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## Episode 20: When the owner of real property dies, how can the property be sold?

**Call from the Agent:** My client and her deceased husband are the joint owners of real property. How can the property be sold?

**The Response:** When a property owner dies, the property can certainly be sold, but it is possible an estate will first have to be opened and just as possible the sale won't be immediate. In that your question involves jointly owned property, the situation will almost surely fall into one of the following categories:

Joint Tenancy – If your client (the wife) and her deceased husband owned the property as “joint tenants with the right of survivorship,” the husband’s 50% interest passed to the wife upon the husband’s death and she (the wife) is now the sole owner of the property. To memorialize this event, an original death certificate must be filed at the county courthouse – this can be done “now” or at the time of closing. In this situation, the wife is free to sell the property.

Horry County estate where the decedent had a Will – If the decedent had a valid Will and it is admitted to Probate Court here in Horry County, the Personal Representative of the estate will be able to sell the property if the Will contains what is called a “power of sale” provision. A “power of sale” provision doesn’t require specific language; it is sufficient so long as it is clear the decedent intended to give the Personal Representative the authority to sell the property. If the Will does not contain a “power of sale” provision, the property can only be sold if a) the Personal Representative successfully petitions the probate court for permission to sell; or b) the property is distributed to the designated beneficiaries and they independently decide to sell the property (which is easiest if the wife is the sole beneficiary). Both of the preceding options should be discussed with the estate attorney. If the Personal Representative decides to petition the probate court for permission to sell, all “interested parties” (i.e. creditors and beneficiaries) are entitled to formal notice and, at the court hearing, the Personal Representative will be required to present proof of the value of the property.

Horry County estate where the decedent did not have a Will – If the decedent did not have a Will and an Horry County estate is opened, the property will be distributed to the legal heirs during or at the conclusion of the administration of the estate. In that there is not a Will, there is obviously no “power of sale” provision. Therefore (similar to the preceding section), the property can only be sold if a) the Personal Representative successfully petitions the probate court for permission to sell; or b) the property is distributed to the legal heirs and they independently decide to sell the property (as in the preceding situation, this is easiest if the wife is the sole legal heir). Still, both of the preceding options should be discussed with the estate attorney. If the Personal Representative decides to petition the probate court for permission to sell, all “interested parties” (i.e. creditors and legal heirs) are entitled to formal notice and, at the court hearing, the Personal Representative will be required to present proof of the value of the property.

Estate is open in another South Carolina County – Here, the situation is the same as the situations described in the two preceding sections. The only additional requirement is that an exemplified copy of the probate documents be filed in Horry County.

Estate is open in another state – In order to sell or distribute South Carolina property, an exemplified copy of all probate filings in the foreign state must be filed in Horry County. If the decedent had a Will, the provisions of that Will control the ability of the Personal Representative to sell or distribute the property. If the decedent did not have a Will, the applicable Probate Code determines the ability of the Personal Representative to sell or distribute the property. In either case, nothing should be done without the direct involvement of the estate attorney.

General Notes:

1. If property is owned jointly, an estate must be opened unless the title has a survivorship feature (i.e. “joint tenancy with right of survivorship” or “life tenancy with remainder interest”).
2. If the title is only in the name of the decedent, an estate must be opened.
3. If an estate was opened, but was closed without the property being distributed, the estate must be re-opened.
4. If property is sold directly from the estate, the estate must have a federal tax ID #.
5. This article is not intended to address property owned by a Trust