



# CHICAGO TITLE INSURANCE COMPANY

<b>TOPIC:</b>	<b><u>Decedent's Estates a/k/a Dead Men Don't Sign Deeds</u></b>
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## I. INTRODUCTION

Any practitioner of real estate law has or will unquestionably run across a title in which an owner of a property has passed away while in ownership, whether it is the current owner or one in the back title. For that reason, title companies receive numerous questions regarding the proper method to convey real property following the death of the owner. This is a result of the multiple factual situations which exist under the owner's estate. The death of an owner of an inheritable interest in real property triggers a transfer of title to the property. The title passes through the estate and the result of the transfer is affected by several factors, such as whether or not the owner had a will or died intestate. Among other things, the certifying attorney must determine to whom the title passes, the risk of dissent from a will or a caveat proceeding, whether all known creditors have been paid and the right of any additional creditors to file a claim, and whether federal and/or estate taxes have been paid or will be due. All of these matters can affect the validity of a conveyance of a decedent's real property. This manuscript reviews many of the common questions and issues encountered in determining the status of title to the decedent's real property and the ability of the decedent's heirs/devisees to convey said property.

## II. TITLE SEARCH & CLOSING GUIDELINES

Determining whether or not an estate is in an acceptable status for a valid and clear conveyance is a complicated process. The facts of each case vary and can cause very different results. The following is a list of questions which are helpful in determining the exact status of the estate.

1. What is the date of death of the decedent?
2. Did the decedent die a resident of North Carolina?
3. Has an estate file been opened in the county and state of residency of decedent at the time of death and in the county and state where the property to be insured is located?
4. Has a personal representative of the estate been appointed and qualified?
5. Is there a will? If so, has it been probated?
6. What powers and directives are given the personal representative regarding the property to be insured?

7. Are the personal representative's powers the result of provisions in the will or by court order?
8. Will there be any inheritance/estate taxes due? If yes, have they been paid and what evidence of payment will be furnished? If no, what evidence will be furnished that no taxes are due?
9. Has the Notice to Creditors been published? If so, has time for filing claims passed?
10. Have any claims been filed? If yes, have they been paid and what evidence of payment will be furnished? If debts or taxes are still outstanding, what assurance is to be obtained from the Executor or Administrator that they will be filed and paid and the estate closed as required by law?
11. Who are the heirs or devisees? Do any of the heirs have judgments filed in the county in which the property is located?
12. Are any of the heirs or devisees married? (Spouses must sign any conveyance)
13. Were any gifts of the insured property made within 3 years prior to the decedent's death?
14. Was any interest in the property to be insured devised to a trust? If so, what powers and authority are granted to the trustee?
15. If an executor is attempting to convey the property without the joinder of any devisees, was the property specifically devised to the executor of the estate and what powers and authority are granted to the executor?
16. Was the estate administered by a surviving spouse as the sole heir via Summary Administration? If so, has a personal representative been appointed nonetheless to handle real estate assets?

If the estate is still open the interests, or potential interests, of all heirs, devisees, their spouses and the executor or administrator of the estate must be addressed prior to any conveyance of property. Note - If any potential heirs were disinherited by the will, said potential heirs and their spouses may be required to sign or consent to the conveyance depending upon the circumstances.

*RECOMMENDATION: Discuss any questions or outstanding issues with your title insurance company attorney before you draw the documents and distribute them for execution in order to avoid any complications later.*

### **III. TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE**

The title company relies upon the attorney to certify that all matters involving administration of the estate are satisfactorily addressed. Therefore, the specific requirements and exceptions are based on what information the certifying attorney provides in the preliminary opinion.

#### **A. Exceptions**

If the above questions are met to the satisfaction of the attorney, and any issues are discussed and addressed to the satisfaction of the title company, then no exception for estate matters would be taken. If the estate matters are not resolved to the satisfaction of the title company, then a general exception or

an exception specific to a matter will be included in the policy. The two general estate exceptions are as follows:

1. Any estate and inheritances taxes, plus interest and penalty, and debts or claims of debt, including but not limited to potential or filed liens under the Medicaid Estate Recovery Act, against the estate of \_\_\_\_\_.
2. Any right, title, or interest of \_\_\_\_\_.

**B. Requirements**

When a transaction involves an open estate, the following requirements are commonly employed:

1. Deed execution requirements: Warranty Deed from the executor/administrator of the Estate of \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (being all of the heirs/devisees of said decedent's estate) and spouse/their respective spouses, if any, to \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.
2. Deed of Trust execution requirements: Deed of Trust from the executor/administrator of the Estate of \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ and spouse/their respective spouses, if any, to a Trustee for \_\_\_\_\_, securing \$\_\_\_\_\_.
3. General requirement for open estate: With regard to the estate of \_\_\_\_\_, (i) receipt of accurately completed Open Estate Affidavit & Indemnity Agreement in a form pre-approved by Company and executed by the personal representative/executor and ALL heirs/devisees of the decedent, or verification that there exist no potential liens resulting from said estate which would attach to the Land; (ii) joinder of the personal representative/executor of the estate in the conveyance; and (iii) compliance with all North Carolina statutory requirements regarding transfer of real property from an open estate. (Any deviation from these requirements shall require pre-approval of Company.)

**IV. FORMS**

Examples included at end of manuscript. Word & PDF versions of the Affidavits are available on the Forms page at [www.northcarolina.ctic.com](http://www.northcarolina.ctic.com).

- Estate Abstract Sheet
- Open Estate Affidavit & Indemnity Agreement
- Intestate Heirs Affidavit without Indemnity
- Intestate Heirs Affidavit with Indemnity

**V. LEGAL DISCUSSION** - Author: Jeffrey I. Hrdlicka, updated by Chicago Title Insurance Counsel 2018.

**A. Background Information**

A person ceases to own property at the moment when he or she dies. In estate matters the person who died is referred to as the decedent. In North Carolina, all real property interests which a person owns at the time

of death vest immediately in the decedent's heirs at law, however, subject to defeasance by the various estate matters, including probate of a valid Last Will and Testament. NCGS § 28A-15-2(b) and NCGS § 31-39. As a result, any conveyance of a decedent's real property must be given special care to assure that the proper parties are conveying the property and that estate requirements have been met.

