

Title Tips - "Informal Administrator"

February 11, 2008

Question: The sole owner of the property for which we have received an application for title insurance has died. The seller is proposing to give a deed as "informal administrator/administratrix" of the decedent's estate. What is that and is it acceptable?

Answer: With limited exception, this will not be acceptable.

Under New Jersey law (N.J.S.A. 3B:10-3), where the total value of the real and personal assets of the estate of an intestate does not exceed \$20,000.00, the surviving spouse (which includes domestic partners and civil union partners) is entitled to all of the assets of the decedent without formal administration. The surviving spouse must file an affidavit setting forth specific information required by the statute with the Surrogate of the county in which the decedent resided at the time of his/her death. The statute provides that "upon the execution and filing of the affidavit... the surviving spouse... shall have all of the rights, powers and duties of an administrator duly appointed for the estate."

Where there is no surviving spouse, an heir may likewise obtain the rights, powers and duties of an administrator by the filing of an affidavit however the total value of the real and personal assets in such a case cannot exceed \$10,000.00 and the affidavit-filing heir must have the written consent of all remaining heirs to do so. (N.J.S.A. 3B:10-4)

If the real property in question is being sold for more than the respective dollar amount limitations cited above the estate probably does not qualify for "informal administration" and we are unwilling to accept a deed executed by the party who filed the affidavit under the statute (the surviving spouse or the heir). We will require that they obtain formal appointment as administrator/ administratrix for the decedent's estate.

In the unlikely event that the real property in question is being sold for less than the limitation amount, we may be willing to accept a deed executed by the party filing the affidavit however, assistance from a member of our underwriting staff should be obtained.

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