



CHICAGO TITLE INSURANCE COMPANY

TOPIC:	<u>Decedent's Estates</u>
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I. INTRODUCTION

Title companies receive numerous questions regarding the proper method to convey real property following the death of the owner. This is a result of the multiple factual situations which exist under the owner's estate. The death of an owner of an inheritable interest in real property triggers a transfer of title to the property. The title passes through the estate and the result of the transfer is affected by several factors, such as whether or not the owner had a will or died intestate. Among other things, the certifying attorney must determine to whom the title passes, the risk of dissent from a will or a caveat proceeding, whether all known creditors have been paid and the right of any additional creditors to file a claim, and whether federal and/or estate taxes have been paid or will be due. All of these matters can affect the validity of a conveyance of a decedent's real property. This manuscript reviews many of the common problems encountered in determining the status of title to the decedent's real property and the ability of the decedent's heirs/devisees to convey said property.

II. TITLE SEARCH & CLOSING GUIDELINES

Determining whether or not an estate is in an acceptable status for a valid and clear conveyance is a complicated process. The facts of each case vary and can cause very different results. The following is a list of questions which are helpful in determining the exact status of the estate.

1. What is the date of death of the decedent?
2. Did the decedent die a resident of North Carolina?
3. Has an estate file been opened in the county and state of residency of decedent at the time of death and in the county and state where the property to be insured is located?
4. Has a personal representative of the estate been appointed and qualified?.
5. Is there a will? If so, has it been probated?
6. What powers and directives are given the personal representative regarding the property to be insured?
7. Will there be any inheritance/estate taxes due? If yes, have they been paid and what evidence of payment will be furnished? If no, what evidence will be furnished that no taxes are due?

8. Has the Notice to Creditors been published? If so, has time for filing claims passed?
9. Have any claims been filed? If yes, have they been paid and what evidence of payment will we be furnished? If debts or taxes are still outstanding, what assurance be obtained from the Executor or Administrator that they will be filed and paid and the estate closed as required by law?
10. Who are the heirs or devisees? Do any of the heirs have judgments filed in the county in which the property is located?
11. Are any of the heirs or devisees married? (Spouses must sign any conveyance)
12. Were any gifts of the insured property made within 3 years prior to the decedent's death?
13. Was any interest in the property to be insured devised to a trust? If so, what powers and authority are granted to the trustee?
14. If an executor is attempting to convey the property without the joinder of any devisees, was the property specifically devised to the executor of the estate and what powers and authority are granted to the executor?

If the estate is still open the interests, or potential interests, of all heirs, devisees, their spouses and the executor or administrator of the estate must be addressed prior to any conveyance of property. Note - If any potential heirs were disinherited by the will, said potential heirs and their spouses may be required to sign or consent to the conveyance depending upon the circumstances.

RECOMMENDATION: Discuss any questions or outstanding issues with your title insurance company attorney before you draw the documents and distribute them for execution in order to avoid any complications later.

III. TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE

The title company relies upon the attorney to certify that all matters involving administration of the estate are satisfactorily addressed. Therefore, the specific requirements and exceptions are based on what information the certifying attorney provides in the preliminary opinion.

A. Exceptions

If the above questions are met to the satisfaction of the attorney, and any issues are discussed and addressed to the satisfaction of the title company, then no exception for estate matters would be taken. If the estate matters are not resolved to the satisfaction of the title company, then a general exception or an exception specific to a matter will be included in the policy. The general estate exception is as follows: Estate and inheritance taxes and debts or claims of debt against the estate of *.

B. Requirements

When a transaction involves an open estate, the following requirements are commonly employed:

1. Deed execution requirements: Warranty Deed from the executor/administrator of the Estate of *and * (being all of the heirs/devisees of said decedent's estate) and spouse/their respective spouses, if any, to *.
2. Deed of Trust execution requirements: Deed of Trust from the executor/administrator of the Estate of * and * and spouse/their respective spouses, if any, to a Trustee for *, securing \$*.
3. General requirement for open estate: With regard to the Estate of *, verification of payment of all debts and taxes of the decedent's estate (or receipt of a fully executed approved Open Estate Affidavit & Indemnity Agreement).

IV. FORMS

Estate Abstract Sheet
Open Estate Affidavit & Indemnity Agreement
Intestate Heirs Affidavit without Indemnity
Intestate Heirs Affidavit with Indemnity

V. LEGAL DISCUSSION - Author: Jeffrey I. Hrdlicka

A. Background Information

A person ceases to own property at the moment when he or she dies. In estate matters the person who died is referred to as the decedent. In North Carolina, all real property interests which a person owns at the time of death vest immediately in the decedent's heirs at law, however, subject to defeasance by the various estate matters, including probate of a valid Last Will and Testament. NCGS § 28A-15-2(b) and NCGS § 31-39. As a result, any conveyance of a decedent's real property must be given special care to assure that the proper parties are conveying the property and that estate requirements have been met.

B. Terminology

Administrator(trix) - A personal representative appointed by the Clerk of Superior Court for the purpose of managing, settling and distributing the estate of an intestate decedent, usually where either no will is probated or the executor(s) under the will are unable or unwilling to serve.

Decedent - The person who died.

