



INHERITED PROPERTY
SOLUTIONS

Solutions for Inherited Property

— in MA & NH —



by Joe Theriault

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So, You're Responsible for Probate or Estate Property. Now What?

All property has value. Yet oftentimes when we're so emotionally connected, we overvalue it. Think about it: what do you have sitting somewhere in your own home that is neglected? Do you have out-grown clothes in the back of your closet? A box of unopened items tucked away that you purchased because they were on clearance? Knick knacks from years of treasure hunting? The list could go on. The point is even though these items may have economic value to someone, they will stay where they are, because of the emotional value that these items have to you, their owners.

An inherited home or one coming to you through probate is no exception. Especially when the passing of a loved one is recent, the emotional attachment can be significant and the focus on what to do with the property can be hard to pin down.

Letting Go

In a very real way, inherited property is part of who the loved one was and who s/he wanted to be. Letting go of the property associated with her/him can be a difficult thing to do.

"A man's Self is the sum total of all that he CAN call his, not only his body and his psychic powers, but his clothes, and his house, his wife and children, his ancestors and friends, his reputation and works, his lands, and yacht and bank-account."

- William James



Dealing with Family Disputes

Many people will tell you that litigation should be a last resort, though many times it is simply inevitable. Legal proceedings can divide heirs even more so and take away any peace they may have had before legal representation. Litigation is also expensive in terms of both time and money, and most people do not have the luxury of either. Finally, contrary to popular myth, litigation oftentimes doesn't result in a final resolution per se, because in most cases, the emotional conflict that brought the action about in the first place remains.

Many times, one or more heirs want to retain the house while one or more want to sell it. If a cash buyout is not an option, for whatever reason, there are some options available. Assume Heir #1 wants to retain the house and Heir #2 wants to sell it. Depending on the provisions in the will, it may be possible for Heir #2 to have a larger share of some other property, such as a bank account, in lieu of the house sale proceeds. Such a result is often possible because many wills state that the heirs will get an equal share of the property but the wills don't stipulate how that division will come about. Or, Heir #1 might make monthly payments to Heir #2 to pay off Heir #2's share; in some cases, Heir #2 might receive a deed of trust that authorizes foreclosure if Heir #1 defaults.

A related problem sometimes crops up in these situations, if one of the heirs is already living in the house. The new owner may well agree to allow the heir to continue living in the house at a reduced rent for a period of time. If the situation is more complicated (e.g., two heirs want to sell, one heir wants to stay for free, and the three are at an impasse), more aggressive legal action may be necessary.



First Steps When Receiving Inherited or Probate Property

IS THE PROPERTY VACANT?

If **YES**, put immediate measures in place to protect it.
Read below.

If **NO**, but all heirs are agreeable, skip to Chapter 2.

If **NO**, *and* there is **NO CHANCE OF AN AGREEMENT**
among heirs, seek legal counsel.

ARE ALL THE HEIRS AGREEABLE?


If **YES**, skip to Chapter 2.


If **NO**, and there is no chance of an agreement,
seek legal counsel.

DO YOU INTEND TO SELL THE PROPERTY?

If **YES**, seek a real estate agent who specializes
in selling probate and trust properties.

If Your Inherited Property Is Vacant, Take Immediate Action!

Unfortunately, vacant homes are a prime target for thieves and squatters. Especially in the winter months, homeless people seek shelter to stay warm. But sometimes, the fires they start to stay warm end up burning the property to the ground. Year round, thieves steal copper wiring and vandalize properties. In addition, an unsecured home (without a security system) is 300% more likely to be broken into. 

If your property is vacant, the first thing you need to do is protect it. Better yet, find someone with experience to help you in these efforts. 



