

Title Tips - "When Can You Use an Affidavit of Heirship?"

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Question: The vested owner of the property under examination died several years ago allegedly without a will and no personal representative was ever appointed for the estate. The seller's attorney is proposing giving a deed executed by all heirs with an affidavit of heirship. Would this be acceptable to the title company?

Answer: Generally, no.

There are a number of reasons that the estate should be filed and processed through the surrogate's office in accordance with New Jersey law. Most obviously, the process creates a record and grants formal (legal) authority for dealing with the decedent's assets. Filing for administration of a decedent's estate in New Jersey is a relatively simple and inexpensive process. In addition, it is a way to ensure that the appropriate transfer, inheritance and federal taxes are paid for the estate, if any are due.

On the other hand, an heir who is trying to convey a decedent's property without following the formal procedure may be trying to hide something, avoid taxes or defraud other heirs. None of these are activities in which we wish to become involved.

Thus, the best and preferable practice is to require that a personal representative be appointed for the estate and that the deed come out of such personal representative, and the heirs if applicable. This will also enable you to obtain an Estate Questionnaire in order to determine whether any taxes or other decedent debts are payable. You may need to determine whether any of the heirs is living in the premises to be sold and whether any judgments against that heir must be paid from the closing proceeds.

We do recognize, however, that there are rare circumstances where we may be willing to accept a deed signed by all heirs along with an heirship affidavit. This would be the exception, not the rule - and assistance from a member of our underwriting staff should be sought.

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