Devisee - A person who receives property under the decedent's will.

Executor(trix) - A person appointed by a testator (now the decedent) to carry out the directions and requests contained in the will and to dispose of the property according to provisions contained in the will.

Heir - An heir is a person who has a right to a share of a decedent's estate because of his or her relationship to the decedent. Please note that the word "heir" is commonly used to describe persons that acquire property from a decedent whether by will or intestate succession. When used herein, the word heir is a reference solely to those persons that are entitled to a share of decedent's property had the decedent died without a will, i.e., through intestate succession. The word "devisee" is a reference solely to those persons entitled to a share of decedent's property under a valid will.

Intestate - A person who dies without having made a valid will or without having disposed of property or part thereof by a valid will.

Intestate Succession – The devolution of the decedent's property to his heir(s) at law pursuant to a statutory scheme when the decedent has died without having made a valid will or without having disposed of property or part thereof by a valid will.

Personal Representative - The executor(trix) or administrator(trix) of the decedent's estate.

Probate – Court procedure (usually done at the clerk's level) by which a will is proved to be valid or invalid.

Testate – Description of an estate where the decedent died leaving a valid, now probated will.

Testator(trix) – The decedent who died leaving a will.

Will – Usually the "Last Will and Testament" of the decedent. In order to qualify, it must comply with strict rules in North Carolina and be probated both in the county and state where the decedent was a resident at death, and in the county where the property to be insured is located.

C. Vesting of Property

Title to the decedent's real property transfers at death and is vested into the successor owner pursuant to four potential methods:

1. Passed by Intestacy to the Decedent's Heirs – Title is vested in the decedent's heirs at the time of death. NCGS § 28A-15-2(b). If a will of the decedent is later found and successfully probated, then the property may revert into the devisees under the will. If no will is found and successfully probated, then title will remain with the intestate heirs. The personal representative of the estate has the ability in certain situations, and after following certain procedure, to take possession, custody and control of the property. This action could divest title from the intestate heir.

2. Devised to a Devisee – If the will of the decedent is probated and found to be valid, then title is vested in the devisees. NCGS § 28A-15-2(b). The vesting relates back to the decedent’s death, subject to the provisions of NCGS § 31-39. (See Subsection E.1 Will Probated below) The personal representative of the estate has the ability in certain situations, and after following certain procedure, to take possession, custody and control of the property. This action could divest title from the devisee.
3. Devised to an Executor – The will may devise the property specifically to the executor of the estate. This devise is usually accompanied with an instruction on how the executor should dispose of the property. For example, the will may instruct the executor to sell the decedent’s real property and divide the proceeds among the decedent’s children.
4. By Operation of Law – Prior to the decedent’s death, the real property may have been titled in such a manner that it does not pass through the estate. This would include property held by the decedent under a life estate or joint tenancy with right of survivorship. In both of these cases, the decedent’s interest in the property ends at death.

D. Sales of Property while the Decedent’s Estate is Open

Real property is usually sold under one of three situations while the estate is still open. These situations are as follows:

1. By the Personal Representative with Court Authority - The personal representative of an estate has authority to petition the clerk of court to sell property, including real property which has passed to the decedent's heirs, only to satisfy debts and taxes of the estate and *not* to liquidate the estate for the purported convenience of the heirs or devisees in dividing it up. NCGS § 28A-15-1 and NCGS § 28A –17-1. The Petition must include (1) a description of the real property to be sold; (2) the names, ages and addresses, if known, of the devisees and heirs of the decedent; and statement that the personal representative has determined that it is in the best interest of the administration of the estate to sell the real property. NCGS § 28A-17-2. The heirs and devisees are necessary parties to the proceeding and the petition must be served on the heirs or devisees and the sale approved by the clerk of court. NCGS § 28A-17-4. If these matters are satisfied, the property may be conveyed by a deed executed only by the personal representative.
2. By the Executor without Court Authority - The certifying attorney may report that property is being sold by the executor under authority contained in the will. The heirs of the decedent will not execute the conveyance. This is permissible only in two situations:
 - a. If the will specifically conveys the property to the Executor *or* only devisees *proceeds* to the devisees, *and* the will instructs the executor to sell this real property; *or*
 - b. The will gives the executor the power to sell **and** the will devises the real property to the estate and not to a devisee.

NOTE: An argument exists in North Carolina as to whether or not N.C.G.S. 28A-15-1(c) alleviates the need to require the joinder of heirs in certain situations. This statute provides as follows:

If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, **except that no such proceeding shall be required for a sale made pursuant to authority given by will.** A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17.

Where a will gives the executor the power to sell and the will devises the property to devisees other than the estate, this statute appears to give the executor the authority to convey the property without the joinder of the devisees or by obtaining court authority. This contrary to the holding in the 1980 case of Montgomery v. Hinton, 45 N.C. App 271, 262 S.E. 2d 697 (1980). The Montgomery case involved a will that devised property to a minor and granted the executor the powers set forth in NCGS § 32-27, which included the power of sale. The executor attempted to sell the property without bringing a special proceeding to obtain court authority. The Court held that title to property had vested with the devisee and the executor could not executor could not sell the property without obtaining court authority pursuant to NCGS § 28A-13-3(c). The Court stated that to allow such a sale "would be to grant to all executors unbridled discretion to dispose of devised real estate without showing any reason or necessity therefor and without the knowledge of the devisee." 45 N.C. App. 271 at 275.