## **B. Terminology**

**Administrator(trix)** - A personal representative appointed by the Clerk of Superior Court for the purpose of managing, settling and distributing the estate of an intestate decedent, usually where either no will is probated or the executor(s) under the will are unable or unwilling to serve.

**Decedent** - The person who died.

**Devisee** - A person who receives property under the decedent's will.

**Estate Tax:** Tax imposed by U.S. government and some states on the transfer of property from a decedent to his or her heirs or beneficiaries. The estate tax is levied on and measured by the size of the decedent's estate, rather than on the amount received by any particular beneficiary. The current federal estate tax rate is 40%.

**Executor(trix)** - A person appointed by a testator (now the decedent) to carry out the directions and requests contained in the will and to dispose of the property according to provisions contained in the will.

**Heir** - An heir is a person who has a right to a share of a decedent's estate because of his or her relationship to the decedent. Please note that the word "heir" is commonly used to describe persons that acquire property from a decedent whether by will or intestate succession. When used herein, the word heir is a reference solely to those persons that are entitled to a share of decedent's property had the decedent died without a will, i.e., through intestate succession. The word "devisee" is a reference solely to those persons entitled to a share of decedent's property under a valid will.

**Inheritance Tax:** Tax imposed by some states on the amount received by a particular heir of beneficiary.

**Intestate** - A person who dies without having made a valid will or without having disposed of property or part thereof by a valid will.

**Intestate Succession** – The devolution of the decedent's property to his heir(s) at law pursuant to a statutory scheme when the decedent has died without having made a valid will or without having disposed of property or part thereof by a valid will.

**Personal Representative** - The executor(trix) or administrator(trix) of the decedent's estate.

**Probate** – Court procedure (usually done at the clerk's level) by which a will is proved to be valid or invalid.

**Testate** – Description of an estate where the decedent died leaving a valid, now probated will.

**Testator(trix)** – The decedent who died leaving a will.

**Will** – Usually the “Last Will and Testament” of the decedent. In order to qualify, it must comply with strict rules in North Carolina and be probated both in the county and state where the decedent was a resident at death, and in the county where the property to be insured is located.

### **C. Vesting of Property**

Title to the decedent’s real property transfers at death and is vested into the successor owner pursuant to four potential methods:

1. Passed by Intestacy to the Decedent’s Heirs – Title is vested in the decedent’s heirs at the time of death. NCGS § 28A-15-2(b). If a will of the decedent is later found and successfully probated, then the property may revert into the devisees under the will. If no will is found and successfully probated, then title will remain with the intestate heirs. The personal representative of the estate has the ability in certain situations, and after following certain procedure, to take possession, custody and control of the property. This action could divest title from the intestate heir.
2. Devised to a Devisee – If the will of the decedent is probated and found to be valid, then title is vested in the devisees. NCGS § 28A-15-2(b). The vesting relates back to the decedent’s death, subject to the provisions of NCGS § 31-39. (See Subsection E.1 Will Probated below) The personal representative of the estate has the ability in certain situations, and after following certain procedure, to take possession, custody and control of the property. This action could divest title from the devisee.
3. Devised to an Executor – The will may devise the property specifically to the executor of the estate. This devise is usually accompanied with an instruction on how the executor should dispose of the property. For example, the will may instruct the executor to sell the decedent’s real property and divide the proceeds among the decedent’s children.
4. By Operation of Law – Prior to the decedent’s death, the real property may have been titled in such a manner that it does not pass through the estate. This would include property held by the decedent under a life estate or joint tenancy with right of survivorship. In both of these cases, the decedent’s interest in the property ends at death.

### **D. Sales of Property while the Decedent’s Estate is Open**

Real property is usually sold under one of three situations while the estate is still open. These situations are as follows:

1. By the Personal Representative with Court Authority - The personal representative of an estate has authority to petition the clerk of court to sell property, including real property which has passed to the decedent's heirs, only to satisfy debts and taxes of the estate and *not* to liquidate the estate for the purported convenience of the heirs or devisees in dividing it up. NCGS § 28A-15-1 and NCGS § 28A –17-1. The Petition must include (1) a description of the real property to be sold; (2) the names, ages and addresses, if known, of the devisees and heirs of the decedent; and statement that the personal representative has determined that it is in the best interest of the administration of the estate to sell the real property. NCGS § 28A-17-2. The heirs and devisees

are necessary parties to the proceeding and the petition must be served on the heirs or devisees and the sale approved by the clerk of court. NCGS § 28A-17-4. If these matters are satisfied, the property may be conveyed by a deed executed only by the personal representative.

2. By the Executor without Court Authority - The certifying attorney may report that property is being sold by the executor under authority contained in the will. The heirs of the decedent will not execute the conveyance. This is permissible only in two situations:
  - a. If the will specifically conveys the property to the Executor *or* only devisees *proceeds* to the devisees, *and* the will instructs the executor to sell this real property; *or*
  - b. The will gives the executor the power to sell **and** the will devises the real property to the estate and not to a devisee.

NOTE: An argument exists in North Carolina as to whether or not N.C.G.S. 28A-15-1(c) alleviates the need to require the joinder of heirs in certain situations. This statute provides as follows:

If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, **except that no such proceeding shall be required for a sale made pursuant to authority given by will.** A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17.

Where a will gives the executor the power to sell and the will devises the property to devisees other than the estate, this statute appears to give the executor the authority to convey the property without the joinder of the devisees or by obtaining court authority. This contrary to the holding in the 1980 case of Montgomery v. Hinton, 45 N.C. App 271, 262 S.E. 2d 697 (1980). The Montgomery case involved a will that devised property to a minor and granted the executor the powers set forth in NCGS § 32-27, which included the power of sale. The executor attempted to sell the property without bringing a special proceeding to obtain court authority. The Court held that title to property had vested with the devisee and the executor could not sell the property without obtaining court authority pursuant to NCGS § 28A-13-3(c). The Court stated that to allow such a sale "would be to grant to all executors unbridled discretion to dispose of devised real estate without showing any reason or necessity therefor and without the knowledge of the devisee." 45 N.C. App. 271 at 275.