***Ask your REALTOR® if s/he offers free alarm installations
for your vacant property.***

6 Options

for Inherited & Probate Property

The options that you have with inherited or probate property aren't much different than the options you have for standard real estate property. The differences lie in the process (especially if it's tied up in a court process for example) and the fact that there could be high emotions and/or family feuding compounding the newly added responsibility you now have. Whenever you seek professional advice, do so from those experienced with your type of property (e.g., probate or inheritance). Not every attorney and not every real estate agent will be versed in the nuances of the respective process.

As executor or trustee, ask yourself whether you want to hold onto the property or release it at this stage. If the house hasn't been well-maintained, you may want to conduct an inspection to help guide your decision on just how much work would need to be performed should you decide to rent it or sell it via traditional means.

To Inspect or Not to Inspect

Unless you sell for cash with an investor or at auction you will likely need to make repairs to pass inspection and elevate the appeal to new buyers or renters. If you intend to lease the property, many cities require a rental inspection.

There are three general categories:

1. **Code Compliance:** If there are structural issues, wiring issues, or other problems that make the house dangerous (at least as far as the inspector is concerned), these items must be addressed. Keep in mind the foundation doesn't have to be fixed for all eternity; it just needs to be stable enough to pass inspection.
2. **Non-Cosmetic:** Old water heaters, leaky pipes, old HVAC units, thin insulation, etc., probably need to be addressed by discounting the sales price, paying for a home warranty, or making limited repairs.
3. **Cosmetic:** Depending on market conditions, faded paint, worn carpet, and drooping fences can all be left to the new owner.

More specifically, inspectors focus on a few key areas, including:

- ✓ **HVAC:** If the heater, air conditioner, and/or other ventilation system either is not working or seems to be on its last legs, the house may not pass.
- ✓ **Plumbing and Electrical:** Leaky pipes and exposed wiring are generally an automatic fail; the same thing goes for lead pipes and non-working outlets.
- ✓ **Roof:** Water stains on the ceiling mean that the roof is leaking, and that's an automatic fail. Weak spots or loose tiles are, at the very least, serious red flags.
- ✓ **Insulation:** Each jurisdiction generally has its own rules about the amount of insulation required and the method of installation.
- ✓ **Structural:** Cracks in the drywall, doors that don't open or close properly, exterior cracks, and slanted floors all usually mean foundation problems.

- ✓ **Vermin:** If there are a few mouse droppings in the garage, you're probably okay, especially if the house is vacant. If a family of opossums has taken up residence in a closet, that's an epic fail.

In addition to the above guidelines, rent inspectors usually look for safety and security issues like working smoke detectors in every room and keyless deadbolt locks.

If the house fails, the inspector will list what's wrong and what's necessary to fix it. If the house needs a lot of work, a cash sale or auction are attractive options.

If You Decide to Keep the Property

You have two options to keep the property in the family. You may choose one of these options because you can't bear to release the property at this moment in time. But that doesn't mean that you can't sell it later if you change your mind.

1. Keep the House and Live in It

This option generally requires almost no effort, and it is even more attractive if family is already living in the house. Be realistic about the situation and keep a close eye on the occupant, at least for a few months. If Cousin Ernie doesn't pay the taxes well before the due date or lets the grass get too high, consider charging a negligible rent and hiring a property manager.


PROS


- The home stays in the family which can provide emotional comfort.
- If the mortgage is paid off, the owner will have minimum associated costs to keep up with the property.

CONS

- If the house was not kept up with over the years, you may be faced with costly repairs to get the property to an accepted standard of living.
- You may be forced to confront family members if they occupy the property and fall behind on its upkeep.
- The act of staying on the house itself may be too emotionally draining.

2. Keep the House and Rent It

Many new owners rent out the property they inherit for tax reasons (mostly to avoid the capital gains tax). 

Per the New Hampshire Housing Finance Authority, median rents for two-bedroom apartments in the Granite State have inched above \$1,200 per month. That's 15% higher than they were in 2011. 
Some owners prefer to manage the property themselves while others hire property management companies that typically charge about 15% of the monthly rent.

