



## Can I list property if the owner doesn't have a deed?

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**QUESTION:** I have recently been asked to list a property that the owner tells me he inherited under his mother's will. I called somebody I know who works at the Clerk of Court's Office and she confirmed that the mother's estate had been administered and closed more than two years ago, and that she had left everything to her son according to her probated will. I plan on getting a copy of the will for my files, but I am concerned about the fact that he doesn't have a deed to the property in his name. The tax records show him as the owner, but the last deed to the property I can find in the Register of Deeds Office has his mother's name on it. Won't he need a deed in order to sell the property?

**ANSWER:** No. Under North Carolina law, the title to real property passes "automatically" at the moment of the decedent's death to the person or persons who stand to inherit from the decedent, whether it is under a will or under the laws of intestate succession if there isn't a will. See [NC General Statutes Section 28A-15-2\(b\)](#). The purpose of a deed is to pass title to the property being deeded to the grantee named in the deed. Since the title to property passing from a deceased person to a "devisee" (a person named in a will) or an "heir" (a person who inherits by law where there is no will) vests in her or him by operation of law, there is no need or purpose for a deed. Attorneys have been known to prepare quitclaim deeds that purport to convey title from a devisee or heir to herself or himself. Such a deed does no harm but it serves no legal purpose and is created simply to satisfy a client who insists on having a deed to the property.

It is important to understand that although a decedent's property vests at the moment of his or her death in his or her devisees or heirs, their title is subject to claims of the decedent's creditors. If a decedent's debts exceed his or her liquid assets, it is possible that real property owned by the decedent would need to be sold in order to raise money to pay off his or her creditors. One of the primary purposes of the estate administration process (also referred to as "probate") is to identify the decedent's assets and liabilities and pay off creditors. Since you have confirmed that the estate of the owner's mother has been administered and closed, the property may be listed and sold without any concern about claims by creditors of the former owner.

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