

Title Tips - "Requirements for Conveyance by Non-Resident Decedent's Estate"

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Question: What are the requirements for the conveyance of New Jersey property by a non-resident decedent's estate?

Answer: The real property located in New Jersey of any decedent passes under the laws of New Jersey regardless of the decedent's State of residence at the time of his/her death.

This is a situation we frequently encounter - the sale of a New Jersey vacation home by the estate of a Pennsylvania or New York decedent. There are several tracks that such sales can take. The first occurs where the estate has been probated in the State of decedent's residence; the executor or administrator can simply obtain authenticated copies of the letters of appointment and official bond (if any) provided by the home state. These are then filed with the Surrogate of the county where the real property is located. No ancillary probate proceeding (i.e. formal reappointment of the executor/administrator in New Jersey) will be required in these circumstances and the executor/administrator can proceed with the sale as if they had been appointed in New Jersey. If, however, an ancillary proceeding has been brought in New Jersey, it must be continued and control over the property will be decided based upon that proceeding.

Another alternative is permitted under N.J.S.A. 3B3-27. The executor appointed in the decedent's home state may record exemplified copies of the will and related probate documents with the Surrogate of the New Jersey county in which the decedent owned real property. Thereupon the foreign fiduciary may deal with the decedent's New Jersey real property as if he/she had been appointed here.

The final track is a bit more time-consuming, but still straightforward. If no proceedings have been brought in the home state, a proceeding may be brought in the Surrogate's court of the county where the property is located. Disposition of the property and appointment of an administrator or other fiduciary will be decided by that Surrogate's court.

Please be reminded that when accepting a deed from the executor or administrator of a foreign state, the deed should include a GIT-REP 1, and appropriate payment made. New Jersey Transfer Taxes, New Jersey Estate Taxes and Federal Estate Taxes may be due on the transaction, depending upon the size of the estate and the identity of the devisees.

Please feel free to contact our Underwriting staff if you have any questions.

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