One area of risk—vacancy and the lack of cash flow—is less of a factor in much inherited property anyway. Since many of these homes do not have mortgages, the monthly expenses consist only of insurance, taxes and maintenance. In many cases, these costs are negligible or at least not financially debilitating.

The other primary risk area—tenants who damage the property—is also at a low point now, because market conditions dictate that owners can be more selective in the tenants that rent their properties and can also demand higher security deposits.

PROS

- The house stays in the family.
- There is a monthly income stream that can be several hundred dollars a month, or more.
- If the owners change their minds about selling the property or moving into it themselves, many leases can be terminated with just 30 days' notice.

CONS

- If the house was not kept up with over the years, you may be faced with costly repairs to get the property to a minimum standard of living.
- You may have a hard time coming to terms with strangers living temporarily in the house (as opposed to selling it outright and cutting ties permanently).
- Low vacancy rates mean no extra income during that time.
- Tenants could damage property.



If You Decide to Part with The Property

You may decide immediately that you want to relinquish the property or you may come to this conclusion sometime in the future after holding onto it for a while. In many cases, people part with the property as soon as the responsibility is bestowed upon them.

As for the economic benefits, it is much easier to divide cash among heirs than it is to divide legal interests in real property. There may also be some significant tax benefits, because under current law, the capital gains tax is calculated differently for inherited property.

If/when it's time, you have four options to selling the property.

3. Auction the House

Auction sales can be arranged with a few phone calls or mouse clicks and closed within two or three months. Personal items do not have to be cleared out, because they will all become property of the new owner. Sometimes that fast pace is a good thing, and sometimes it isn't. Financially, the house will most likely sell for below fair market value (FMV), but not substantially below it.

Prices are normally a little higher at on-site public auctions, because the excitement that auctioneers generate drives up bid amounts. Typically, bidders must meet minimum financial qualifications to participate, so there is less uncertainty.

PROS


- You don't have to perform any repairs because the property is sold "as-is."
- You can leave anything you don't want; simply leave it in the house and it's the buyer's responsibility to manage.

CONS

- You'll have to hire an auctioneer.
- The outcome can be unpredictable unless you set a reserve price up front.
- The entire process from start to finish including the auction itself can be fast-paced and downright startling if someone is still in mourning over the loss of the property owner.

4. Sell It on Your Own: "For Sale By Owner"

This process is just as it sounds. You do the legwork and there is potential to save money if you do everything correctly. The potential to save money is stressed here because people don't know what they don't know and in real estate, mistakes can become costly very quickly. For example, if you have not educated yourself on laws, processes and other nuances related to the probate sale, you could end up spending more time and money than if you had hired a REALTOR® specializing in probate and trust properties from the start.

According to Quicken Loans, on average, homes sold by the owner are 15% less than homes sold through a real estate agent, making the 6% you gain by not paying commission fees seem more appetizing than it's really worth. 

PROS

- You won't pay commission fees. An average commission fee is 6%. On a house selling for \$250,000, that's \$15,000 in savings.



CONS

- You risk losing money since FSBO homes sell at 15% less than with a real estate agent. That would put a home traditionally listed at \$250,000 at \$212,500, a loss of \$37,500.
- You'll have to educate yourself on the market and the respective probate and/or inheritance selling process.
- You'll have to deal with potential buyers and other professionals such as a lawyer, financial advisor and an appraiser on your own.
- You'll have to research and prepare all of your own legal documents.
- You'll have to market the house on your own (e.g., take pictures yourself or hire a professional photographer, list and promote it online, and hold open houses, etc.).

5. List It on the Market

This option is very good if market conditions are favorable, the house needs little work, you don't mind the extra time it will take, and obtaining top dollar is a priority.

Listing with an agent specializing in this area also means that you have a professional in your corner who can advise you every step of the way.

Even in the best of times, it may take several months for the house to sell and the closing to happen, so be prepared for a wait.

Don't assume that older homes can't be listed on the market. An experienced REALTOR® who routinely deals with inherited real estate and knows the prevailing market conditions can evaluate the property and make a recommendation one way or the other.