This issue is receiving the attention of the General Assembly. The current Editor's Note to NCGS §§ 28A-15-2 and 28A-15-2 indicates that "the General Statutes Commission is directed to study and report to the General Assembly on the personal representative's authority to take possession of and dispose of real property of an estate without order of the court." The study is to include examination of 28A-15-1, 28A-15-3, 32-27(2), and the provisions of House Bill 716, Second Edition, of the 2001 General Assembly. This edition of House Bill 716 sought to resolve this issue by allowing the personal representative to sell the decedent's real property pursuant to authority granted by the will without a court order and without the joinder or consent of the devisees. Prior to taking possession and conducting a sale of the real property, the personal representative would be required to file a Notice of Intent to take such action with the clerk of superior court in the county where the estate is pending and any other county where the property is located. The notice shall describe the real property, state the basis and purpose for taking possession, custody and control and conducting the sale, and shall list the names and addresses of the decedent, the devisees, and the personal representative. The Notice of Intent also must be served on all devisees of the real property in any manner prescribed in Rule 4 of the Rules of Civil

Procedure. **Please note that this legislation is pending and may or may not enacted in this form or any other form.**

As a result of the controversy, practicing attorneys differ in their opinions on this statute. This creates a marketability risk. A later potential buyer may question to the seller's title to property acquired from a sale by the executor without court authority.

3. By the Heirs - Real property that passes to the heirs may be conveyed by the heirs if the following requirements are met:
 - a. Status of the estate is acceptable - Please refer to the Status of Estate at the Time of Conveyance section below.
 - b. All spouses of heirs/devisees have joined in the execution of the conveyance.
 - c. If an heir/devisee is incompetent or a minor, then a guardian must be appointed, and the guardian must obtain a court order approving the sale. Please note that the sale of a minor's interest in real property must be approved by a Superior Court Judge. NCGS § 35A-1301.

E. Status of Estate File at Time of Conveyance

Title companies rely upon the certifying attorney to review the decedent's estate file to determine that the will is probated, the identity of the heirs when intestate, an Estate Tax Release/Certification is filed, the Notice to Creditors was published, and a Final Accounting is filed at the time of a conveyance. The reasons for each of these are as follows:

1. Will Probated – Probating a will and having it found to be valid establishes the decedent's devisees, thereby naming the owners of the property who will be required to sign the conveyance. No will shall be effectual to pass real property unless it has been probated in the court of the proper county, and a certified copy thereof is recorded in the office of the clerk of superior court of the county wherein the land is located. NCGS § 31-39.

Please note that conveyances made two years after the death of the a testator or after the filing and approval of the final account to innocent purchasers from the heirs at law of the testator shall not be affected by the probate and registration of any will. NCGS § 31-39.

2. Intestate Succession – Intestate succession is a statutory scheme under which the decedent's property devolves to his heir(s) at law. It applies when the decedent has died without having made a valid will or without having disposed of property or part thereof by a valid will. To whom the property passes depends upon the number of relatives the decedent had and their exact relation to the decedent. NCGS §§ 29-14, 29-15 and 29-16 describe the scheme. The following chart demonstrates how the title to the decedent's property would pass pursuant to those statutes in various situations:

Only Surviving Family/Relatives

Title

No relatives	Escheat
Spouse	All real property to spouse
Spouse and one child or lineal descendents of only one deceased child	1/2 to spouse, 1/2 to child/descendents of deceased child
Spouse and two or more children or one child and lineal descendents of one or more deceased children or lineal descendents of two or deceased children	1/3 to spouse, 2/3 shared by children/descendents of deceased child/children
Spouse and one or more parents	1/2 to spouse, 1/2 to parents
One or more parents and one or more children	All to the child/children
One or more parents	If one – all real property; if two – 1/2 each
One or more children	If one – all real property, if two – 1/2 each, if three – 1/3 each; ...
One child and two grandchildren from a deceased child	1/2 to child, 1/4 to each grandchild
One child, one grandchild from a deceased child, and two grandchildren from another deceased child	1/3 to child, 2/9 to each grandchild

The most problematic aspect title to real property which passes under intestacy is accounting for all heirs of the decedent. In some cases there is no reliable source to establish the identity of all of the decedent’s heirs. In other cases the names of all the heirs are known, but their location is not. Title companies may be willing to rely upon affidavits from parties familiar with the decedent, but uninterested in the current transaction. Indemnities may also allow title companies to insure a transaction. These situations are handled on a case-by-case basis.

3. Estate Tax Release/Certification (formerly the Inheritance Tax Release/Certification) - The estate may be required to pay federal and/or state estate taxes depending the total value of all estate property. If estate taxes are due, the personal representative may petition the clerk to sell property, including real property which has passed to the decedent’s heirs or devisees, to pay the tax amount. This acts as defeasance of the heirs’ or devisees’ ownership interests in the property, and therefore anyone taking title solely through the heirs or devisees. If this occurs after a conveyance of the property, then the new owner may suffer a loss of title. If the personal representative fails to pay the tax amount, then the IRS or the NC Department of Revenue has a lien on the property. Once again, this could result in a loss of title for the new owner.

