



Issues faced by property managers when an owner client dies

This article updates one that we published in the summer of 2019. It includes answers to some new questions that we have heard from property managers in the interim.

Imagine that you are managing a multi-unit residential property for a landowner, the property is fully leased, and you receive a telephone call from a family member of your client informing you that your client has passed away. A few hours later, you hear from another family member who confirms the landlord's death but also asks you questions about the current leases and your property management agreement. A few days later, you hear from one of your tenants that a family member has stopped by and suggested that he send all future rent payments to the family member instead of to your property management firm.

The following are questions that property managers may have when confronted with the death of an owner client:

QUESTION: Does a property manager have the authority to continue managing a property after the death of the owner, or does the manager need to enter into a new management agreement?

ANSWER: If you are using NC REALTORS®' standard Exclusive Property Management Agreement (Standard Form 401), the answer to that question can be found in paragraph 33. It states that the property management agreement "shall be binding upon and inure to the benefit of the heirs, legal and personal representatives, successors and permitted assigns of the parties." This means that the owner's heirs, and any executor or administrator who gets appointed by the court, will be bound by the existing property management agreement. No new agreement is required.

If the property management agreement in effect does not contain language similar to paragraph 33, the question of the manager's continuing authority is less clear. Whether that agreement will remain in effect will likely depend on whether the property manager identified in the agreement is an individual or an entity. If the property manager is an individual, the property management agreement will likely be considered a "personal service contract." In 1993, in a case entitled McGowen v. Rental Tool Company, the Court of Appeals of North Carolina ruled that personal service contracts are terminated by the death of either the party offering the personal services (the "offeror") or the offeree. This ruling will likely be controlling unless your property management agreement provides otherwise.

QUESTION: Do the existing leases remain in effect following the death of the property owner?

ANSWER: While this issue is not addressed in NC REALTORS®' standard Residential Rental Contract, North Carolina case law is clear that the death of the property owner does not affect a tenant's right to occupy leased property for the full term of any existing lease. Just as any buyer would take the property subject to the existing leases, so too will any heirs of a deceased owner and any personal representative appointed by the court to act on behalf of the decedent's estate.

QUESTION: Does a property manager still have the authority to collect rents after the death of an owner?

ANSWER: If the manager is using Standard Form 401, the answer is "yes". Paragraph 33 states that the property management agreement is binding on the heirs, legal and personal representatives, successors and permitted assigns of the parties. This means that the property manager's duties and authority remain governed by that agreement. Paragraph 6(c) of Standard Form 401 includes the authority to collect all rentals and other charges and amounts due under tenant leases.

QUESTION: What if the property requires repairs after the owner dies, can a property manager use funds that are on hand to pay for those repairs?

ANSWER: Again, the answer is "yes". The property manager's authority is not affected by the death of the owner. Under paragraph 6(f) of Standard Form 401, the property manager's authority includes the authority to make arrangements for repairs which, in the property manager's opinion, are necessary to preserve, maintain and protect the property.

QUESTION: If the owner dies, who is entitled to receive the rent proceeds and other disbursements?

ANSWER: In that situation, any funds that a property manager would ordinarily deliver to a property owner (including any funds properly deducted from a tenant security deposit) should only be disbursed to a person who has been given legal authority to serve as the "personal representative" of the decedent's estate. That legal authority is granted through a legal process known as probate or estate administration. Property managers should encourage the decedent's family members to initiate the probate process as quickly as possible. That process can be initiated with or without legal representation.

QUESTION: How do property owners know if a personal representative has been granted legal authority?

ANSWER: Property managers should insist on seeing what are known as letters testamentary or letters of administration. These "letters" are legal documents issued by the clerk of court in the county where the decedent lived. If the decedent lived out of state, the probate process can be initiated in any North Carolina county where the decedent left property or other assets. If the decedent died with a will, the executor named in the will has the highest priority to receive letters testamentary. The probate statute sets forth the priority of persons who may be granted letters testamentary if, for some reason, the executor named in the will is not qualified to serve. If the

decedent died without a will, the clerk will issue what are known as letters of administration to a qualified person. That person is referred to as the Administrator of the decedent's estate.

QUESTION: What if a family member claims to have inherited the managed property pursuant to a will? If the family member provides a property manager with a copy of a will, can the property manager rely on that document, deliver collected funds to the heir or heirs identified in that document, and take direction from the same individual(s)?

ANSWER: No. Property managers should understand that a will has no legal effect until it is probated by a representative of the court, usually the clerk. Probate is the process by which the court determines that a purported will is actually the final will and testament of the decedent and is legally valid to pass title to property.

QUESTION: What should a property manager do if the executor named in the decedent's will declines to begin the probate process or, in the case of intestacy, no one begins the probate process?

ANSWER: One alternative is to request that the Public Administrator in the county where the property is located to apply for letters granting authority to act as the representative of the decedent's estate. Chapter 28A of the North Carolina General Statutes has an article devoted to "public administration" of decedents' estates. The Public Administrator may apply for letters if he or she is informed that six months has elapsed since the death of an individual who died owning property, and that no letters testamentary or letters of administration have been applied for or issued to any person.

QUESTION: What should a property manager do with collected funds if the public administrator declines to apply for letters authorizing him or her to act on behalf of the decedent's estate?

ANSWER: Property managers do not have to hold collected funds until someone qualifies to administer the estate. According to Section 28A-25-6 of the North Carolina General Statutes, any person indebted to a decedent may satisfy the indebtedness by paying the amount of any indebtedness to the clerk in the county where the decedent resided provided that three conditions are present: (1) no administrator has been appointed for the estate; (2) the amount owed does not exceed five thousand dollars; and (3) the total amount paid to the clerk belonging to the decedent does not exceed five thousand dollars. The clerk's acceptance of the funds should be confirmed by the clerk's completion of an [Authorization For Payment of Money Owed Decedent \(AOC Form AOC-E-431\)](#).

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