

The Beacon Article

Death of Party to Real Estate Contract

I'd say I get the most questions on a weekly basis where an estate is somehow involved. That's a broad topic with lots of things to address, so as much as I'd like to write a comprehensive Title Insurance primer for underwriting estate issues, I think that's a little beyond the scope of a single article for the Beacon. Instead, I'd like to focus on an issue that has come up recently that I think is worth bringing to your attention in case you come across it in the course of your practice: 'What happens when a party to a real estate contract dies after the contract is signed, but before closing has occurred?'

There are two angles to address for this one, depending on whether the deceased individual was the Buyer or the Seller. In the latter case, there is actually a statute directly on point to this subject, NCGS § 28A-17-9:

“When any decedent has contracted to sell any real property and has given bond or other enforceable written contract to the purchaser to convey same, the decedent’s personal representative may execute and deliver a deed to such real property and such deed shall convey the title as fully as if it had been executed and delivered by the decedent...”

Essentially, this allows the Personal Representative (PR) of the decedent Seller’s estate to consummate the sale and execute the deed (and presumably any title affidavits) required, similar to one acting under a Power of Attorney for the decedent Seller. The statute goes on to clarify that the warranties given by the deed are binding on the estate but not the Personal Representative individually. Of course, this does require the opening of an estate file, the issuance of Letters Testamentary and the qualification of a PR by the Court, so it does mean opening and creating an estate and possible delay of the closing date under the contract.

What about when the individual who passes away is the Buyer under a PSA? We recently dealt with this on a commercial property in the eastern part of NC. Although § 28A-17-9 specifically only references the death of a Seller who is under contract, § 28A-13-3(4), when enumerating the power of the Personal Representative of the Estate, grants the PR the right:

“...(4) To complete performance of contracts entered into by the decedent that continue as obligations of the decedent's estate, or to refuse to complete such contracts, as the personal representative may determine to be in the best interests of the estate, but such refusal shall not limit any cause of action which might have been maintained against decedent if the decedent had refused to complete such

contract. In respect to enforceable contracts by the decedent to convey an interest in land, the provisions of G.S. 28A-17-9 are controlling.”

Here, we see even broader power granted to the PR with regards to consummation of the sale. Not only are they authorized to consummate the transaction, but they are also authorized to refuse to do so if they believe it is in the best interests of the Estate. Note that this does not release the estate from liability for a breach of contract action if they do so.

In the transaction we were handling where this came up, another interesting wrinkle was involved: Buyer was handling the transaction as a 1031, and the company handling the 1031 exchange required that the property be conveyed into the name of the Executor/PR in their capacity as the Executor/PR of the Estate in order for the 1031 to go through. Initially, we had concerns that the PR did not have the right to take the property themselves or that they would do so subject to the liens of the estate and the interests of the heirs since all of the decedent’s property vests in the heirs/devisees upon probate relating back to the date of death per § 28A-15-2. However, pursuant to the very general powers granted in § 28A-17-10, we found the PR able to hold title to the property. Furthermore, it was deemed that because the interest in real property had not actually vested as of date of death, the property did not pass through the estate and title in the name of the PR could be insured without exception for the liens of creditors of the estate or any potential interest of the heirs of the estate. I think this underscores the much broader powers granted to the PR when the decedent was a purchaser under a real estate contract, as compared to the more limited ability to simply execute the terms of the contract in a kind of de facto Power of Attorney for the decedent.

Brad Surles, Harbor City Title President & Counsel