The Estate Tax Release/Certification establish that taxes either have been paid or that no taxes are due. Estate taxes only apply to estates which have a total in excess of the federal credit amount for state death taxes. NCGS § 105-32.2(b). This amount will escalate over the next several years as follows:

Decedent's Year of Death	Credit Amount
2003.....	\$1,000,000.
2004 and 2005.....	\$1,500,000.
2006, 2007 and 2008.....	\$2,000,000.
2009.....	\$3,000,000.

If the estate's total value is less than the credit amount for corresponding year of decedent's death, then estate taxes will not be due.

For the estates of decedents dying prior to January 1, 1999, North Carolina had an Inheritance Tax system. Payment of inheritance taxes would negate any requirement to pay estate taxes. Effective January 1, 1999, the inheritance tax was repealed. This changed our focus from requiring payment of inheritance taxes to requiring payment of estate taxes for estates opened after January 1, 1999. For estates of decedents dying prior to January 1, 1999, payment of inheritance taxes is still required.

The statute of limitations on enforcing estate tax liens, federal and state, is 10 years from the due date. NCGS § 105-32.6. So any estate of a decedent dying up to approximately 11 years prior to closing (allowing for extensions, etc.) should be carefully reviewed. A confusing situation has arisen with regards to the statute of limitations for inheritance tax liens. The entire Article of the inheritance tax statutes was repealed. This included former NCGS § 105-20, which established a 10 year statute of limitations for enforcing an inheritance tax lien. As a result it is unclear if any statute of limitations applies for tax liens when dealing with an estate in which the decedent died before January 1, 1999.

4. Notice to Creditors and Final Accounting - An unsecured creditor (any party owed money by the decedent) is entitled to have his claim paid from the assets of the estate. If a creditor files a claim against the estate, the personal representative may petition the clerk to sell property, including real property which has passed to the decedent's heirs or devisees, to pay the amount claimed. This acts as defeasance of the heirs'/devisees' ownership interests in the property, and anyone claiming through them. If this occurs after a conveyance of the property, then the new owner may suffer a loss of title.

The time in which creditors can file a claim which affects title to real property is limited under NC statutes. Under NCGS § 28A-14-1, the personal representative may file a Notice to Creditors which establishes the time in which creditors may file a claim. If the personal representative has published a Notice to Creditors and the time for filing claims has passed with no claims being filed, then the property may be conveyed and insured without exception for the claims of creditors. If any claims are filed, then the title company may

require that either (1) the claims are paid and the final accounting filed, or (2) a letter from the attorney that is handling the estate which states that there are sufficient estate assets to pay the claims without selling this property.

NCGS § 28A-17-12(a) addresses sales occurring when Notice to Creditors has been published or posted pursuant to 28A-14-1 within two years after the date of death of the decedent. Under subsection (a)(1), if the sale occurs prior to the first publishing or posting, then the sale is void as to creditors and personal representatives. This places the title to the property at great risk and such a sale is almost always uninsurable.

Under subsection (a)(2), if the sale occurs after the first publishing and before approval of the final accounting, then the sale is void as to creditors and personal representative unless the personal representative joins in the sale. In this situation title companies may rely on this statute and insure the sale. The title company will require the personal representative to sign a personal undertaking and join the heirs (and their spouses) in executing the deed.

NCGS § 28A-17-12(b) addresses sales occurring where the first publication or posting of the Notice to Creditors does not occur within two years after the date of the death of the decedent. In such a situation a deed from the heirs (and their spouses) shall be valid as to creditors and personal representatives of the decedent. Title companies will insure a sale in the situation as the purchaser's title will have priority over later filed claims of creditors.

F. Special Circumstances

1. Tenancy by the Entirety - Real property held in Tenancy by the Entirety automatically vests title in the surviving spouse upon death of the other spouse. This is called a "right of survivorship". The real property does not pass through the decedent spouse's estate, unless the surviving spouse disclaims the property.
2. Contract to Sell by the Decedent - In rare cases, a decedent may have entered into a contract to sell property and died prior to closing on the sale. In such a case, the personal representative can complete the contract and convey the property without court approval or joinder of the heirs or devisees. The proceeds of the sale must be paid into the estate. N.C.G.S. § 28A-17-9. Title companies may insure the conveyance of the property upon satisfactory evidence that all other estate matters are acceptable.
3. Caveat – The validity of a will may be attacked in a caveat proceeding. The purpose of the proceeding is to determine whether the paper-writing purporting to be a will is in fact the last will and testament of the person for whom it is propounded. In re Will of Spinks, 7 N.C. App. 417, 173 S.E. 2d 1 (1970). The caveat may be brought at the time of application for probate, the probate thereof in common form, or within three years thereafter, by any person entitled under the will or interested in the estate. NCGS § 31-32.
4. Judgments Against Heirs - The title examination may reveal that there is a judgment docketed against an heir or devisee. This judgment *does* attach to the inherited/devisee

property, as title passes at the time of the decedent's death. As a result, title companies will require that any such judgment be satisfied or that the lien be released from the property to be insured prior to insuring a conveyance from the heir/devisee, even if the judgment is for substantially more than the debtor-heir's/devisee's undivided interest. A sale by a personal representative under a special proceeding pursuant to NCGS § 28A-13-3(c) does have priority over the lien of a judgment against an heir. The proceeding to sell must be brought in the best interest of the administration of the estate, such as to satisfy debts or claims against the estate. Its purpose cannot be convenience for the heirs or to avoid a judgment against an heir.

