

Selling Out of an Estate: A Comprehensive Guide



Selling a property out of an estate after an owner has passed away can be a complex and emotional process. For many, it's a first-time experience that comes with a steep learning curve. This guide will help clarify common misconceptions, address frequent complaints, and explain the key steps to ensure a smooth transaction. Whether you're navigating affidavits of heirship, probate proceedings, or trust documentation, Republic Title is here to support you. As the preferred title partner in North Texas, Republic Title provides the expertise and responsiveness needed to guide you through even the most complicated real estate transactions.

This guide is intended to provide basic information about the sale of property after the death of an owner. Nothing contained in this article is intended to be a substitute for legal advice, and Republic Title recommends that anyone seeking wills, estate planning, or probate advice should contact an attorney to provide you with legal advice and help guide you.



KEY TERMINOLOGY TO UNDERSTAND

- **POWER OF ATTORNEY (POA):** A legal document granting authority to act on someone else's behalf. Not valid after death.
- **AFFIDAVIT OF HEIRSHIP:** A sworn statement identifying heirs when no will exists or a will is not probated, often used to transfer ownership.
- **PROBATE:** A legal process to give a will legal effect and aid in the distribution of assets. Necessary to confirm the executor's authority to sell.
- **TRUSTS:** A legal arrangement that is often used in estate planning to help avoid probate and simplify sales of property after a death. Title is held by a trustee for the benefit of the trust beneficiaries and the powers of the trustee are defined in the trust document.
- **EXECUTOR:** A person named in the will who is given authority by a probate court to manage the estate and sell property.
- **ADMINISTRATOR:** A person appointed by the court to manage an estate when there is no will, or a named executor is not willing or able to serve.



STEPS TO AVOIDING COMMON COMPLAINTS WHEN SELLING OUT OF AN ESTATE

To ensure a smoother estate sale and avoid common complaints, it's essential to be prepared and organized. Here are key steps to take:

PROVIDE TO THE TITLE COMPANY, IF APPLICABLE:

- Will, regardless of whether it is probated
- Death Certificate
- Probate Documents, if any
- Trust, if any
- Attorney and/or CPA's contact information handling probate

NOTIFY THE COUNTY APPRAISAL DISTRICT (CAD):

Of the change in ownership and the removal of any exemptions. This helps prevent tax issues and ensures the property records are updated.

REVIEW THE COMMITMENT: Carefully go over the title commitment with your title company to understand any requirements or exceptions that may impact the sale.

FIND OUT THE EXPECTED TIMELINE FROM THE SELLER'S PROBATE ATTORNEY: Knowing the timeline for probate proceedings will help set realistic expectations for the closing process.

** Following these steps can significantly reduce delays and frustrations, helping to keep all parties informed and the transaction on track. With Republic Title as your partner, you can rely on their expertise and guidance through each step, making this process as smooth as possible.*



COMMON QUESTIONS ON SELLING OUT OF AN ESTATE

Q: CAN I SELL RIGHT AWAY AFTER SOMEONE PASSES?

A: Many believe they can immediately list and sell a property after a loved one's passing. However, without proper documentation, including proof of ownership and authority to sell, the process cannot begin.

Q: WILL A POWER OF ATTORNEY (POA) HANDLE EVERYTHING?

A: POA is only valid while the person granting it is alive. After their passing, the agent no longer has the power to act under the POA and who has authority to act for the estate will be determined by the probate court documents or an affidavit of heirship.

Q: DOES NO WILL MEAN NO SALE?

A: When there is no will, or a will is not probated, properties can still be sold by using affidavits of heirship or court proceedings to determine the heirs of the decedent that will need to sign closing documents.

SELLING OUT OF AN ESTATE WITH A POWER OF ATTORNEY

As mentioned earlier, a POA ceases to be valid upon the grantor's death. However, during their lifetime, it can be instrumental in managing property sales if the property owner is incapacitated. Ensure the POA explicitly grants authority to sell real estate, and provide the document to the title company.

SELLING WHEN THERE IS NO WILL

Here are some other ways title may be transferred when a decedent died without a will:

AFFIDAVITS OF HEIRSHIP:

- Used to determine legal heirs and transfer property ownership as set out in the Texas Estates Code .
- Requires signatures from disinterested witnesses who knew the deceased.

PROBATE PROCEEDINGS:

- The court appoints an Administrator to manage the estate and also may determine the heirs of the decedent.
- The Administrator may be given the authority to sell the property by court order.

TRUSTS:

- If the property was conveyed to the trustee of a trust, it may be possible to avoid probate to sell the property. The power of the trustee to sell the property is defined by the trust documents.
- This may simplify the process and avoid many of the potential delays associated with court proceedings.