

14. Death: The Effect of Death upon Registered Land Titles

(May 1, 2000, Revised February 27, 2009)

The purpose of this guideline is to assist attorneys in dealing with title to registered land upon the death of a registered owner. Upon such a death, there are three possible avenues of approach.

THE METHODS OUTLINED ARE, GENERALLY SPEAKING, MUTUALLY EXCLUSIVE.

1. BY WAY OF A LICENSE TO SELL.

This method is usually utilized when the death is fairly recent and when a sale of the real estate is contemplated.

The advantage of this method is that the sale is free of debts of the deceased, costs of administration, legacies and Massachusetts estate taxes.

For details, see Method # 3.

2. BY WAY OF A SALE UNDER THE POWER IN A WILL.

This method is utilized when a sale is contemplated.

Under this method, the sale is free of debts of the deceased, costs of administration and legacies.

For details, see Method # 4.

3. BY WAY OF PETITION FOR A NEW CERTIFICATE AFTER DEATH OF A REGISTERED OWNER.

This method is usually utilized when no sale is imminent. The heirs-at-law or the devisees in the will are entitled to a Certificate of Title in their names.

For details, see Method # 1 and Method # 2.

If Land Court form LCP-2 is presented, an Order of Court will issue. If a deed under a license is presented, the deed is approved. No petition is necessary.

This guideline is not intended to be exhaustive and addresses only the most common situations. With any method, an attested copy of the outstanding Certificate of Title must be presented.

METHOD # 1—DEATH OF ONE TENANT BY THE ENTIRETY OR DEATH OF ANY NUMBER OF JOINT TENANTS BUT THE LAST

Because title to land passes in such situations by operation of law to the surviving co-tenant(s) by right of survivorship, it is unnecessary for the surviving owner(s) to obtain a new certificate of title in order to deal with the property. It is necessary, however, that evidence of the death be noted on the encumbrance sheet of the outstanding Certificate of Title. There should be registered the following:

1. Certified copy of death certificate of deceased owner.
2. If deceased was a tenant by the entirety, an Affidavit of No Divorce. Attached is a form which may be used.

Once the above-mentioned documents are registered, the surviving owner(s) may deal with the property freely without Land Court approval.

However, if the surviving owner(s) requests a certificate of title in his/her name, an "S" petition must be filed at the Land Court Department along with the statutory filing fee, the material referred to in the previous paragraph and an attested copy of the outstanding Certificate of Title. There is no form for such a petition; the surviving owner must simply recite under oath the circumstances, request the cancellation of the outstanding certificate and the issuance of a new certificate in his/her name.

METHOD # 2—PETITION FOR LAND COURT ORDER

This method is used to obtain a new Certificate of Title after the death of a person in whose name alone a Certificate of Title stands, after the death of both tenants by the entirety, after the death of any tenant in common and after the death of the last joint tenant.

1. Land Court Form LCP-2 must be completed and filed at the Land Court along with the statutory filing fee. Note that the petition has two signature sections. The petitioners (heirs or devisees of the deceased owner) may sign the first section of the petition or their attorney may sign for them. The statement in the last paragraph of the petition *must* be signed by the executor or administrator of the estate and the signature must be notarized.
2. An attested copy of the outstanding Certificate of Title must be filed with the petition.
3. Supporting documentation will vary depending upon how title to the property was held:

- (a) *Tenancy by the Entirety/Joint Tenancy—all co-tenants deceased*
 - (i) *as to first to die*, file a death certificate. In addition, an Affidavit of No Divorce must be filed where the owners were tenants by the entirety. (Where there were more than *two* joint tenants, these documents must be filed for each joint tenant to die but the last).
 - (ii) *as to the surviving tenant by the entirety or last joint tenant to die*, file either an abstract of the probate proceedings prepared by a Land Court Examiner, *or*, attested Probate Court copies of the Probate petition, citation, decree, bond, will (and any codicils thereto), inventory, if any, and docket. Attorneys *may not* attest these documents.
- (b) *Tenancy in Common—for each tenant in common who has died*, file all of the material set out in the immediately preceding paragraph 3(a)(ii). If there are surviving tenants in common, each should assent to the petition by signing it to indicate that they are aware that the old certificate is to be canceled and a new one issued in their names and the names of the new tenant(s) in common.
- (c) *Certificate Standing in the Name of One Person*—again, file either an abstract of the probate proceedings, prepared by a Land Court Examiner, *or*, attested Probate Court copies of all probate papers in the estate of the deceased and the Probate Court docket.

