

# Selling A Deceased Loved One’s Real Estate: Things You Need To Know

By Elizabeth Glines

After the death of a loved one, such as a parent, various tasks must be handled to wrap up your loved one’s final affairs. Selling your deceased loved one’s real estate is one of the more daunting ones. But before you call a real estate agent, take some time to get familiar with and consider a few of the critical issues as you work through this process.

**Who Owns the Property?**

The first task is to understand the property's legal owner. Many families are surprised to learn that their family member was not the legal owner of the house where the relative had lived for years. Perhaps the family member rented or owned the home jointly with another relative or a friend.

How do you discover whether your loved one was the actual owner? You must locate and examine the last vesting deed for the property. “Vesting” means that ownership has become genuine and legal. The deed (the legal document that creates

ownership of the property) contains the information needed to determine land ownership. When someone takes title to the property, the previous owner signs a deed. Then the deed is recorded with the regional government office, often called the recorder, which keeps track of land ownership. Usually, a deed must be recorded before the land will vest in the new owner. If you cannot find a copy of the recorded deed among your loved one’s important papers, you may need to go to the city or county recorder’s office, a title company, or an attorney with experience in real property transactions to get help searching for the deed in the property records and determining whether your loved one owned the property.

You will see the legal ownership once you have located the recorded deed. Each type of ownership has different legal implications, so understanding the differences is crucial, and get help where you need it to sell or transfer ownership of the property.

Type of Ownership	What to Look for in the Deed (Who Is the Grantee?)	Possible Next Steps
Owned by a trust	“Jane Doe, Trustee of the Jane Doe Living Trust dated MM/DD/YYYY” or “The John and Jane Doe Living Trust U/A. (Month, Day, Year)”	Locate the associated trust documentation and determine who is the successor trustee if Jane Doe is now deceased.
Individually owned	“John Doe” or “John Doe, a single man”	Depending on the state of the property, <b>probate may be</b> a personal representative, executor, or administrator who can sell or transfer the land.
Joint tenancy with right of survivorship	“Jane Doe and Alice Brown, as joint tenants’ tenants” with rights of survivorship” or	Probate may not be necessary if the co-owner is living. Full land ownership automatically passes by law to the

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	<p>"John Doe and Jane Doe, as husband and wife" *</p> <p>or</p> <p>"John Doe and Jane Doe, as joint tenants"</p> <p>*In many states, listing a couple on the deed as married indicates a default form of joint ownership, often joint tenancy with the right of survivorship or tenancy by the entirety. This varies by state.</p>	<p>surviving joint tenant. Heirs of the deceased, or the beneficiaries of a will or trust, will not inherit any interest in land so titled.</p> <p>The county recorder may require an affidavit of surviving joint tenant, along with a death certificate, to allow the land to be sold or transferred after the death of the first joint tenant.</p>
Tenancy in common	<p>"Alice Brown, James Cooper, and Andy Katz, as tenants in common"</p> <p>or</p> <p>"Alice Brown, James Cooper, and Andy Katz, as joint tenants" *</p> <p>*In many states, if unmarried individuals' property as "joint tenants" with no additional language, it is assumed that the intent was for it to be owned as tenancy in common.</p>	<p>The deceased tenant's family in common will probably need to file a probate case for a personal representative, executor, or administrator to be appointed by the court to sell or transfer the deceased's interest in the land according to state law or the deceased's will.</p> <p>If one tenant in common is a trust, probate would likely not have to transfer that interest.</p>
Tenancy by the entirety	<p>"John Doe and Jane Doe, tenants by the entirety"</p> <p>or</p> <p>"John Doe and Jane Doe, husband and wife" *</p> <p>*In states, title to real property held by a married couple is automatically held as tenants by the entirety.</p>	<p>This option is available only to married couples in some states. The surviving spouse automatically becomes the complete owner of the property upon the other spouse's death. No probate will be required. The survivor may need to record a new deed or an affidavit of surviving tenant before the survivor can sell or otherwise transfer the property.</p>
Community property	<p>"John Doe and Jane Doe, husband, and wife, as community property"</p> <p>or</p> <p>"John Doe and Jane Doe, husband and wife" *</p> <p>or</p> <p>"Jane Doe, a married woman" *</p> <p>*If this language appears and the property is in a community property state, there is a strong presumption that the property was intended to be owned as community property.</p>	<p>Usually, the surviving spouse of the deceased automatically inherits the deceased spouse's interest in the property unless it was otherwise disposed of by the deceased spouse's will or trust, so probate may not be necessary, but you may need to obtain a court order to transfer title to the spouse.</p>
Miscellaneous	<p>If you see other languages that don't fit the above examples, be aware that other forms of ownership, such as life estates or tenancy in partnership, may use different wording and can lead to various legal results.</p>	<p>Contact an attorney, a title company, or other knowledgeable real estate professional to help determine your next steps.</p>

## Appraising the Property

Have the property appraised after your loved one's death as soon as possible. An appraisal is beneficial for a variety of reasons:

- If you sell the property to a family member or a friend, or even if you purchase the property yourself, a professional appraisal will protect you as the trustee, personal representative, or executor should other heirs and beneficiaries claim you sold the property in a self-dealing manner for less than full market value.

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- If you sell to an unrelated third-party purchaser, an appraisal will help you determine whether you are getting a fair price for the real estate and protect you from accepting low-ball offers. It will also protect you as the trustee, personal representative, or executor from claims that you are not acting in the best interests of the beneficiaries.
- If your loved one's estate could be subject to estate taxes, an appraisal will help you verify the estate's value for tax purposes.
- If you intend to sell the property later, an appraisal will help you determine the new tax basis of the property, established upon the previous owner's death, so you can accurately calculate the capital gain or loss when you sell the property.
- Documenting the property's proper value can also help obtain insurance sufficient to cover any damage to the property while you are administering your loved one's estate or trust.

### Maintaining the Property

When handling the final affairs of a loved one, properly maintaining the property until it is ready to be sold is another essential task. For instance, you must determine if the property still has a mortgage against it and whether there are sufficient funds in the estate or trust to continue making mortgage payments. If you do, you could avoid foreclosure, exponentially complicating your job. If funds are available, ensure that timely payments continue to be made.

In addition to maintaining any mortgage payments, ensure that the property taxes and other necessary payments, such as water, electricity, natural gas, yard maintenance, security system, etc., are timely paid. As for phone, internet, and cable bills, determine whether those are necessary. Specific alarm systems require a phone line or internet connection to function correctly.

### A Seller's Required Disclosures

Once you have listed the property for sale, you must be sure that you know what disclosures about the property the applicable laws and regulations require. In some states, you must disclose various property conditions to potential

buyers. You must do so to avoid significant liability and even litigation. Some of the more common disclosures you should know include:

- asbestos, mold, water damage, or lead
- mechanical or electrical problems issues
- structural problems
- hauntings or deaths in the home, including natural deaths, murders, or suicides.
- boundary disputes
- environmental and natural hazards, such as high radon levels, contaminated soil, electrical hazards, high water tables leading to frequent flooding, etc.; and
- drug-related hazards, e.g., meth labs

Check with your real estate agent or attorney to determine what disclosures are required under state law.

Selling the property of your loved one can be simple, and it can often be done quickly and efficiently. Armed with the above information, you will be far better prepared to handle this critical aspect of your loved one's final affairs. Please call the lawyers of Altman & Associates if you need help.

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