



PENNSYLVANIA

UNDERWRITING GUIDELINES – DECEDENTS, ESTATES, AND INHERITANCE TAXES

This Underwriting Guideline is for use only by policy-issuing agents of WFG National Title Insurance Company (“WFG”) regarding issuance of WFG’s policies of title insurance. This Guideline reflects underwriting, risk, and business decisions of WFG and is not legal advice. WFG does not represent any party to a transaction, and parties should seek legal advice from their own legal counsel.

This Guideline is intended to answer the most common questions faced by WFG’s agents when issuing policies of title insurance, but the facts and circumstances of a specific transaction may lead to a different result. If you have any questions regarding this Guideline or your specific transaction, please do not hesitate to contact Underwriting.

Introduction

Whether there is a deceased person (“decedent”) in a Property’s chain of title, or you are handling a sale from a decedent’s estate, there are two related, but independent, concepts that commonly come into play: **(1) transfer of the Property’s title**, and **(2) inheritance/estate taxes**.

This Guideline contains the following Sections:

1. The Property’s Title

- a. Jointly-held Property
- b. Intestate Succession (without a Will)
- c. Testate Succession (with a Will)
- d. Out of State Decedents (Foreign Fiduciaries)
- e. Trust Property

2. Pennsylvania Inheritance Taxes

- a. Clearing the Inheritance Tax Lien
- b. Closing with Security (Escrow)
- c. Jointly-Owned and Trust Property

3. Federal Estate Taxes

4. Gifts in Contemplation of Death (\$1 Deeds)

Sample Schedule B-I Requirements:

Below is a sample Requirement for Schedule B-I of the Commitment. Additional or different Requirements may be needed depending on the specifics of your transaction.

In re Estate of ____, deceased, proof must be furnished as to the following:

- (a) Date of death.
- (b) That the decedent died either testate or intestate.
- (c) If the decedent died testate his/her Last Will and Testament must be probated in the Register of Wills Office of ____ County and Letters Testamentary must be granted to his/her Executor.
- (d) If the decedent died intestate an Estate proceedings must be opened in the Register of Wills Office of ____ County, and Letters of Administration granted to his/her personal representative.
- (e) If Probate has been filed in a foreign jurisdiction, Foreign Fiduciary filing will be required with the Register of Wills, County of ____, including an exemplified copy of the Will and Letters Testamentary or of Administration. (See 20 PA C.S.A. Section 4101)
- (f) Payment of all Inheritance Taxes due the Commonwealth of Pennsylvania.
- (g) Payment of all Federal Estate Taxes due to The United States of America, if any.

If title is in two spouses as tenants by the entirety and one is deceased:

Proof of death and date thereof of [insert grantee name] co-grantee in [insert Book/page or Instrument #].

Proof that ____ and ____ were continuously married, uninterrupted by divorce, from a date prior to acquiring title, through and including the date of death of ____.

1. THE PROPERTY'S TITLE

Understanding how and to whom Property's title transfers will determine the proper vested owner (and therefore who will be required to sign the Deed or Mortgage).

A. Jointly-held Property

DIRECTIONS: For jointly-held Property, you must require adequate proof that the Decedent is in fact deceased (usually proved by an Estate filing or by production of the Death Certificate), and that the survivorship characteristic of the Deed remained intact. Inheritance tax requirements will also apply (see below).

If the Decedent held the Property as either ***joint tenants with the right of survivorship*** or ***tenants by the entirety*** under the last deed, then the Property is said to pass "under the deed". The Property automatically passes to the surviving co-owner(s) at the time of the Decedent's death. The Decedent's Personal Representative (Estate) is not involved in the conveyance of the title. Although the Property does not pass "through" probate, ***inheritance taxes may still be due*** depending on the relationship of the surviving owner(s) to the Decedent (see below).

The words “**joint tenants**” alone are not sufficient to create a right of survivorship in a deed.¹ The intention to specifically create a right of survivorship must be shown. This is usually done by using the phrase “joint tenants with the right of survivorship”, although no specific language is required. If there is any uncertainty regarding the type of tenancy, please contact Underwriting.