As a result of the ongoing controversy, practicing attorneys differ in their opinions on this statute. This creates a marketability risk. A later potential buyer may question the seller's title to property acquired from a sale by the executor without court authority.

3. By the Heirs - Real property that passes to the heirs may be conveyed by the heirs if the following requirements are met:

- a. Status of the estate is acceptable - Please refer to the Status of Estate at the Time of Conveyance section below.
- b. All spouses of heirs/devisees have joined in the execution of the conveyance.
- c. If an heir/devisee is incompetent or a minor, then a guardian must be appointed, and the guardian must obtain a court order approving the sale. Please note that the sale of a minor's interest in real property must be approved by a Superior Court Judge. NCGS § 35A-1301.

**E. Status of Estate File at Time of Conveyance**

Title companies rely upon the certifying attorney to review the decedent's estate file to determine whether the will is probated, the identity of the heirs when intestate, an Estate Tax Release/Certification is filed, the Notice to Creditors was published, and a Final Accounting is filed at the time of a conveyance. The reasons for each of these are as follows:

1. Will Probated – Probating a will and having it found to be valid establishes the decedent's devisees, thereby naming the owners of the property who will be required to sign the conveyance. No will shall be effectual to pass real property unless it has been probated in the court of the proper county, and a certified copy thereof is recorded in the office of the clerk of superior court of the county wherein the land is located. NCGS § 31-39.

Please note that conveyances made two years after the death of the testator or after the filing and approval of the final account to innocent purchasers from the heirs at law of the testator shall not be affected by the probate and registration of any will. NCGS § 31-39.

2. Intestate Succession – Intestate succession is a statutory scheme under which the decedent's property devolves to his heir(s) at law. It applies when the decedent has died without having made a valid will or without having disposed of property or part thereof by a valid will. To whom the property passes depends upon the number of relatives the decedent had and their exact relation to the decedent. NCGS §§ 29-14, 29-15 and 29-16 describe the scheme. The following chart demonstrates how the title to the decedent's property would pass pursuant to those statutes in various situations:

Only Surviving Family/Relatives	Title
No relatives	Escheat
Spouse	All real property to spouse
Spouse and one child or lineal descendants of only one deceased child	½ to spouse, ½ to child/descendants of deceased child
Spouse and two or more children or one child and lineal descendants of one or more deceased children or lineal descendants of two or more deceased children	1/3 to spouse, 2/3 shared by children/descendants of deceased child/children
Spouse and one or more parents	½ to spouse, ½ to parents
One or more parents and one or more children	All to the child/children

One or more parents	If one – all real property; if two – ½ each
One or more children	If one – all real property, if two – ½ each, if three – 1/3 each; ...
One child and two grandchildren from a deceased child	½ to child, ¼ to each grandchild
One child, one grandchild from a deceased child, and two grandchildren from another deceased child	1/3 to child, 2/9 to each grandchild

One caveat to intestate succession is that while most modern estate plans use a per stirpes distribution plan (unless there are specific reasons a decedent would do otherwise), intestate succession is a **per capita** distribution scheme.

However, the most problematic aspect of title to real property which passes under intestacy is accounting for all heirs of the decedent. In some cases there is no reliable source to establish the identity of all of the decedent’s heirs. In other cases the names of all the heirs are known, but their location is not. Title companies may be willing to rely upon affidavits from parties familiar with the decedent, but uninterested in the current transaction. Indemnities may also allow title companies to insure a transaction. These situations are handled on a case-by-case basis.

### 3. Death Taxes:

#### a. STATE DEATH TAXES:

- i. Until 1999, North Carolina collected Inheritance Taxes from the heirs or devisees of the decedent. (NCGS 105-2 to 105-32 REPEALED) Therefore, this would be a concern only for deaths occurring prior to January 1, 1999 and is an unlikely scenario in 2019 and beyond. In any case, however, payment of inheritance taxes would negate any requirement to pay estate taxes related to deaths occurring within this timeframe.
- ii. Following the repeal of the Inheritance tax (effective January 1, 1999), the focus shifted from requiring payment of inheritance taxes to requiring payment of estate taxes for estates opened after January 1, 1999. (NCGS 105-32.1 to 105-32.8 REPEALED) The estates of decedents who died between January 1, 1999 and December 31, 2012 may be required to pay both federal and/or state estate taxes depending the total value of all estate property. There were several legislative maneuvers during this time frame that are beyond the scope of this manuscript and should be reviewed by the attorney on a case-by-case basis.
- iii. In July, 2013, North Carolina repealed the estate tax system retroactive to January 1, 2013. From that point forward, only federal estate taxes have been imposed upon estates valued over the exemption amounts in effect during the year of death. The following chart provides an overview of the federal estate tax exemptions and tax rates per year:



<b>YEAR</b>	<b>ESTATE TAX EXEMPTION</b>	<b>TOP ESTATE TAX RATE</b>
2013	\$5,250,000	40%
2014	\$5,340,000	40%
2015	\$5,430,000	40%
2016	\$5,450,000	40%
2017	\$5,490,000	40%
2018	\$11,180,000	40%
2019	\$11,400,000 est. by Forbes	40%

Notably, in 2018, the estate tax exemption roughly doubled to \$11,180,000 under the Tax Cuts and Jobs Act. The exemption is in effect until 2025, subject to adjustment for inflation. The top tax rate currently remains at 40%. As we move forward, at least until Congress acts otherwise, estate taxes issues will decrease in number but will increase in severity when they do exist. Probate and real estate attorneys will continue to be responsible for determining the applicability of taxes to decedent's estates or at least determine whether a tax certificate/release has been filed in the estate file.

If estate taxes are due, the personal representative may petition the clerk to sell property, including real property which has passed to the decedent's heirs or devisees, to pay the tax amount. This acts as a defeasance of the heirs' or devisees' ownership interests in the property, and therefore anyone taking title solely through the heirs or devisees. If this occurs after a conveyance of the property, then the new owner may suffer a loss of title. If the personal representative fails to pay the tax amount, then the IRS or the NC Department of Revenue has a lien on the property. Once again, this could result in a loss of title for the new owner.