If heirs are interested in maximum value, and they are willing and able to wait a few months to obtain it—and the house needs little to no repairs—a listed sale is often the best option.

There are basically three stages to a listed sale:

- 1. Getting Ready to Sell:** Not every house needs major repairs, but they nearly always need a few alterations to increase curb appeal.
- 2. Attracting Buyers:** The curb appeal is only part of the equation. Once they're inside, lookers must be converted to buyers. These buyers must also be qualified to purchase the home; if they've been pre-approved for a mortgage up to a certain amount, that's even better.
- 3. Pre-Closing:** The home inspection is the most important element in this phase, but there are others as well, such as mortgage financing clarification.

An experienced REALTOR® is a big help in all these areas. This person is not only in touch with market conditions, but is also a professional salesperson that knows how to connect with potential buyers. A REALTOR® can also guide a seller through the applicable paperwork, and perform much or all the legwork.



Do You Know the Difference?

REALTOR® vs. Real Estate Agent

According to REALTOR.com®:

Real Estate Agent: Anyone who earns a real estate license.

REALTOR®: A real estate agent who is a member of the National Association of REALTORS®, which means that he or she must uphold the standards of the association and its code of ethics.

Money is a commodity like any other, and when it is cheap (i.e., when interest rates are low), potential buyers can acquire more money and hang on to more of what they have. While there is never a shortage of buyers, there is a big difference between a *potential* buyer and a *qualified* buyer.

Current conditions make it easier for a REALTOR® to identify buyers that are:

- **Prequalified:** Prequalified buyers are credit-worthy according to the bank's financial parameters. If the buyers are "preapproved," which means the bank has already agreed to loan a certain amount of money pending inspection and paperwork, that is even better.
- **Liquid:** REALTORs® can ensure that buyers have about 5% of the purchase price in cash for closing costs, and can also verify that they either have a down payment or are prepared to buy mortgage insurance.
- **Cash Flow Positive:** As a rule of thumb, qualified buyers will spend no more than 28% of their monthly income on PITI (principal, interest, taxes and insurance) payments.
- **Credit Worthy:** There are several components. First, qualified buyers have few blemishes and have proactively dealt with negative information. Second, qualified buyers are not overly leveraged with car loans, credit cards, and so on.

A REALTOR® can ensure that the buyer is financially qualified, and as a bonus, possibly find out the buyer's financial parameters in terms of maximum and minimum price. At this point, your REALTOR® becomes a highly-qualified negotiator who can get maximum value for your property.

Inherited property requires a specialized touch, because in addition to selling the property itself, a REALTOR® will generally sell the neighborhood and the story behind the property. These things are especially effective in the early stages, because like marketers, REALTORS® know that a good story always draws people in and sets the proper tone for a favorable financial transaction.

PROS


- You will receive expert guidance from a professional who knows the market and the standard real estate selling process.
- You will reap additional benefits of streamlined communication and understanding of the unique process if you can find an agent who specializes in probate and inheritance properties.
- You'll have access and an "in" with local contractors by using the agent's vetted network of area service professionals.
- You will receive the best marketing possible and not have to do any of it yourself.

CONS


- You'll pay the standard 6% commission fee for hiring an agent to provide professional services for you.
- You'll have to set aside several months, at minimum, to allow for the process to unfold.
- You may have to make repairs and mitigate anything found during the home inspection.

6. Sell to an Investor for Cash

Older houses that need work are good candidates for as-is cash sales. In fact, the more repairs needed, the more enticing the property is to an investor because of the sheer expense the repairs would cost.

For both emotional and financial reasons, the fast closings typically associated with as-is cash sales are often what make these vehicles attractive devices for liquidating inherited real estate.  Many heirs, especially those who live out-of-state, simply want to “move on” and selling the inherited real estate quickly can provide closure. Other situations, such as multiple heirs or an estate with substantial debts, dictate that non-cash assets be liquidated and the sale proceeds redistributed.