Tenancy by the entirety requires that the parties are actually married **both at the time they acquired title and when the Decedent died**. If the parties were not married, or were married after taking title, please contact Underwriting.

Both tenancies above can be **severed** which would turn them into a **tenancy in common**. A tenancy by the entirety is most commonly severed by **divorce**, but can also be done by the actions of the parties. A joint tenancy with right of survivorship is commonly severed by one of the owners conveying their partial interest to a different owner. Both can also be severed by one owner filing a court action regarding the Property’s title against the other owner(s), such as a **partition action**. If there are concerns whether a right of survivorship was altered before death, or an active dispute amongst the parties (including the Decedent’s Personal Representative), please contact Underwriting.

Please note, **if a married person dies without a Will** their entire Estate **does not** automatically pass to their surviving spouse. If the decedent held the property separately (or as tenants in common with their spouse), then it only passes to the surviving spouse if the decedent left no surviving issue (children, grandchildren, etc.) or parents.² If the decedent left issue or parents, then the surviving spouse only receives a portion of the estate and the portion passing to the issue or parents will be subject to taxation. Of course, if the Property was held as tenants by the entirety or joint tenants with the right of survivorship, then these rules of succession would not apply and the spouse would receive the Property specifically as the surviving tenant under the deed.

If there is a Decedent in the back chain, it is often acceptable to rely on a deed recital showing the date of death and devolution of title, assuming there is no other reason to question the recital’s validity. If there is not a sufficient recital, or something indicating the recital may be incorrect (either in the record or known to you), please contact Underwriting.

B. Intestate Succession (without a Will)

DIRECTIONS: Estate proceedings must be opened in the Register of Wills and Letters of Administration must be granted to a Personal Representative. The Administrator and all intestate Heirs must join the deed of conveyance. If Estate proceedings have been opened in another State, foreign fiduciary filing is required in the County where the Property is located. Inheritance tax requirements will also apply (see below).

¹ See, e.g., 68 P.S. § 110; *In re Estate of Quick*, 588 Pa. 485, at 490-91 (Pa. 2006).

² See 20 Pa. C.S. § 2102.

If a person dies without a Will, they are said to have died **intestate**. In this scenario, legal title passes to their **Heirs** immediately at their time of death, subject to the powers of the **Personal Representative**.³ This applies either where decedent **solely owned** the Property, or owned a portion as a **tenant in common**. Although legal title passes to the Heirs, WFG will normally not insure a conveyance solely from Heirs without an Estate being opened. If you are being asked to insure a conveyance or mortgage from Heirs only, please contact Underwriting.

For decedents without a Will, the Personal Representative is called the **Administrator** and will be granted **Letters of Administration** from the County **Register of Wills**. Sometimes, the Personal Representative will be an **Administrator D.B.N.** This just means it is a successor Administrator appointed to administer the property which was not already administered by a previous Personal Representative. An Administrator DBN should proceed normally, but if there appears to be a dispute over administration of the Estate, please contact Underwriting.

An Estate should be opened in the County where the decedent lived when they died. If a decedent owned real estate located in multiple Pennsylvania Counties, an Estate proceeding in any Pennsylvania County gives the Administrator authority over all of the decedent's real estate in Pennsylvania. However, any **Court Orders** relating to the real estate must be filed in the County where the real estate is located. For Estates opened outside of Pennsylvania, please see Out of State Decedents (Foreign Fiduciaries), below.

The Administrator has the statutory power to sell the Property, and must always join the conveyance deed. (If the Administrator is purchasing the property from the estate for themselves, Court approval is required.⁴) As a matter of risk avoidance and best practice, WFG also asks that all Heirs join the conveyance deed. If this is not possible, we would require all Heirs to otherwise show their agreement to the sale (i.e. through a family settlement agreement, a written statement of consent, or filed disclaimers). A **renunciation** to act as Administrator is not the same as a **disclaimer** of the Heir's interest in the Property. If you are being asked to insure a conveyance from an Administrator without involving the Heirs, or by relying on disclaimers, please contact Underwriting.

It is unusual that an Administrator would need to take out a loan and pledge Estate assets as collateral before the Estate is distributed to the Heirs. If you are being asked to insure a Mortgage given by someone in their capacity as an Administrator, please contact Underwriting.