The statute of limitations on enforcing estate tax liens, federal and state, is 10 years from the due date. NCGS § 105-32.6. So any estate of a decedent dying up to approximately 11 years prior to closing (allowing for extensions, etc.) should be carefully reviewed. A confusing situation has arisen with regards to the statute of limitations for both inheritance and state estate tax liens. The entire Articles of the inheritance and the estate tax statutes were repealed. This included former NCGS § 105-20 (inheritance) and NCGS 105-32.6(estate), both of which established a 10 year statute of limitations for enforcing an inheritance tax lien. As a result it is unclear if any statute of limitations applies for tax liens when dealing with an estate in which the decedent died before January 1, 2013.

4. Notice to Creditors and Final Accounting - An unsecured creditor (any party owed money by the decedent) is entitled to have his claim paid from the assets of the estate. If a creditor files a claim against the estate, the personal representative may petition the clerk to sell property, including real property which has passed to the decedent's heirs or devisees, to pay the amount claimed. This acts as a defeasance of the heirs'/devisees' ownership interests in the property, and anyone claiming through them. If this occurs after a conveyance of the property, then the new owner may suffer a loss of title.

The time in which creditors can file a claim which affects title to real property is limited under NC statutes. Under NCGS § 28A-14-1, the personal representative may file a Notice to Creditors which establishes the time in which creditors may file a claim. If the personal representative has published a Notice to Creditors and the time for filing claims has passed with no claims being filed, then the property may be conveyed and insured without exception for the claims of creditors. If any claims are filed, then the title company may require that either (1) the claims are paid and the final accounting filed, or (2) a letter from the attorney that is handling the estate which states that there are sufficient estate assets to pay the claims without selling this property.

NCGS § 28A-17-12(a) addresses sales occurring when Notice to Creditors has been published or posted pursuant to 28A-14-1 within two years after the date of death of the decedent. Under subsection (a)(1), if the sale occurs prior to the first publishing or posting, then the sale is void as to creditors and personal representatives. This places the title to the property at great risk and such a sale is almost always uninsurable.

Under subsection (a)(2), if the sale occurs after the first publishing and before approval of the final accounting, then the sale is void as to creditors and personal representative unless the personal representative joins in the sale. In this situation title companies may rely on this statute and insure the sale. The title company will require the personal representative to sign a personal undertaking and join the heirs (and their spouses) in executing the deed.

NCGS § 28A-17-12(b) addresses sales occurring where the first publication or posting of the Notice to Creditors does not occur within two years after the date of the death of the decedent. In such a situation a deed from the heirs (and their spouses) shall be valid as to creditors and personal representatives of the decedent. Title companies will insure a sale in the situation as the purchaser's title will have priority over later filed claims of creditors.

## **F. Special Circumstances**

1. Tenancy by the Entirety - Real property held in Tenancy by the Entirety automatically vests title in the surviving spouse upon death of the other spouse. This is called a "right of survivorship". The real property does not pass through the decedent spouse's estate, unless the surviving spouse disclaims the property.
2. Contract to Sell by the Decedent - In rare cases, a decedent may have entered into a contract to sell property and died prior to closing on the sale. In such a case, the personal representative can complete the contract and convey the property without court approval or joinder of the heirs or devisees. The proceeds of the sale must be paid into the estate. N.C.G.S. § 28A-17-9. Title companies may insure the conveyance of the property upon satisfactory evidence that all other estate matters are acceptable.
3. Caveat – The validity of a will may be attacked in a caveat proceeding. The purpose of the proceeding is to determine whether the paper-writing purporting to be a will is in fact the last will and testament of the person for whom it is propounded. In re Will of Spinks, 7 N.C. App. 417, 173 S.E. 2d 1 (1970). The caveat may be brought at the time of application for probate, the probate thereof in common form, or within three years thereafter, by any person entitled under the will or interested in the estate. NCGS § 31-32.

4. Judgments Against Heirs - The title examination may reveal that there is a judgment docketed against an heir or devisee. This judgment *does* attach to the inherited/devisee property, as title passes at the time of the decedent's death. As a result, title companies will require that any such judgment be satisfied or that the lien be released from the property to be insured prior to insuring a conveyance from the heir/devisee, even if the judgment is for substantially more than the debtor-heir's/devisee's undivided interest. A sale by a personal representative under a special proceeding pursuant to NCGS § 28A-13-3(c) does have priority over the lien of a judgment against an heir. The proceeding to sell must be brought in the best interest of the administration of the estate, such as to satisfy debts or claims against the estate. Its purpose cannot be convenience for the heirs or to avoid a judgment against an heir.
5. Medicaid Lien - In certain situations, Medicaid may obtain a lien on real property formerly owned by the decedent. If the title examination reveals a Medicaid lien or the potential of a Medicaid lien because of conveyances for inadequate consideration within 3 years prior to the decedent's death, the title company may take exception to said lien.

In response to the rising costs of the Medicaid program, the federal government enacted mandatory estate recovery under the Omnibus Budget Reconciliation Act of 1993 (OBRA). This Act requires states to recover the cost of Medicaid benefits received from estates of individuals who were fifty-five or older when the benefits were received. 42 U.S.C. 1396p. NCGS § 108-70.5 establishes North Carolina's Estate Recovery Plan in the Department of Health and Human Services. While OBRA gives states the authority reach property outside of the recipient's probate estate, North Carolina has chosen to define "Estate" as the real and personal property considered assets of the estate available for the discharge of debt pursuant to NCGS § 28A-15-1. In recovery, the Department is a fifth class creditor under NCGS § 28A-19-6.

6. Ancillary Administration - Often a decedent was a resident of another state and owned property in NC. In order for the heirs, devisees or personal representative to sell the NC property, an estate proceeding must be filed with the Clerk of Superior Court in the NC county where the property is located. This is called an ancillary administration. In an ancillary administration, an in-state representative is appointed and that representative administers the estate pursuant to NC law. NCGS § 28A-26-1, *et seq.*

Possible Exception - One fact situation may create a possible exception to the need to require an ancillary administration. If several years have passed since the date of death of the decedent, and satisfactory evidence can be obtained that establishes proper identification of the heirs or devisees and all estate and inheritance taxes have been paid (to North Carolina and the United States Internal Revenue Service), then title companies may be able to insure a conveyance by the heirs without an ancillary administration. Whether or not the sale can be insured will vary from case to case based upon the facts. This situation must be discussed with and approved by counsel for the title company prior to closing.

