information, tax calculator, etc.
- http://www.stewart.com/new-jersey
  - Includes links to our most requested forms, schedule of upcoming events, past seminar materials, and more!

What about the proceeds?

It is the responsibility of the estate to pay off debts and distribute funds to beneficiaries.

Generally speaking, sale proceeds of estate property **should be sent to the Executor on behalf of the estate** (not individually) or the attorney representing the estate.

Exceptions to the general rule:

- Court orders

Issues with the Heirs

Missing Estate or Heir Information – What to consider?

- Why are they missing?
- Passage of time
- Current owner title policy?
- Heirship affidavits
- When in doubt – talk with your underwriter!

Red Flags for Estate Transactions

Estate Transaction Red Flags

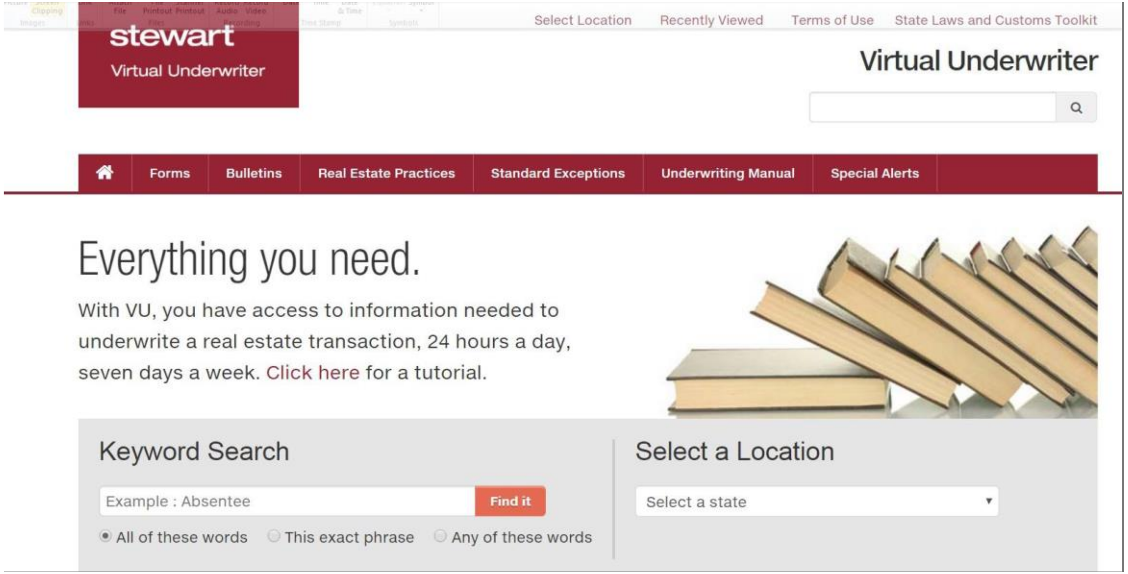
- Self-dealing
- Non-compliance with will
- Decedent judgments
- Beneficiary judgments
- Missing heir information
- Undervalued sale

Key Takeaways

Remember

✓ Ownership controls succession
✓ Verify authority before conveyance
✓ Confirm tax compliance
✓ Watch for estate red flags
✓ When in doubt, consult underwriting

www.VUwriter.com



Virtual Underwriter

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Thank you. Please join us on October 13th, 2026 for our next webinar N2K: Title Law in New Jersey