C. Testate Succession (with a Will)

DIRECTIONS: Estate proceedings must be opened in the Register of Wills, a Will admitted to probate, and Letters Testamentary must be granted to a Personal Representative. The Executor

³ See 20 Pa.C.S. § 301(b).

⁴ See 20 Pa.C.S. § 3356.

and all Specific Devisees must join the deed of conveyance. If Estate proceedings have been opened in another State, foreign fiduciary filing is required in the County where the Property is located. Inheritance tax requirements will also apply (see below).

If a person dies with a Will, they are said to have died **testate**. The Will governs how the Property is handled and the powers of the Executor, so the probated Will must be read in its entirety. Although Pennsylvania statutes provide many “default” provisions, a Will can change them. For example, the Will could limit the Executor’s authority to sell real estate. Therefore, examination of the Will is important and you should not assume every Will is the same.

In this scenario, legal title passes to their **Devisees** immediately at their time of death, subject to the powers of the **Personal Representative**.⁵ This applies either where decedent **solely owned** the Property, or owned a portion as a **tenant in common**. Although legal title passes to the Devisees, WFG will not insure a conveyance solely from Devisees without the will being admitted to probate. If you are being asked to insure a conveyance or mortgage from Devisees under an un-probated Will, please contact Underwriting.

For decedents leaving a Will, the Personal Representative is called the **Executor** and will be granted **Letters Testamentary** from the County Register of Wills. Sometimes, the Personal Representative will be an **Administrator C.T.A.** or an **Administrator D.B.N.C.T.A.** This just means that no one qualifies as an Executor under the Will so an Administrator is appointed. An Administrator C.T.A/D.B.N.C.T.A. must still follow the Will and should proceed normally like an Executor, but if there appears to be a dispute over administration of the Estate, please contact Underwriting.

An Estate should be opened in the County where the decedent lived when they died. If a decedent owned real estate located in multiple Pennsylvania Counties, an Estate proceeding in any County gives the Executor authority over all of the decedent’s real estate in Pennsylvania. However, any **Court Orders** relating to the real estate must filed in the County where the real estate is located. For Estates opened outside of Pennsylvania, please see Out of State Decedents (Foreign Fiduciaries), below.

Unless the Will says otherwise, the Executor has the statutory power to sell the Property, and must always join the conveyance deed. By law, all **Specific Devisees** of the Property must also join the deed.⁶ A Specific Devisee is someone who is left the real estate, as contrasted with a general devise (who may be left money), or a residuary devise (who is left the remainder, or the entirety of the Estate). There is no set language required to create a specific devise. Look out for Wills which refer to the Property by address or by descriptor (e.g. “my house”, “the farm”, “my real estate in ___ County”). If the Will refers to the Property, it is likely specifically devising it to someone. It is better to err on the side of caution by requiring a Devisee’s signature than to miss a Specific Devisee. If you have any questions regarding

⁵ See 20 Pa.C.S. § 301(b).

⁶ See 20 Pa.C.S. § 3351.

whether someone is a Specific Devisee, please contact Underwriting. Other persons named in the Will who are **not** Specific Devisees are not required to join the Deed with the Executor, but it does not hurt if they do. It is better to have too many Devisees sign a deed than not enough.

A **renunciation** to act as Executor is not the same as a **disclaimer** of the Devisee's interest in the Property. If you are being asked to insure a conveyance from the Executor without the Specific Devisee by relying on a disclaimer, please contact Underwriting.

D. Out of State Decedents (Foreign Fiduciaries)

If a person dies while residing outside of Pennsylvania, often their Estate will be opened in their state of residence. A Personal Representative appointed in another state (called a **foreign fiduciary**) **does not** have any authority to administer real property located in Pennsylvania without first qualifying under Pennsylvania's statutes. Exemplified copies of the Estate proceedings from the other State must be filed in the County where the Property is located.⁷ The foreign fiduciary cannot exercise powers in Pennsylvania within the first month after decedent's death.⁸

Unlike Pennsylvania Estates, copies of a foreign estate must be filed in each County where real estate is located. For example, assume a decedent died while residing in New Jersey and owned properties in Philadelphia and Bucks Counties; an Estate was raised with the Surrogate in New Jersey. You are asked to handle the sale of the Bucks County property. The fact that the New Jersey Estate was already filed in Philadelphia is not sufficient. Copies of the New Jersey Estate documents must also be filed in Bucks County to allow the New Jersey fiduciary authority over the Bucks County property.