7. Anti-Lapse Statute – NCGS § 31-42 addresses what happens when a devisee predeceases a testator. The purpose of the Anti-Lapse statute is to provide a mechanism to complete a testator's wishes when a devisee has predeceased. North Carolina Courts have recognized that intestacy should not be favored where a testator has made a will for the purpose of disposing of property. Faison v. Middleton, 171 N.C. 170, 88 S.E. 141 (1916).

Subsection (a) of the statute provides:

Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendent of a grandparent of the testator, then the issue of the predeceased devisee shall take the place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death....

This scheme allows the property to pass to the direct descendants of the deceased devisee, if the deceased devisee is of close family relationship - grandparent of or a descendent of a grandparent – of the testator.

Subsection (b) of the statute addresses the situation where the provision of subsection (a) do not apply and provides:

Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in the proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

The Anti-Lapse was amended in 2001 and 1999. The amendments changed the relationship requirements for the Anti-Lapse statute to apply. The prior statute required the issue of the devisee to have been an heir of the testator under the Intestate Succession Act. Prior amendments also made clear that the devisee may have predeceased the testator prior to the execution of the will.

8. Renunciation – A devisee under a will or an heir under intestacy may renounce in whole or in part the right of succession to any property or interest therein of the decedent. NCGS § 31B-1. A written instrument renouncing the interest must be filed in order for the renunciation to be effective. NCGS § 31B-1. The instrument shall (i) describe the property renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the person authorized to renounce. NCGS § 31B-1(c). The instrument must be filed with the clerk of court in the county where the estate is being administered and in the office of the register of deeds where the real property is located. NCGS § 31B-2(c) and (d). To be a qualified disclaimer for federal and state inheritance, estate and gift tax purposes, the filing must occur within the time period required under the applicable federal statute for renunciation. NCGS § 31B-2(a). If no such federal statute applies, then the instrument must be filed within nine months after the date of the transfer was complete for the purpose of such taxes. NCGS § 31B-2(a). If the instrument is filed within the above-described time frames, then the property shall pass as if the renouncer died immediately prior to the decedent. NCGS § 31B-3(a)(1). If the instrument is filed after the time frames, then the property or interest devolves as if the renouncer had died on the date the instrument is filed. 31B-3(a)(2).

9. Surviving Spouse - Election of Life Interest/Elective Share – Dower and curtesy have been abolished in North Carolina; however, the provisions of NCGS § 29-30 and NCGS § 30-3.1, et seq., preserve similar property rights for the surviving spouse of a decedent.
- b. Election of Life Interest – NCGS § 29-30 provides that in lieu of taking an intestate share or an elective share of the decedent’s property, a surviving spouse shall be entitled to take a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture. The real estate does not include any property to which the surviving spouse waived, released or quitclaimed their interest. The surviving spouse must file a notice of the election with the clerk of court in the county where the estate is being administered, or, if no estate is being administered, in the any county where the estate could be administered. NCGS § 29-30(c). The notice shall be (1) directed to the clerk; (2) state that the surviving spouse elects to take under NCGS § 29-30 rather than the provisions of NCGS §§ 29-14, 29-21 or 30-3.1, as applicable; (3) set forth the names of all heirs, devisees, legatees, personal representatives and all persons in possession of or claiming an interest in the subject property; and (4) request the allotment of the life estate provided for in NCGS § 29-30(a). NCGS § 29-30(c1). The notice must be filed (1) at any time within one month after the expiration of the time for a petition for an elective share (see below); (2) if intestacy, within 12 months of the date of death of the decedent if letters of administration are not issued within that period; (3) if letters of administration are issued within 12 months of the decedent’s date of death, then within one month after the expiration of the time limited for filing claims against the estate; or, (4) if litigation that affects the surviving spouse’s share of the estate is pending, then within reasonable as allowed by an order of the clerk of superior court. NCGS § 29-30 (c).
- c. Elective Share – Article 1A of Chapter 30 of the statutes provides that a surviving spouse may claim an “elective share”. The elective share is an amount equal to (i) the applicable share of Total Net Assets, as defined by NCGS § 30-3.2(4), less (ii) the value of Property Passing to Surviving Spouses, as defined by NCGS § 30-3.3. NCGS § 30-3.1(a). The applicable share is based upon the number of children and lineal descendants which survive the decedent. If the decedent is survived by no lineal descendants, or one child, or lineal descendants of one deceased child, then one-half of the Total Net Assets. NCGS § 30-3.1 (1) and (2). If the decedent is survived by two or more children, or one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, then one-third of the Total Net Assets. NCGS § 30-3.1(3). The applicable share may also be reduced by one-half, if the surviving spouse is a second or successive spouse and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse. NCGS § 30-3.1(b). The claim for the elective share must be within six months after the issuance of letters testamentary or letters of administration with respect to the administration of the decedent’s estate. NCGS § 30-3.4. The claim is made by filing a petition with the clerk of superior court of the county in which the primary administration of the decedent’s estate lies and by mailing or delivery a copy of the petition to the personal representative of the estate. NCGS § 30-3.4(b). Unless waived by the personal representative and the surviving spouse, a hearing shall held no earlier than months and no later than six months after the filing of the petition. NCGS § 30-3.4(c).
- d. Summary Administration - NCGS28A-28. Article 28 of Chapter 28A allows a surviving spouse who is the sole beneficiary of the decedent, either by will or through intestate succession, to

file a petition for summary administration with the Superior Court Clerk in the county where the decedent was domiciled when he/she died. Summary administration is not available to the surviving spouse in instances where the will prohibits it, or if the devise is to a trust for the surviving spouse. NCGS 28A-28-1. After petition and order of the court, the surviving spouse is free to convey, lease, sell or mortgage real property devised or inherited from the decedent. NCGS 28A-28-4(b). Under NCGS 28A-28-6, however, the surviving spouse assumes all debts and liabilities of the deceased spouse, including taxes and valid claims, except those that were discharged by death. Additionally, any person qualified under NCGS 28A-4-1 to serve as personal representative, including the spouse, may petition the court to appoint a personal representative or a collector to administer the estate. Upon appointment, the surviving spouse must file an accounting of estate the estate property and is discharged from liability only if the property is returned to the estate in kind, or if not in kind, the spouse is discharged to the extent of the fair market value of the property at the time it is delivered to the personal representative or collector.