Moreover, since these sales are made without warranties, there is no need for thorough inspections.

As a general rule of thumb, a cash buyer will pay about 60%  of FMV, and in most cases, that means tens of thousands of dollars. The good news is that, like auction sales, the property is sold “as is” and closing normally occurs within a few weeks.

Imagine if all the family feuding, added responsibility and stress could be alleviated in just two weeks. And everyone walks away with cash.

PROS

- You can sell the property as-is without having to make repairs.
- You'll get a quick and solid closing with a dependable, financially sound investor.
- You'll avoid commissions and other fees like an inspection.

- You don't have to remove any personal items or furniture in the house. Take anything of value or special meaning to family members and leave the rest.
- You'll have cash somewhat immediately available which, for some people, is the quickest, most direct route to helping move on from the loss of the loved one.


CONS

- You'll get less money for the property.



Inherited Property Tax Considerations

It's almost impossible for inherited property to qualify for the \$250,000/\$500,000 tax exclusion. However, with careful planning, sellers can take advantage of other tax loopholes and save thousands of dollars.

IRS rules reduce the reportable capital gain from real estate transactions by \$250,000 for individuals or \$500,000 for married couples filing a joint return.  To claim this exemption, the seller must have lived in the house for at least two of the five years preceding the sale. The Service determines residence based on both objective factors, such as the address listed on a driver's license and other official documents, and subjective factors, including the home's proximity to the seller's workplace and other family members.

Many times, especially in the case of local inheritors, the owner partially meets this test, and it may be a good idea to live in the house for a brief time to reach the two-year mark. Bear in mind that the IRS will scrutinize this deduction and resolve any discrepancies or ambiguities in its own favor, so it is always best to consult a tax professional.


Other Tax Breaks

If the tax exclusion is out of reach, for whatever reason, the procedures for determining tax basis often come into play, because the IRS calculates basis (the house's value for tax purposes) differently for inherited property. Traditionally, basis is the house's construction cost plus the value of any improvements. But if the new owner(s) inherited the property, basis is the house's fair market value at the time of sale.

Assume that Benjamin Buyer bought a house for \$150,000 in 1976 and made an additional \$50,000 in improvements over the years, perhaps by finishing the basement and adding a room. As a result, the house is worth \$500,000. If Benjamin sells the house for that amount, he must report a \$50,000 capital gain (because he qualifies for the \$250,000 exemption). However, if Benjamin dies and leaves the house to Betty Beneficiary, she had no capital gain, since the sales price matched the fair market value.

If Betty sells the house at a loss, which often happens in these cases, she can claim up to a \$3,000 capital loss in the current filing year; any additional loss must be carried over to future years.

Other Options

For emotional as well as financial reasons, renting the house may be an attractive alternative. Such an arrangement leaves the house in the family and provides additional options further down the road. The house (but not the land) is a depreciable asset, and this deduction often makes the rental income essentially tax-free. 

There are some important considerations. For example, the homeowner's insurance policy must be changed to a landlord policy and, if the house is sold later, the depreciation must be reported as a capital gain.

Inherited Property in Foreclosure


The loss of a loved one is devastating enough, but when that loss is coupled with the prospect of losing the family home, which is typically the most valuable asset in these situations both financially and emotionally, the burden can almost be too much.

Massachusetts is a non-judicial foreclosure state. In many cases, delinquent borrowers receive little more than a notice of acceleration and a notice of sale before the property is transferred at auction. New Hampshire is a judicial foreclosure state, so before the bank takes the property back, it must go through the courts.

With regard to inherited real estate that's in foreclosure, many times, the owner was already behind on payments before the heirs took over the house. Estate administrators often make the problem worse, either because they erroneously assume that the bank cannot foreclose on a property that is in probate, they forget to make the payments, or they do not have the funds because the estate is tied up in court.