Regardless of where the owner died, or where their Estate was originally raised, Pennsylvania inheritance taxes are due on any property located within Pennsylvania.⁹

E. Trust Property

If the Property is titled in a Trustee of a Trust, the Property will pass according to the terms of the Trust. Normally, the Trustee will have authority to convey the Property and a Personal Representative of the decedent will not be needed. But as with any Trust property, you must examine the terms of the Trust. If the Trust is **revocable**, or the decedent retained any interest in or power over the real estate **during their lifetime**, there will likely be inheritance taxes due (see below). The title of the Trust is not sufficient to determine whether the Settlor or Grantor (creator of the Trust) retained any rights in the property; you must always read the

⁷ See 20 Pa.C.S. §§ 3136, 4101.

⁸ See 20 Pa.C.S. § 4101(3).

⁹ See 20 Pa.C.S. § 4101(4).

terms of the Trust. If the Trust requires action by the decedent's Estate or Personal Representative, or you are unsure of how title will be passed, please contact Underwriting.

2. PENNSYLVANIA INHERITANCE TAXES

Pennsylvania's inheritance tax is imposed on the transfer of the property resulting from a person's death.¹⁰ The **inheritance tax lien** arises at the time of death and attaches to all property included in the transfer.¹¹ The lien is a "**secret lien**" because the Commonwealth does not need to file anything to create the lien. The lien automatically arises, and the fact that the owner is deceased is sufficient notice that an inheritance tax lien exists. Normally, nothing is filed with the Prothonotary or the Recorder of Deeds regarding this lien. Because of this, you must examine copies of the Estate proceedings from the Register of Wills.

To pay the inheritance taxes, the Personal Representative must first file an Inheritance Tax Return (Form REV-1500), and include Schedules showing the Property and its value. The rate of taxation will depend on the relationship of the person receiving the Property to the Decedent.¹² As of date of publication of these Guidelines, the rates are:

RATE	RELATIONSHIP TO DECEDENT
0%	Spouse (after 1/1/95 – 3% prior); Parent (natural, adoptive, or step) of a decedent child under 21 years of age; Child under 21 years of age of a decedent Parent (natural, adoptive, or step).
4.5%	Grandparent, parents (except if child was under 21 per above), lineal descendants, child-in-law.
12%	Siblings.
15%	All others (unless exempt under 72 P.S. § 9111).

Rates are subject to change by legislation.

Please note, if a married person dies without a Will, their entire Estate **does not** automatically pass to their surviving spouse. If the decedent held the property separately (or as tenants in common with their spouse), then it only passes to the surviving spouse if the decedent left no surviving issue (children, grandchildren, etc.) or parents.¹³ If the decedent left issue or parents, then the surviving spouse only receives a portion of the estate and the portion passing to the issue or parents will be subject to taxation. Of course, if the Property was held as

¹⁰ See 72 P.S. § 9106.

¹¹ See 72 P.S. § 9167.

¹² See 72 P.S. § 9116.

¹³ See 20 Pa. C.S. § 2102.

tenants by the entirety or joint tenants with the right of survivorship, then these rules of succession would not apply and the spouse would receive the Property specifically as the surviving tenant under the deed.

A. Clearing the Inheritance Tax Lien

DIRECTIONS: You must obtain and review copies of (a) the filed Inheritance Tax Return with Schedules showing the Property was reported to the Department of Revenue, **and** (b) the final Notice of Appraisal showing the Return was accepted by the Department, the inheritance taxes were paid, and \$0 balance is remaining. If the Notice of Appraisal showed a balance, you can accept a copy of the receipt from the Register of Wills or Department of Revenue showing the balance was paid.

