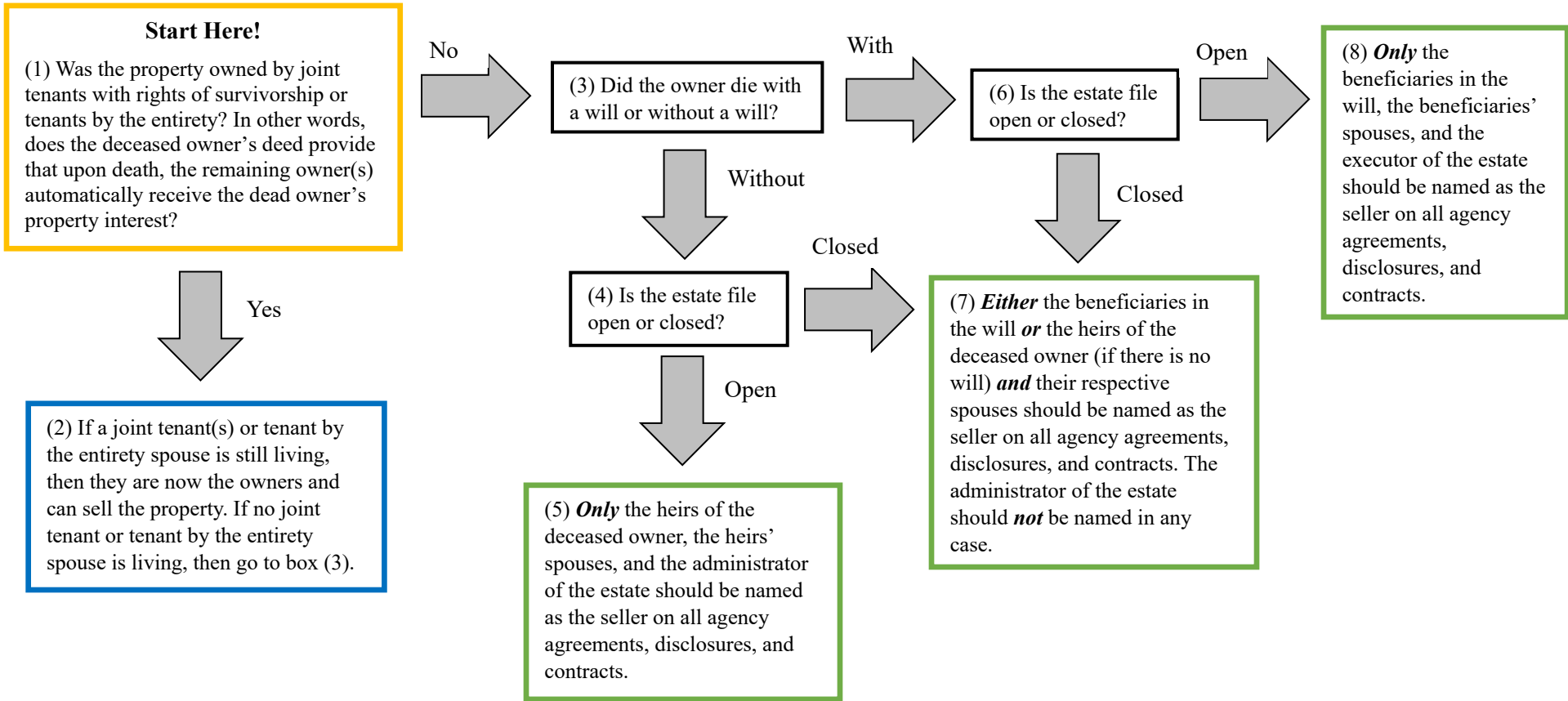


ESTATE PROPERTY FLOWCHART

WARNING: Agents are strongly advised to consult with an attorney before entering into any agency relationship involving an estate. *Deceased people cannot own real property.* The name of a deceased person should not appear in any agency agreement, disclosure, or contract. The named seller should never be, for example, “The Estate of John Doe.” The seller should instead be the name of the individual executor, administrator, beneficiary, trustee, or heir if no will exists, and agents should use this guide in conjunction with legal counsel to determine who has an interest in the property.



IMPORTANT INFORMATION FOR ESTATE PROPERTY FLOWCHART

1. If any beneficiaries or heirs are under the age of 18, or if any seller has a guardian regardless of their age, ***do not use this chart***, and consult an attorney for further instructions.
2. Remember that the estate administration process may take longer than a typical transaction. Agents should have an understanding of the steps involved in estate administration prior to entering into an agency agreement concerning estate property.
3. During every estate client intake, remember to ask: (a) Where is the property located? (b) Where did decedent reside? (c) Who is on the deed? (d) Did the decedent have a will? (e) Is the decedent's estate open or closed? (f) Is there a mortgage on the property?
4. The spouse of any owner ***must*** sign the deed and should be added to all agency agreements, disclosures, and contracts, regardless of whether the owner is an heir or a beneficiary named in a will. Spouses of estate administrators or executors do not need to be named. See page 6 of Guidelines for Completing the Offer to Purchase and Contract (Form 2G) for more information on the requirement for spousal signatures.
5. While the spouse must sign the deed and lien waiver, proceeds will go directly to the beneficiary, heir, or estate, as applicable, and not to the signing spouse. In order to keep inherited property as separate property, the beneficiary or heir should be careful not to co-mingle their separate property with marital property. In most cases, inherited property is separate property and not marital property in North Carolina.
6. If the estate is being administered in a state or county different than where the property is located, the estate administrator will have to file an ancillary proceeding in the North Carolina county where the property is located. This requires that an exemplified copy of the estate be filed in that county. An exemplified copy means that the file will have a stamp from the clerk of court certifying the copy's authenticity. If it has been more than two years since the date of death, and the estate has been closed, but located in a different state or county, an exemplified copy of the estate file will still need to be filed in the county in which the property is located, along with the North Carolina certificate of probate.
7. If the property has been left to a trust, the seller-trustee must provide a trust certification pursuant to N.C.G.S. § 36C-10-1310.
8. If the seller signs the contract and dies prior to Closing, N.C.G.S. § 28A-17-9 and N.C.G.S. § 28A-13-3(a)(4) allow the estate administrator to sign the deed without the joinder of the beneficiaries or heirs. However, the title company will require that an estate file be opened for the deceased owner.
9. Estate forms can be found on the North Carolina Court System website: <http://www.nccourts.org/forms/FormSearch.asp>.
10. Powers of attorney expire when the principal dies. Therefore, powers of attorney are not sufficient to convey estate property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC., AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM. YOU SHOULD CONSULT A NORTH CAROLINA ATTORNEY BEFORE ENTERING INTO ANY AGENCY RELATIONSHIP INVOLVING ESTATE PROPERTY.

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This form jointly approved by:
North Carolina Bar Association's Real Property Section
North Carolina Association of REALTORS®, Inc.



STANDARD FORM 10-T
Adopted 7/2024
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