5. Medicaid Lien - In certain situations, Medicaid may obtain a lien on real property formerly owned by the decedent. If the title examination reveals a medicaid lien or the potential of a medicaid lien because of conveyances for inadequate consideration within 3 years prior to the decedent's death, the title company may take exception to said lien.

In response to the rising costs of the Medicaid program, the federal government enacted mandatory estate recovery under the Omnibus Budget Reconciliation Act of 1993 (OBRA). This Act requires states to recover the cost of Medicaid benefits received from estates of individuals who were fifty-five or older when the benefits were received. 42 U.S.C. 1396p. NCGS § 108-70.5 establishes North Carolina's Estate Recovery Plan in the Department of Health and Human Services. While OBRA gives states the authority reach property outside of the recipient's probate estate, North Carolina has chosen to define "Estate" as the real and personal property considered assets of the estate available for the discharge of debt pursuant to NCGS § 28A-15-1. In recovery, the Department is a fifth class creditor under NCGS § 28A-19-6.

6. Ancillary Administration - Often a decedent was a resident of another state and owned property in NC. In order for the heirs, devisees or personal representative to sell the NC property, an estate proceeding must be filed with the Clerk of Superior Court in the NC county where the property is located. This is called an ancillary administration. In an ancillary administration, an in-state representative is appointed and that representative administers the estate pursuant to NC law. NCGS § 28A-26-1, *et seq.*

Possible Exception - One fact situation may create a possible exception to the need to require an ancillary administration. If several years have passed since the date of death of the decedent, and satisfactory evidence can be obtained that establishes proper identification of the heirs or devisees and all estate and inheritance taxes have been paid (to North Carolina and the United States Internal Revenue Service), then title companies may be able to insure a conveyance by the heirs without an ancillary administration. Whether or not the sale can be insured will vary from case to case based upon the facts. This situation must be discussed with and approved by counsel for the title company prior to closing.

7. Anti-Lapse Statute – NCGS § 31-42 addresses what happens when a devisee predeceases a testator. The purpose of the Anti-Lapse statute is to provide a mechanism to complete a testator's wishes when a devisee has predeceased. North Carolina Courts have recognized

that intestacy should not be favored where a testator has made a will for the purpose of disposing of property. Faison v. Middleton, 171 N.C. 170, 88 S.E. 141 (1916).

Subsection (a) of the statute provides:

Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendent of a grandparent of the testator, then the issue of the predeceased devisee shall take the place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death....

This scheme allows the property to pass to the direct descendants of the deceased devisee, if the deceased devisee is of close family relationship - grandparent of or a descendent of a grandparent – of the testator.

Subsection (b) of the statute addresses the situation where the provision of subsection (a) do not apply and provides:

Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in the proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

The Anti-Lapse was amended in 2001 and 1999. The amendments changed the relationship requirements for the Anti-Lapse statute to apply. The prior statute required the issue of the devisee to have been an heir of the testator under the Intestate Succession Act. Prior amendments also made clear that the devisee may have predeceased the testator prior to the execution of the will.

8. Renunciation – A devisee under a will or a heir under intestacy may renounce in whole or in part the right of succession to any property or interest therein of the decedent. NCGS § 31B-1. A written instrument renouncing the interest must be filed in order for the renunciation to be effective. NCGS § 31B-1. The instrument shall (i) describe the property renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the person authorized to renounce. NCGS § 31B-1(c). The instrument must be filed with the clerk of court in the county where the estate is being administered and in the office of the register of deeds where the real property is located. NCGS § 31B-2(c) and (d). To be a qualified disclaimer for federal and state inheritance, estate and gift tax purposes, the filing must occur within the time period required under the applicable federal statute for renunciation. NCGS § 31B-2(a). If no such federal statute applies, then the instrument must be filed within nine months after the date of the transfer was complete for

the purpose of such taxes. NCGS § 31B-2(a). If the instrument is filed within the above-described time frames, then the property shall pass as if the renouncer died immediately prior to the decedent. NCGS § 31B-3(a)(1). If the instrument is filed after the time frames, then the property or interest devolves as if the renouncer had died on the date the instrument is filed. 31B-3(a)(2).