There are obviously issues regarding the transfer of real property upon summary administration of a decedent's estate, including judgments or liens due to the debts and liabilities of the decedent spouse, or the potential collection of the fair market value of the real property at the time the personal representative or collector receives it back into the estate. In fact, publication AOC-E-850, April 2016 by the North Carolina Administrative Office of the Courts, entitled Estate Proceedings for Executors, Administrators, Collectors by Affidavit, and Summary Administration recognizes the potential issues that may arise by stating the following: "If a sale of real estate by the surviving spouse is foreseeably necessary or desirable, a formal administration with notice to creditors may be necessary".

10. Slayer Statute – NCGS Chapter 31A addresses acts barring property rights. This includes the rights of a slayer to inherit or take property by operation of law. NCGS § 31A-3 defines a slayer as any person pleading guilty or nolo contendere to or found guilty in a criminal action as primary actor or accessory of the willful and unlawful killing of another from whom they would otherwise take title to property. A person found to have willfully and unlawfully killed the decedent in a civil action brought within one year of the death, and who shall have died before having been tried for the offense and before the settlement of the estate is also considered a slayer. The slayer is barred or limited in their ability to take such title to property they otherwise would have received at the decedent's death as set out in the following statutes:

NCGS § 31A-4. Slayer barred from testate or intestate succession and other rights.

The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

- (1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession or by common law or statutory right as surviving spouse of the decedent.
- (2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate succession and the slayer has living issue who would have been entitled to an interest in the property if the slayer had predeceased the decedent, the property shall be distributed to such issue, per stirpes. If the slayer does not have such issue, then the property shall be distributed as though the slayer had predeceased the decedent.

(3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, the devolution of such property shall be governed by G.S. § 31-42(a) notwithstanding the fact the slayer has not actually died before the decedent.

NCGS § 31A-5. Entirety property.

Where the slayer and decedent hold property as tenants by the entirety, one half of the property shall pass upon the death of the decedent to the decedent's estate, and the other one half shall be held by the slayer during his or her life, subject to pass upon the slayer's death to the slain decedent's heirs or devisees as defined in G.S. 28A-1-1.

NCGS § 31A-6. Survivorship property.

(a) Where the slayer and the decedent hold property with right of survivorship as joint tenants, joint owners, joint obligees or otherwise, the decedent's share thereof shall pass immediately upon the death of the decedent to his estate, and the slayer's share shall be held by the slayer during his lifetime and at his death shall pass to the estate of the decedent. During his lifetime, the slayer shall have the right to the income from his share of the property subject to the rights of creditors of the slayer.

(b) Where three or more persons, including the slayer and the decedent, hold property with right of survivorship as joint tenants, joint owners, joint obligees or otherwise, the portion of the decedent's share which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one half of the property then held by the slayer shall pass immediately to the estate of the decedent, and upon the death of the slayer the remaining interest of the slayer shall pass to the estate of the decedent. During his lifetime the slayer shall have the right to the income from his share of the property subject to the rights of the creditors of the slayer.

**ABSTRACT OF ESTATE FILE NUMBER:** \_\_\_\_\_  
\_\_\_\_\_ **COUNTY**

**DECEDENT:** \_\_\_\_\_

Date of Death: \_\_\_\_\_

County of Domicile at Time of Death: \_\_\_\_\_

Decedent Died: \_\_\_\_\_ Intestate  
\_\_\_\_\_ Testate      Date of Last Will and Testament: \_\_\_\_\_  
Date of Codicil(s) If Any: \_\_\_\_\_  
Date Will Admitted to Probate: \_\_\_\_\_

Any information that indicates Decedent left a Last Will and Testament/Codicil which has not been admitted to probate? (\_\_\_) Yes    (\_\_\_) No      If Yes, indicate reason not admitted and source of information:  
\_\_\_\_\_  
\_\_\_\_\_

Personal Representative(s): \_\_\_\_\_

Date of Qualification of Personal Representative(s): \_\_\_\_\_

Persons/entities entitled to share in Decedent's estate *pursuant to above-captioned Estate File:*

NAME/MARITAL STATUS	AGE	RELATIONSHIP

Other persons that may be entitled to share in Decedent's estate based on information available in the public records or elsewhere (indicate source of information):

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Affidavit of Publication of Notice to Creditors in Estate File? (  ) Yes (  ) No

If Yes: Dates published: \_\_\_\_\_  
Name of newspaper: \_\_\_\_\_  
County in which newspaper published: \_\_\_\_\_

Tax Release(s)/Certification(s) in Estate File? (  ) Yes (  ) No

If Yes: Date and description of release(s)/certification(s): \_\_\_\_\_  
\_\_\_\_\_

Final Account Filed? (  ) Yes (  ) No

If Yes: Date of Filing: \_\_\_\_\_

Attorney for Estate: \_\_\_\_\_

Notes/Remarks:  
\_\_\_\_\_  
\_\_\_\_\_



**CHICAGO TITLE INSURANCE COMPANY**  
**OPEN ESTATE AFFIDAVIT AND INDEMNITY AGREEMENT**

**NOTE: THIS FORM IS TO BE USED ONLY IN SITUATIONS WHICH HAVE BEEN SPECIFICALLY  
APPROVED BY AN UNDERWRITER FOR CHICAGO TITLE INSURANCE COMPANY PRIOR TO CLOSING**

This **OPEN ESTATE AFFIDAVIT AND INDEMNITY AGREEMENT** (hereinafter "Agreement") made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_

\_\_\_\_\_ (collectively, and jointly and severally if more than one, hereinafter "Indemnitor"), and CHICAGO TITLE INSURANCE COMPANY (hereinafter "Company"). Indemnitor, first being duly sworn, deposes, says, and agrees as follows:

WHEREAS, Company has been asked to issue its title insurance commitment(s) and/or policy or policies insuring against loss or damage by reason of defects or possible defects in the title to property described as follows (hereinafter "Property"):

WHEREAS, the Property was formerly owned by:

Decedent: \_\_\_\_\_  
Date of Death: \_\_\_\_\_  
Estate File No: \_\_\_\_\_  
County: \_\_\_\_\_ and