4. The result of this procedure will be an attested Order of the Land Court which must be registered at the Land Registration Office at the proper Registry of Deeds. In due course, a new Certificate of Title will be drawn in accordance with the Order.

NOTE:

DEBTS

As to decedents dying before January 1, 1990 the new Certificate of Title will issue subject to debts in the estate of the deceased owner, *unless* one full year has elapsed from the date upon which the bond in the estate was allowed.

As to decedents dying on or after January 1, 1990 claims of creditors are barred at one year from the date of decedent's death.

TAXES

Estate and inheritance taxes are not required to be noted on certificates, G.L. c. 185, § 46. See also Guideline 35.

LEGACIES

Unless there is a specific devise of the real property, if a will directs the payment of legacies, the Land Court requires evidence of their payment unless six years have elapsed from the date of death.

DEVISE TO TRUST

If property is devised to the trustees of a testamentary trust, attested copies of the trustees' appointment and bond must be included with the probate papers.

If real property is devised to the trustees of an *inter vivos* trust which is not on record, the original trust instrument and any amendment(s) thereto or a certificate pursuant to G. L. ch. 184, § 35 must be presented at the Land Court.

The Court Order will issue to the trustees, and the trust will be registered and noted on the new certificate issued.

METHOD # 3—SALE UNDER DECREE (LICENSE) OF PROBATE COURT

This method and Method # 4 are alternatives to Method # 2 and are used when an immediate sale is contemplated. One of the advantages of obtaining a Probate Court decree of sale is that the property will be sold free of debts of the deceased, costs of administration, legacies and Massachusetts estate taxes, a tax release being a prerequisite for obtaining the decree from the Probate Court.

1. *The original or an attested copy of the Decree of the Probate Court* must be presented at the Land Court together with *an attested copy of the Probate Court docket*; the decree must be no more than one year old.
2. *An attested copy of the outstanding Certificate of Title* must be filed.
3. *A fully executed deed* must be presented. The grantor clause should state as follows: "I, _____ Executor/Administrator of the estate of _____ holder of a Decree of the Probate Court of _____ County dated _____, by power conferred by said Decree". The date must be the date the decree issued. The deed must conform in all respects to the decree, thus, the consideration must be equal to or more than the amount specified in the decree. It should be executed on or after the date of the decree.

Likewise, the description of the property in the deed must conform to the description in the decree. There are several Probate Courts whose decrees do not describe the property. If the decree is obtained from one of these courts, the petition filed to obtain the decree must be presented at Land Court. In addition, if the fiduciary is the grantee in the deed, the decree of the Probate Court must state that the fiduciary is permitted to take title.

4. If everything is in order, the deed under the decree will be endorsed "Approved for Registration" and signed by Land Court personnel.

METHOD # 4—DEED UNDER POWER OF SALE IN WILL

The advantage of a sale pursuant to a Power of Sale in the will is that the property is sold free of debts of the deceased, costs of administration and legacies.

1. *An attested Probate Court copy of the will* must be presented at the Land Court. To use this method, the Power of Sale in the will must be unequivocal. The clause containing the power should be marked.
2. Along with the will, file an attested Probate copy of the *Executor's appointment*, together with *an attested copy of the Probate Court docket*. *The certificate of appointment* should be no more than 60 days old.
3. *An attested copy of the outstanding Certificate of Title* must be filed.
4. *The fully executed deed* of the Executor must be filed. The grantor clause should state clearly that the Executor is selling pursuant to the power conferred by the will of the deceased owner. The consideration in the deed *must* be other than nominal.

AFFIDAVIT OF NO DIVORCE

I, _____, Attorney for _____,
being the surviving owner of the premises described in Land Court Certificate of Title No.
_____, depose and say that his wife/her husband, _____, died at
_____ on _____, and at that time there had been no divorce.

Attorney for

Subscribed and sworn to before me this _____ day of _____, 1999

Notary Public