9. Surviving Spouse - Election of Life Interest/Elective Share – Dower and curtesy have been abolished in North Carolina; however, the provisions of NCGS § 29-30 and NCGS § 30-3.1, et seq., preserve similar property rights for the surviving spouse of a decedent.
 - a. Election of Life Interest – NCGS § 29-30 provides that in lieu of taking an intestate share or an elective share of the decedent’s property, a surviving spouse shall be entitled to take a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture. The real estate does not include any property to which the surviving spouse waived, released or quitclaimed their interest. The surviving spouse must file a notice of the election with the clerk of court in the county where the estate is being administered, or, if no estate is being administered, in the any county where the estate could be administered. NCGS § 29-30(c). The notice shall be (1) directed to the clerk; (2) state that the surviving spouse elects to take under NCGS § 29-30 rather than the provisions of NCGS §§ 29-14, 29-21 or 30-3.1., as applicable; (3) set forth the names of all heirs, devisees, legatees, personal representatives and all persons in possession of or claiming an interest in the subject property; and (4) request the allotment of the life estate provided for in NCGS § 29-30(a). NCGS § 29-30(c1). The notice must be filed (1) at any time within one month after the expiration of the time for a petition for an elective share (see below); (2) if intestacy, within 12 months of the date of death of the decedent if letters of administration are not issued within that period; (3) if letters of administration are issued within 12 months of the decedent’s date of death, then within one month after the expiration of the time limited for filing claims against the estate; or, (4) if litigation that affects the surviving spouse’s share of the estate is pending, then within reasonable as allowed by an order of the clerk of superior court. NCGS § 29-30 (c).
 - b. Elective Share – Article 1A of Chapter 30 of the statutes provides that a surviving spouse may claim an “elective share”. The elective share is an amount equal to (i) the applicable share of Total Net Assets, as defined by NCGS § 30-3.2(4), less (ii) the value of Property Passing to Surviving Spouses, as defined by NCGS § 30-3.3. NCGS § 30-3.1(a). The applicable share is based upon the number of children and lineal descendants which survive the decedent. If the decedent is survived by no lineal descendants, or one child, or lineal descendants of one deceased child, then one-half of the Total Net Assets. NCGS § 30-3.1 (1) and (2). If the decedent is survived by two or more children, or one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, then one-third of the Total Net Assets. NCGS § 30-3.1(3). The applicable share may also be reduced by one-half, if the surviving spouse is a second or successive spouse and the decedent has one or more lineal descendants surviving by a prior marriage but there are

no lineal descendants surviving by the surviving spouse. NCGS § 30-3.1(b). The claim for the elective share must be within six months after the issuance of letters testamentary or letters of administration with respect to the administration of the decedent's estate. NCGS § 30-3.4. The claim is made by filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies and by mailing or delivery a copy of the petition to the personal representative of the estate. NCGS § 30-3.4(b). Unless waived by the personal representative and the surviving spouse, a hearing shall held no earlier than months and no later than six months after the filing of the petition. NCGS § 30-3.4(c).

10. Slayer Statute – NCGS Chapter 31A addresses acts barring property rights. This includes the rights of a slayer to inherit or take property by operation of law. NCGS § 31A-3 defines a slayer as any person pleading guilty or nolo contendere to or found guilty in a criminal action as primary actor or accessory of the willful and unlawful killing of another from whom they would otherwise take title to property. A person found to have willfully and unlawfully killed the decedent in a civil action brought within one year of the death, and who shall have died before having been tried for the offense and before the settlement of the estate is also considered a slayer. The slayer is barred or limited in their ability to take such title to property they otherwise would have received at the decedent's death as set out in the following statutes:

NCGS § 31A-4. Slayer barred from testate or intestate succession and other rights.

The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

- (1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession or by common law or statutory right as surviving spouse of the decedent.
- (2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate succession and the slayer has living issue who would have been entitled to an interest in the property if the slayer had predeceased the decedent, the property shall be distributed to such issue, per stirpes. If the slayer does not have such issue, then the property shall be distributed as though the slayer had predeceased the decedent.
- (3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, the devolution of such property shall be governed by G.S. § 31-42(a) notwithstanding the fact the slayer has not actually died before the decedent.

NCGS § 31A-5. Entirety property.

Where the slayer and decedent hold property as tenants by the entirety, one half of the property shall pass upon the death of the decedent to the decedent's estate, and the other one half shall be held by the slayer during his or her life, subject to pass upon the slayer's death to the slain decedent's heirs or devisees as defined in G.S. 28A-1-1.

NCGS § 31A-6. Survivorship property.

- (a) Where the slayer and the decedent hold property with right of survivorship as joint tenants, joint owners, joint obligees or otherwise, the decedent's share thereof shall pass

immediately upon the death of the decedent to his estate, and the slayer's share shall be held by the slayer during his lifetime and at his death shall pass to the estate of the decedent. During his lifetime, the slayer shall have the right to the income from his share of the property subject to the rights of creditors of the slayer.

(b) Where three or more persons, including the slayer and the decedent, hold property with right of survivorship as joint tenants, joint owners, joint obligees or otherwise, the portion of the decedent's share which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one half of the property then held by the slayer shall pass immediately to the estate of the decedent, and upon the death of the slayer the remaining interest of the slayer shall pass to the estate of the decedent. During his lifetime the slayer shall have the right to the income from his share of the property subject to the rights of the creditors of the slayer.