WHEREAS, Decedent's estate has not been fully administered and closed; and

WHEREAS, title to the Property has passed under Decedent's will admitted to probate or pursuant to the laws of intestacy to the following parties (please indicate if minor or incompetent): \_\_\_\_\_  
\_\_\_\_\_

; and

WHEREAS, \_\_\_\_\_ has been appointed by the Clerk of Superior Court as \_\_\_\_ Executor \_\_\_\_ Administrator of Decedent's estate; and

WHEREAS, if Decedent died within the preceding two years, the Notice to Creditors has been published at least once; and

WHEREAS, Company has noted as exceptions to the aforesaid title the following actual or supposed rights, interests, liens, claims, encumbrances or defects in title (hereinafter "Title Matter"):

The Property is or may be subject to matters resulting from the incomplete administration of Decedent's estate including but not limited to: any debts or claims of debt of the estate of Decedent; potential estate and/or inheritance taxes; appeal of any order admitting a will to probate; institution of a suit impeaching such will; filing of a claim for an elective share; filing of a renunciation of any interests in property; discovery and probate of a

later will; claims or interests of any undisclosed or disinherited heirs or undisclosed spouses of heirs or devisees; disqualification of any heir or devisee of Decedent's estate; and any claim of unmarketability of title.

WHEREAS, Indemnitor desires Company issue its title insurance commitment(s) and/or policy or policies without exception to or providing affirmative coverage for the Title Matter; and

WHEREAS, Company may concurrently herewith or hereafter in the ordinary course of its business and in reliance on the representations herein made issue another commitment and/or policy in the form or forms now or then commonly used by Company insuring without exception to or providing affirmative coverage for the Title Matters; and

WHEREAS, Company is willing to issue its commitment(s) and/or policy or policies without exception to or providing affirmative coverage for the Title Matter only if indemnified as herein set out.

NOW, THEREFORE, for and in consideration of the issuance of said title insurance commitment(s) and/or policy or policies and other good and valuable consideration, the receipt of which is hereby acknowledged, Indemnitor does hereby agree with Company as follows:

1. Indemnitor agrees to defend, at Indemnitor's own cost and expense on behalf of and for the protection of Company and the parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies (but without prejudice to the right of Company to defend at the reasonable expense of Indemnitor if Company so elects), any and every suit, action or proceeding in which the Title Matter may be asserted or attempted to be asserted, established or enforced in, to, upon, against or in respect to the Property, or any part thereof, or interest therein.
2. Indemnitor agrees to indemnify and hold Company and any parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies harmless of and from any and all loss, costs, damage and expense of every kind, including attorney's fees, which Company and/or said parties shall or may incur or become liable for as a result of the Title Matter, directly or indirectly, including but not limited to diminution in value, unmarketability of title and actions to enforce this Agreement.
3. Each and every provision of this Agreement shall extend to and be in force concerning any and every other title insurance commitment and/or policy Company may at any time or times hereafter issue insuring without exception to or providing affirmative coverage for the Title Matter.
4. This Agreement contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. It is made to induce the purchase of and/or a loan secured by the Property described herein and the issuance of a title insurance commitment(s) and/or policy or policies relating to same. Indemnitor acknowledges that Company is relying on the representations and indemnifications contained herein in issuance of said commitment(s) and/or policy or policies. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Indemnitor, its/their successors and/or assigns.
6. Indemnitor agrees that the Company may demand arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Indemnitor arising out of or relating to this Agreement, or any breach thereof. Arbitration pursuant to this Agreement and under the Rules in effect on the date of this Agreement, shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

<p>_____</p> <p style="text-align: center;">ENTITY NAME</p> <p>By: _____</p> <p>Printed/Typed Name: _____</p> <p>Title: _____</p> <p>By: _____</p> <p>Printed/Typed Name: _____</p> <p>Title: _____</p> <p>Entity Address: _____</p> <p>_____</p>	<p>_____ (SEAL)</p> <p>Printed/Typed Name: _____</p> <p>Address: _____</p> <p>_____ (SEAL)</p> <p>Printed/Typed Name: _____</p> <p>Address: _____</p> <p>_____ (SEAL)</p> <p>Printed/Typed Name: _____</p> <p>Address: _____</p>
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State of \_\_\_\_\_  
County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me this day by \_\_\_\_\_  
\_\_\_\_\_ [insert name(s) of  
principal(s)], and I certify that each of the aforesaid person(s) personally appeared before me this day  
acknowledging to me that he or she signed the foregoing document.

Date: \_\_\_\_\_

Public

(Official/Notarial Seal)

\_\_\_\_\_  
\_\_\_\_\_, Notary

Notary's Printed or Typed Name

My commission expires: \_\_\_\_\_

**CHICAGO TITLE INSURANCE COMPANY**  
**INTESTATE HEIRS AFFIDAVIT AND INDEMNITY AGREEMENT**

**NOTE: THIS FORM IS TO BE USED ONLY IN SITUATIONS WHICH HAVE BEEN SPECIFICALLY APPROVED BY AN UNDERWRITER FOR CHICAGO TITLE INSURANCE COMPANY PRIOR TO CLOSING**

This **INTESTATE HEIRS AFFIDAVIT AND INDEMNITY AGREEMENT** (hereinafter "Agreement") made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_

\_\_\_\_\_ (collectively, and jointly and severally if more than one, hereinafter "Indemnitor"), and CHICAGO TITLE INSURANCE COMPANY (hereinafter "Company"). Indemnitor, first being duly sworn, deposes, says, and agrees as follows:

WHEREAS, Company has been asked to issue its title insurance commitment(s) and/or policy or policies insuring against loss or damage by reason of defects or possible defects in title to property described as follows (hereinafter "Property"):

WHEREAS, Indemnitor currently resides at \_\_\_\_\_;  
\_\_\_\_\_;  
and

WHEREAS, Indemnitor is familiar with the family and relatives of \_\_\_\_\_ (hereinafter "Decedent") and has been so for \_\_\_\_\_ years. Indemnitor is familiar with Decedent as follows: \_\_\_\_\_ (i.e., neighbor, friend); and

WHEREAS, to the best of Indemnitor's knowledge, Decedent died without an existing Last Will and Testament; and

WHEREAS, to the best of Indemnitor's knowledge, Decedent was survived at the time of his/her death by the following family/relatives which person(s) are the closest relatives/next of kin of the Decedent at the time of his/her death:

Spouse (indicate current marital status of surviving spouse): \_\_\_\_\_

Children (indicate marital status): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Children of predeceased children (indicate marital status): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF THE DECEDENT WAS NOT SURVIVED BY A SPOUSE OR ANY CHILDREN OR CHILDREN OF PREDECEASED CHILDREN**, please list other surviving relatives (parents, siblings, aunts/uncles, cousins, etc.).

