

---

## Coates' Canons Blog: How to Deal with Heir Property

By Chris McLaughlin

Article: <https://canons.sog.unc.edu/how-to-deal-with-heir-property/>

This entry was posted on November 19, 2015 and is filed under Finance & Tax, Property Taxes

---

Few things cause more headaches for property tax offices than heir property. When a taxpayer dies owning real property, listing, exemption eligibility, billing, and enforced collection questions suddenly become very difficult to resolve.

The traditional approach to resolving these questions is for the tax office to wait until a court administers the dead taxpayer's estate and identifies the parties who are the rightful new owners of that taxpayer's property. But that might take years, or it might never happen.

After discussing the issue with my property law expert colleague Chuck Szypszak and other experienced practitioners, it's become clear to me that tax offices may change ownership of heir property without waiting for action by a court. The new approach described below should reduce the time property remains listed in the name of unknown owners and the headaches associated with those listings.

All real property must be listed "in the name of the owner of record" as of January 1 each year. G.S. 105-303(b)(1) and G.S. 105-302(a). Although the Machinery Act does not define the term "owner of record" it is generally understood to mean the party identified in public records as the owner of the property.

Usually owner of record for real property can be determined easily by locating the most recent deed to the property recorded with the register of deeds. But when a taxpayer dies owning real property, ownership of that property can and usually will transfer without a deed.

If the decedent (fancy name for the dead taxpayer) had executed a will, then that will controls subsequent ownership of the property. A will can be the subject of a probate proceeding in the N.C. Superior Court in the county where the decedent maintained his or her primary (legal) residence. (For more details on probate proceedings, see this guide published by the N.C. Administrative Office of the Courts.) If a probate proceeding occurs, then the tax office can rely on the filings in that proceeding as the public records needed to identify the new record owner(s) of the decedent's property.

But it may take years for a will to make it to probate. And if the decedent owned little property at the time of death, the will may never be probated. Without a probate proceeding, the tax office has no public records to justify a change in record ownership for property tax purposes.

The same problem often arises when a taxpayer dies without a will. State intestacy laws then govern who owns the decedent's property. G.S. Chapter 29. Although the decedent's estate could still be the subject of a court proceeding, that is rare unless there is a substantial amount of assets involved. If there are no court filings for the estate, then there are no public records to identify the heirs and change record ownership for tax purposes.

My customary advice when there is no will probate or estate proceeding after the death of a taxpayer is to list the property in the name "heirs of decedent" as authorized by G.S. 105-302(b)(6).

That approach is a quick fix but it doesn't really solve the ownership problem. Tax offices need to list property in the names of specific taxpayers so that they have someone to hold responsible if the taxes on that property become delinquent. Attachment and garnishment, often the most effective and efficient method of collecting delinquent property taxes, cannot be employed unless there is a specific responsible taxpayer to target. If property is listed in the name of unknown heirs, the only enforced collection remedy will be foreclosure.

---

After much thought, I now feel confident amending my advice about heir property. I don't think it is necessary for counties to wait until a will is probated or an intestate estate is administered before listing heir property in the name of its new owner.

Here's why: G.S. 105-302(b)(6) instructs the tax office to list the property under the name "heirs of" or "devisees of" the decedent until the heirs or the devisees "have given the assessor notice of their names and of the division of the estate." (An heir is someone who takes property under the intestacy laws; a devisee is someone who takes property under a will).

Essentially, this provision says that if the new owners of the decedent's property self-identify with the tax office then the tax office should list the decedent's property in the names of these (self-proclaimed) new owners.

This approach should be helpful to tax offices, as it is in their best interests to get property listed in the names of specific individuals rather than unknown heirs or devisees as quickly as possible. Doing so helps answer listing, exemption, and collection questions that will otherwise remain unresolved.

Unfortunately, G.S. 105-302(b)(6) does not describe the type of notice that is required from heirs or devisees to prove they are the owners of the property for the purpose of property taxes. An unsupported assertion ("I promise I'm Uncle Ernie's only relative!") likely is not sufficient. But conversations with my School of Government property law expert colleague Chuck Szypszak and other experienced practitioners suggest that an affidavit from an alleged heir or devisee, signed and notarized under oath, should be sufficient.

At a minimum, the affidavit must identify the real property, the decedent, and the alleged owner's relationship with the decedent. It should assert an ownership right to the real property under either a will or under state intestacy law and identify any other known devisees or heirs who may have an interest in the property. If ownership is claimed under a will, a copy of the will should be attached to the affidavit.

Once an affidavit is submitted to the tax office it becomes a public record and can be relied upon by the tax office to change the listing of heir property to the party that submitted the affidavit.

Keep in mind that nothing the tax office does or does not do regarding the listing of real property for taxes will affect legal ownership of that property. A party's ownership interest in the property will be determined by other facts and other law, not by whether the property is listed in that party's name.

The fact that the tax office accepts an affidavit of ownership from one alleged heir/devisee and lists the property in that party's name would not prevent another alleged heir/devisee from challenging ownership of the property. But that dispute would be for the courts to resolve, not the tax office. The best approach in that situation is for the tax office to conclude that ownership is in dispute. G.S. 105-302(b)(12) then instructs the tax office to list the property in the name of the occupant or, if property is unoccupied, in the name of "unknown owner."

Most importantly, the tax office needs to avoid providing legal advice to parties fighting about property ownership. There are plenty of real estate attorneys out there looking for work—the competing owners need to hire their own lawyers and not rely on the tax office for free (and possibly misleading) legal counsel.



## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-303](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-303)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-302](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-302)
- [www.nccourts.org/forms/documents/735.pdf](http://www.nccourts.org/forms/documents/735.pdf)
- [www.ncga.state.nc.us/gascripts/statutes/StatutesTOC.pl?Chapter=0029](http://www.ncga.state.nc.us/gascripts/statutes/StatutesTOC.pl?Chapter=0029)