Estate Abstract Sheet

Decedent: _____

Estate File No.: _____ **Date of Death:** _____

Testate: _____ **Intestate:** _____ **Administration:** _____

Heirs/Devisees/Surviving Spouse: (include age of each if available) _____

Approximate Gross Value of Estate: \$ _____

Executor/Administrator (trix): _____

Date of Qualification: _____

Affidavit of Publication of Notice to Creditors Filed: () Yes () No If Yes, Dates Published: _____

Claims Filed? () Yes () No

If Yes, Comments: _____

Final Account Filed: () Yes () No If Yes, Date Filed: _____

Tax Release(s)/Certification(s) Filed: () Yes () No

Notes:

CHICAGO TITLE INSURANCE COMPANY
OPEN ESTATE AFFIDAVIT AND INDEMNITY AGREEMENT

NOTE: THIS FORM IS TO BE USED ONLY IN SITUATIONS WHICH HAVE BEEN SPECIFICALLY
APPROVED BY AN UNDERWRITER FOR CHICAGO TITLE INSURANCE COMPANY PRIOR TO
CLOSING

This **AFFIDAVIT AND INDEMNITY AGREEMENT** (hereinafter "Agreement") made and entered into as of the _____ day of _____, 20____, by and between _____

_____ (collectively, and jointly and severally if more than one, hereinafter "Indemnitor"), and CHICAGO TITLE INSURANCE COMPANY (hereinafter "Company").

WITNESSETH:

WHEREAS, Company has been asked to issue its title insurance commitment(s) and/or policy or policies insuring against loss or damage by reason of defects or possible defects in the title to property described as follows (hereinafter "Property"):

WHEREAS, the Property was formerly owned by:

Decedent: _____
Date of Death: _____
Estate File No: _____
County: ___; and

WHEREAS, Decedent's estate has not been fully administered and closed; and

WHEREAS, title to the Property has passed under Decedent's will admitted to probate or pursuant to the laws of intestacy to the following parties (please indicate if minor or incompetent): _____

_____ ; and

WHEREAS, _____ has been appointed by the Clerk of Superior Court as _____ Executor _____ Administrator of Decedent's estate; and

WHEREAS, if Decedent died within the preceding two years, the Notice to Creditors has been published at least once; and

WHEREAS, Company has noted as exceptions to the aforesaid title the following actual or supposed rights, interests, liens, claims, encumbrances or defects in title (hereinafter "Title Matter"):

The Property is or may be subject to matters resulting from the incomplete administration of Decedent's estate including but not limited to: any debts or claims of debt of the estate of Decedent; potential estate and/or inheritance taxes; appeal of any order admitting a will to probate; institution of a suit impeaching such will; filing of a claim for an elective share; filing of a renunciation of any interests in property; discovery and probate of a later will; claims or interests of any undisclosed or disinherited heirs or undisclosed spouses of heirs or devisees; disqualification of any heir or devisee of Decedent's estate; and any claim of unmarketability of title.

WHEREAS, Indemnitor desires Company issue its title insurance commitment(s) and/or policy or policies without exception to or providing affirmative coverage for the Title Matter; and

WHEREAS, Company may concurrently herewith or hereafter in the ordinary course of its business issue another commitment and/or policy in the form or forms now or then commonly used by Company insuring without exception to or providing affirmative coverage for the Title Matter; and

WHEREAS, Company is willing to issue its commitment(s) and/or policy or policies without exception to or providing affirmative coverage for the Title Matter only if indemnified as herein set out.

NOW, THEREFORE, for and in consideration of the issuance of said title insurance commitment(s) and/or policy or policies and other good and valuable consideration, the receipt of which is hereby acknowledged, Indemnitor does hereby agree with Company as follows:

1. Indemnitor agrees to defend, at Indemnitor's own cost and expense on behalf of and for the protection of Company and the parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies (but without prejudice to the right of Company to defend at the reasonable expense of Indemnitor if it so elects), any and every suit, action or proceeding in which the Title Matter may be asserted or attempted to be asserted, established or enforced in, to, upon, against or in respect to the Property, or any part thereof, or interest therein.
2. Indemnitor agrees to indemnify and hold Company and any parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies harmless of and from any and all loss, costs, damage and expense of every kind, including attorney's fees, which Company and/or said parties shall or may incur or become liable for as a result of the Title Matter, directly or indirectly, including but not limited to diminution in value, unmarketability of title and actions to enforce this Agreement.
3. Each and every provision of this Agreement shall extend to and be in force concerning any and every other title insurance commitment and/or policy Company may at any time or times hereafter issue insuring without exception to or providing affirmative coverage for the Title Matter.
4. This Agreement contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.
5. This Agreement is made to induce the purchase of and/or a loan secured by the Property described herein and the issuance of a title insurance commitment(s) and/or policy or policies relating to same. Indemnitor acknowledges that Company is relying on the representations and indemnifications contained herein in issuance of said commitment(s) and/or policy or policies. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Indemnitor, its/their successors and/or assigns.

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

ENTITY NAME

Printed/Typed Name: _____ (SEAL)

By: _____
Printed/Typed Name: _____
Title: _____

Address: _____
Social Security No. _____

(SEAL)

By: _____
Printed/Typed Name: _____
Title: _____

Printed/Typed Name: _____
Address: _____
Social Security No. _____

(SEAL)

Entity Address: _____
Tax Identification No. _____

Printed/Typed Name: _____
Address: _____
Social Security No. _____

(SEAL)

STATE OF ___ COUNTY OF _____

Sworn to and subscribed before me this the _____
day of _____, 20____.