Name	Relation to Decedent/Marital Status
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

WHEREAS, Company has noted as exceptions to the aforesaid title the following actual or supposed rights, interests, liens, claims, encumbrances or defects in title (hereinafter "Title Matter"):

The Property is or may be subject to rights of any potential heirs of Decedent not named in the preceding section of this Agreement.

WHEREAS, Indemnitor desires Company issue its title insurance commitment(s) and/or policy or policies without exception to or providing affirmative coverage for the Title Matter; and

WHEREAS, Company may concurrently herewith or hereafter in the ordinary course of its business and in reliance on the representations herein made issue another commitment and/or policy in the form or forms now or then commonly used by Company insuring without exception to or providing affirmative coverage for the Title Matters; and

WHEREAS, Company is willing to issue its commitment(s) and/or policy or policies without exception to or providing affirmative coverage for the Title Matter only if indemnified as herein set out.

NOW, THEREFORE, for and in consideration of the issuance of said title insurance commitment(s) and/or policy or policies and other good and valuable consideration, the receipt of which is hereby acknowledged, Indemnitor does hereby agree with Company as follows:

1. Indemnitor agrees to defend, at Indemnitor's own cost and expense on behalf of and for the protection of Company and the parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies (but without prejudice to the right of Company to defend at the reasonable expense of Indemnitor if Company so elects), any and every suit, action or proceeding in which the Title Matter may be asserted or attempted to be asserted, established or enforced in, to, upon, against or in respect to the Property, or any part thereof, or interest therein.
2. Indemnitor agrees to indemnify and hold Company and any parties insured or who may be insured under said title insurance commitment(s) and/or policy or policies harmless of and from any and all loss, costs, damage and expense of every kind, including attorney's fees, which Company and/or said parties shall or may incur or become liable for as a result of the Title Matter, directly or indirectly, including but not limited to diminution in value, unmarketability of title and actions to enforce this Agreement.

3. Each and every provision of this Agreement shall extend to and be in force concerning any and every other title insurance commitment and/or policy Company may at any time or times hereafter issue insuring without exception to or providing affirmative coverage for the Title Matter.
4. This Agreement contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. It is made to induce the purchase of and/or a loan secured by the Property described herein and the issuance of a title insurance commitment(s) and/or policy or policies relating to same. Indemnitor acknowledges that Company is relying on the representations and indemnifications contained herein in issuance of said commitment(s) and/or policy or policies. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Indemnitor, its/their successors and/or assigns.
6. Indemnitor agrees that the Company may demand arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Indemnitor arising out of or relating to this Agreement, or any breach thereof. Arbitration pursuant to this Agreement and under the Rules in effect on the date of this Agreement, shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

\_\_\_\_\_(SEAL)  
 Printed/Typed Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

\_\_\_\_\_(SEAL)  
 Printed/Typed Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

State of \_\_\_\_\_  
 County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me this day by \_\_\_\_\_ [insert name(s) of principal(s)], and I certify that each of the aforesaid person(s) personally appeared before me this day acknowledging to me that he or she signed the foregoing document.

Date: \_\_\_\_\_

Notary Public

\_\_\_\_\_  
 Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: \_\_\_\_\_

**CHICAGO TITLE INSURANCE COMPANY**  
**INTESTATE HEIRS AFFIDAVIT**

**NOTE: THIS FORM IS TO BE USED ONLY IN SITUATIONS WHICH HAVE BEEN SPECIFICALLY APPROVED BY AN UNDERWRITER FOR CHICAGO TITLE INSURANCE COMPANY PRIOR TO CLOSING AND IN WHICH THE AFFIANT IS NOT A PARTY TO AND DOES NOT BENEFIT FROM THE TRANSACTION TO BE INSURED**

\_\_\_\_\_ (hereinafter "Affiant") first being  
duly sworn, deposes and says:

1. Affiant currently resides at \_\_\_\_\_  
\_\_\_\_\_.

2. Affiant is familiar with the family and relatives of \_\_\_\_\_  
(hereinafter "Decedent") and has been so for \_\_\_\_\_ years. Affiant is familiar with Decedent  
as follows: \_\_\_\_\_ (i.e., neighbor,  
friend).

3. To the best of Affiant's knowledge, Decedent died without an existing Last Will and Testament.

4. To the best of Affiant's knowledge, Decedent was survived at the time of his/her death by the following  
family/relatives which person(s) are the closest relatives/next of kin of Decedent at the time of his/her death:

Spouse (indicate current marital status of surviving spouse): \_\_\_\_\_

Children (indicate marital status): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Children of predeceased children (indicate marital status): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF THE DECEDENT WAS NOT SURVIVED BY A SPOUSE OR ANY CHILDREN OR CHILDREN OF PREDECEASED CHILDREN, please list other surviving relatives (parents, siblings, aunts/uncles, cousins, etc.).**

Name	Relation to Decedent/Marital Status
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Affiant has been advised that Chicago Title Insurance Company has been asked to issue its title insurance commitment(s) and/or policy or policies insuring against loss or damage by reason of an interest in real property owned by Decedent at the time of his death being subject to the rights of any potential heirs of Decedent not named in Item 4 of this affidavit. Affiant is aware that Chicago Title Insurance Company is relying of the representations made herein in issuing said commitment(s) and/or policy or policies.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_(SEAL)  
Printed/Typed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_(SEAL)  
Printed/Typed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me this day by \_\_\_\_\_ [insert name(s) of  
principal(s)].

Date: \_\_\_\_\_

Public

\_\_\_\_\_, Notary

Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: \_\_\_\_\_