Alternatively, if the conveyance from the Estate is in the back chain of title, you can accept a Letter of Indemnity under the current Owner's Policy from the title insurer and indemnifying WFG. If you have questions regarding Letters of Indemnity, please contact Underwriting. Statements of Account, receipts, and similar documents alone are not sufficient because they do not show what was reported to the Department of Revenue. Likewise, the Notice of Appraisal does not restate what was in the Return, so copies of both must be examined.

The Department of Revenue states that the 20 year and 9 month statute of limitations regarding inheritance taxes begins running after 1) an Estate is opened, and 2) the Property is reported to the Department in a filed Return. If those two requirements are met, then the Commonwealth has 20 years and 9 months to file a collection action or lien. However, it is much more likely you will encounter the scenario where either an Estate was never opened, or the Estate was opened but no one ever filed an Inheritance Tax Return. Therefore, you cannot assume the inheritance tax lien has expired just because more than 20 years 9 months have passed since the person's death.

However, the Department has also stated that if there is a ***bonafide purchaser and*** 20 years and 9 months have passed from death, they will not pursue collection against property held by the bonafide purchaser.¹⁴ Importantly, the Department ***does not consider a purchaser from an Estate, Heirs, or surviving joint tenant to be bonafide***. Therefore, there must be at least 2 bonafide sales (one from the Estate, and one from the purchaser) **and** the passage of 20 years and 9 months before we can insure over a possible inheritance tax lien.

Similarly, if there is an older Estate in the chain of title and the Register of Wills' file does not contain proof of payment, please attempt to obtain clearance from the Department of Revenue directly. In the past, the Department has been willing to confirm via email whether the

¹⁴ This policy is subject to change, so you must stay informed as to any updated Bulletins, changes in the law, or changes in the Department's procedures in collecting inheritance taxes.

taxes have been paid in a specific Estate or related to a specific Property. If you run into any issues, please contact Underwriting.

Mortgage foreclosures do not clear the inheritance tax lien, even if the Department of Revenue is sent notice of the foreclosure. The Department of Revenue has a specific procedure (Form REV-1839) where the foreclosing Lender can pay the inheritance taxes due on the Property, or obtain a determination that no taxes are owed. If you are insuring a property with a mortgage foreclosure against a deceased person's Heirs or Estate in the chain of title, you must obtain the REV-1839 documents from the foreclosing Lender (or their foreclosure counsel) in order to clear the inheritance tax lien.¹⁵

B. Closing with Security ("Escrow")

To issue a Policy without Exception for inheritance taxes before the final Notice of Appraisalment has been issued, you may rely on a **written** agreement with the Personal Representative that they will a) provide you with copies of 1) the ***filed Inheritance Tax Return with Schedules***, and 2) the final ***Notice of Appraisalment*** showing \$0 balance remaining, **and** b) allow you to hold security in an amount sufficient to cover the estimated inheritance taxes due on the Property, with an adequate cushion.

In Pennsylvania, Estates often sell real property before they have fully settled the inheritance taxes due. To accommodate the selling Estates, it is customary for settlement agents to hold an amount of security sufficient to pay the inheritance taxes on the real estate being conveyed, plus a cushion to account for changes by the Department of Revenue and associated costs if the Personal Representative fails to timely file the Return.

This is commonly called an "escrow" although there is no neutral third-party. Therefore, this agreement should be designed to protect you, as the settlement agent, from loss relating to the non-payment of the inheritance tax lien. Remember, it is not just about the amount of money owed, but someone must be willing to file the Inheritance Tax Return and receive a Notice of Appraisalment. If no one does this, the inheritance tax lien is never removed from the Property. If the Personal Representative disappears, you may need to obtain a release from the Department of Revenue to clear the lien. If the lien is paid but the Personal Representative does not come back to release the balance of the security, you may need to escheat the balance to the Commonwealth according to applicable law and procedures. It is recommended that your agreements with the Personal Representative cover such contingencies. Because these agreements are outside the scope of your agency agreement with WFG, it is recommended that you discuss with your general counsel.