Printed/Typed Name: _____
Address: _____
Social Security No. _____

Notary Public

My Commission Expires: _____

Notary Seal

CHICAGO TITLE INSURANCE COMPANY
Intestate Heirs Affidavit with Indemnity

State of North Carolina
County of _____

Affiant: _____
Current Address: _____

Closing Attorney: _____
Title Insurance Company: _____
Property (to be insured): _____

I, the Affiant, am a resident of the above county and state, currently residing at the address above. I hereby certify as follows:

1. I am familiar with the family and relatives and of _____ (hereinafter "the decedent") and have been so for _____ years. I am familiar with the decedent as follows:
_____ (i.e, neighbor, friend,...)

2. The decedent was survived at the time of his/her death by the following family and relatives:
Spouse (indicate marital status): _____
Children (indicate marital status): _____

Children of predeceased children (indicate marital status): _____

(If the decedent was not survived by any children or children of predeceased children, please list other surviving relatives (parents, siblings, aunts/uncles, or cousins)):

Name	Relation to Decedent/Marital status
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. To the best of my knowledge, the above-named person(s) are the closest relatives/next of kin of the decedent at the time of his/her death.
4. To the best of my knowledge, the decedent died without an existing Last Will and Testament.
5. I hereby give this affidavit for the purpose of inducing the above Closing Attorney to close the transaction regarding the Property above, and the above Title Insurance Company (hereinafter "Company") to insure title without exception to rights of any potential heir of the decedent not named in paragraph #2 above (hereinafter "Title Matter"). For and in consideration of the issuance of the title insurance commitment(s) and/or policy or policies and other good and valuable consideration, the receipt of which is hereby acknowledged, I, the affiant, hereby agree with Company as follows:
 - a) Affiant agrees to defend, at Affiant's own cost and expense on behalf of and for the protection of Company and the parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies (but without prejudice to the right of Company to defend at the reasonable expense of Affiant if it so elects), any and every suit, action or proceeding in which the Title Matter may be asserted or attempted to be asserted, established or enforced in, to, upon, against or in respect to the Property, or any part thereof, or interest therein.
 - b) Affiant agrees to indemnify and hold Company and any parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies harmless of and from any and all loss, costs, damage and expense of every kind, including attorney's fees, which Company and/or said parties shall or may incur or become liable for as a result of the Title Matter, directly or indirectly, including but not limited to diminution in value, unmarketability of title and actions to enforce this Agreement.
 - c) Each and every provision of this Agreement shall extend to and be in force concerning any and every other title insurance commitment and/or policy Company may at any time or times hereafter issue insuring without exception to or providing affirmative coverage for the Title Matter.
 - d) This Agreement contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.
 - e) This Agreement is made to induce the purchase of and/or a loan secured by the Property described herein and the issuance of a title insurance commitment(s) and/or policy or policies relating to same. Affiant acknowledges that Company is relying on the representations and indemnifications contained herein in issuance of said commitment(s) and/or policy or policies. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Affiant, its/their successors and/or assigns.

This the _____ day of _____, 20__.

_____(SEAL)
AFFIANT

STATE OF NORTH CAROLINA
COUNTY OF _____

On this ____ day of _____, 200__ , personally appeared before me, the said named _____, to me known and known to be the person described in and who executed the foregoing instrument and he/she acknowledged that he/she executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Witness my hand and official notarial seal, this the _____ day of _____, 199__.

My Commission Expires: _____

Notary Public

CHICAGO TITLE INSURANCE COMPANY
Intestate Heirs Affidavit without Indemnity

State of North Carolina
County of _____

Affiant: _____
Current Address: _____

Closing Attorney: _____
Title Insurance Company: _____
Property (to be insured): _____

I, the Affiant, am a resident of the above county and state, currently residing at the address above. I hereby certify as follows:

1. I am familiar with the family and relatives and of _____ (hereinafter "the decedent") and have been so for _____ years. I am familiar with the decedent as follows:
_____ (i.e, neighbor, friend,...)

6. The decedent was survived at the time of his/her death by the following family and relatives:

Spouse (indicate marital status): _____

Children (indicate marital status): _____

Children of predeceased children (indicate marital status): _____

(If the decedent was not survived by any children or children of predeceased children, please list other surviving relatives (parents, siblings, aunts/uncles, or cousins)):

Name	Relation to Decedent/Marital status
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

7. To the best of my knowledge, the above-named person(s) are the closest relatives/next of kin of the decedent at the time of his/her death.
8. To the best of my knowledge, the decedent died without an existing Last Will and Testament. I hereby give this affidavit for the purpose of inducing the above Closing Attorney to close the transaction regarding the Property above, and the above Title Insurance Company to insure title without exception to rights of any potential heir of the decedent not named in paragraph #2 above.

This the _____ day of _____, 20__.

_____(SEAL)
AFFIANT

STATE OF NORTH CAROLINA
COUNTY OF _____

On this ____ day of _____, 200__ , personally appeared before me, the said named _____, to me known and known to be the person described in and who executed the foregoing instrument and he/she acknowledged that he/she executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Witness my hand and official notarial seal, this the _____ day of _____, 199__.

Notary Public

My Commission Expires: _____