Ultimately, it is the Seller's responsibility to convey title clear of the inheritance tax lien, and this is offered as an accommodation to the parties by the settlement agent. If, for any

¹⁵ This information may also be obtainable from the Department of Revenue directly.

reason, the Personal Representative is unable or unwilling to follow your procedure, they always have the option of settling the inheritance taxes first and then selling the Property, paying the inheritance taxes directly from the proceeds of your sale, or obtaining their own lien release in advance of settlement.¹⁶

C. Jointly-Owned and Trust Property

Contrary to what some believe, Pennsylvania inheritance tax arises on transfers that happen “outside of probate” such as jointly-owned property with rights of survivorship, and property held in trust. In fact, there is a specific Schedule for the Inheritance Tax Return to report this property called “Inter-Vivos Transfers and Misc. Non-Probate Property” (REV-1510, Schedule G). Further, there is a checkbox on the REV-1500 Inheritance Tax Return for “Individual-Transferee Return” which is used when the Estate fails to file a Return so the surviving owner (transferee) must report the property and pay the taxes.

Likewise, holding title in a Trust does not always insulate the Property from inheritance taxes. Depending on the powers reserved by the creator of the Trust, or the grantor of the Property to the Trust, inheritance taxes may still be due. The most common examples are revocable Trusts, or any Trust where the grantor retained the right to use the Property during their lifetime. In close circumstances, the Trust can obtain a ruling from the Department of Revenue whether inheritance taxes are due, or can obtain a lien release.¹⁷

3. FEDERAL ESTATE TAXES

DIRECTIONS: You must require proof that the decedent’s entire estate falls under the applicable federal estate tax exclusion, **or** that a federal estate tax return has been filed and the tax paid, **or** that the estate has obtained a release of the property from the federal estate tax lien. *Alternatively*, if the conveyance from the Estate is in the back chain of title, you can accept a Letter of Indemnity under the current Owner’s Policy from the title insurer and indemnifying WFG. If you have questions regarding Letters of Indemnity, please contact Underwriting.

Remember, ***all property of the decedent*** (even property located outside Pennsylvania, personal property, and property which is not taxed by Pennsylvania inheritance tax), is included in the federal gross estate. Below is a table of some of the exclusions based on year of death:

2014	\$5,340,000	2020	\$11,580,000
2015	\$5,430,000	2021	\$11,700,000
2016	\$5,450,000	2022	\$12,060,000
2017	\$5,490,000	2023	\$12,920,000

¹⁶ See 72 P.S. § 9175.

¹⁷ See 72 P.S. § 9175.

2018	\$11,180,000	2024	\$13,610,000
2019	\$11,400,000	2025	\$13,990,000

The federal government may disagree with the Estate's valuation of the assets, so if it appears the gross estate may be close to the exemption amount, or if there are any questions or concerns, please contact Underwriting for review and further guidance.

Unlike Pennsylvania inheritance taxes, an **unfiled** federal estate tax lien automatically expires 10 years from the Decedent's date of death. Meaning that if the Decedent died more than 10 years ago, and your title search does not reveal any filed liens or enforcement actions, you do not need to request an LOI.

4. GIFTS IN CONTEMPLATION OF DEATH (\$1 DEEDS)

DIRECTIONS: If the current owner obtained the Property under a \$1 Deed (or any deed for less than fair market value), you must require proof that the grantor(s) (prior owner(s)) lived at least 1 year (PA inheritance tax), or 3 years (federal estate tax) from the recording of the deed, or are still living. If they died within those timeframes, you must require proof that the required taxes were paid, as per above.

Both Pennsylvania inheritance taxes and the Federal estate taxes have rules for situations where a person conveys property to someone for less than fair market value shortly before their death. A common scenario is where a parent conveys property to their children shortly before they die. Although the conveyance happened while the parent was alive, both Commonwealth and federal authorities will include that property in the parent's estate and impose taxes on the transfer. These are sometimes called **lookback** provisions.

This period should not be confused with a statute of limitations. For example, if the current owner obtained the property for \$1 from their parent in 2019, and their parent died within 1 year of the deed, inheritance taxes would be owed. The fact that the deed is more than 1 year old does not matter.

If the current owner obtained the Property as a gift, and the grantor(s) died within 1 year or 3 years, the applicable inheritance/estate tax must be cleared as per above.

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Revision History

Version	Significant Changes	Date
1.0	Guidelines created.	12/1/25