What to Do

Opinions vary greatly as to whether or not banks really want to foreclose on property. Bankers will say they do not want the property and they are only interested in the money, while housing advocates contend that banks target certain properties for expedited foreclosure and will take adverse action at the drop of a pin.

The lender's side may be an unknown, but borrowers do have options. The first thing to do is ensure that you are legally the borrower, because not all promissory notes automatically change title from person to estate. 


After that, there are several avenues:

- **Refinance:** If the property has equity and the borrower has good credit, the existing lender can be paid off in a lump sum with a new loan, and the borrower may even have a little cash left over.
- **Loan Modification:** If the property has no equity or the borrower has poor credit, the bank may lower the interest rate and recapitalize the delinquent amount back into the unpaid principal balance. In layman's terms, the bank will call off the sale and allow borrowers to start over.
- **Short Sale:** If there is too much delinquency for a refinance or loan modification, the bank may allow the borrower to sell the property for less than it's worth and eat the difference.
- **Deed in Lieu of Foreclosure:** This process is essentially voluntary and agreed foreclosure; deed in lieu looks a little better on credit reports than straight foreclosure.
- **Cash for Keys:** This procedure, which usually involves cleaning up the property after foreclosure in exchange for a little cash, falls into the "better than nothing" category.

Short sales are usually a great option for pre-foreclosure inherited properties, because the heirs liquidate the house and simultaneously eliminate the bank's involvement.

Probate Foreclosure

Older properties, like inherited real estate, typically have lower mortgage loan balances and more stable property values, so they are at a lower risk for foreclosure. But that is certainly not always the case. Moreover, although it is illegal to do so and banks consistently deny

that they conduct business in this way, there is some evidence that houses in certain neighborhoods are targeted for expedited foreclosure. 

Many heirs wrongly assume that banks cannot foreclose during probate, but there is no automatic stay in probate court like there is in bankruptcy court. Further complicating matters, the estate's cash is sometimes tied up in court, so there is no money for the monthly installment payments.

Homeowners have several non-transfer options to avoid foreclosure, including:

- **Loan Modification:** This plan is really a forbearance. The bank may agree to put the past-due amount back into the unpaid principal balance and allow it to be paid out over time. The major drawback is that the eligibility rate is quite low and the approval rate is even lower.
- **Refinance:** If the property has equity and is in good condition, and the borrower has good credit, a refinance is an option. But the chances are that, if all three of these conditions existed, the property would not be in foreclosure in the first place.

If these techniques either fail or are unavailable, and they often are, a REALTOR® can help arrange a short sale. To sell the house quickly, it's listed for less than its market value, and the bank agrees to accept the sale price as payment in full on the note, even if there is not enough money to completely pay it off. Since these sales are tricky to perform and require an extra step (the mortgage company's approval), not all REALTORS® are qualified to handle them. If you choose this route, find a REALTOR® who has previous experience with short sales.

More People Putting Off Wills and Trusts: How to Break the Cycle

According to a Google Consumer Survey, less than 29% of Americans have up-to-date wills. The rest either have no will at all (63%) or have one that is so outdated that it is basically useless. Furthermore, the percentage of people with no will has gone up about 10% in the last 10 years. The numbers are evenly distributed among income levels, but lower and middle-income individuals are among the most likely one to have inadequate estate plans.

Even people that have up-to-date wills may not be doing everything they can to make life easier for their heirs. A will is just one component.

To reduce this emotional burden on heirs, it's important for current owners to develop a plan before they die.

Some components include:

- **A Specific Will:** Instead of simply designating property shares, the testator (person who makes the will) can typically make additional designations about any inherited real property, such as a preferred method for selling or otherwise disposing of it.
- **Trust:** Consider placing the house in a separate trust and designating a trusted REALTOR® as the successor trustee.
- **Proposed Timeline:** No matter how old they are, your children still count on you for guidance. Create an outline of things to do and people to call, to keep things moving along emotionally.

A probate attorney in either Massachusetts or New Hampshire can help you prepare these and other documents. When that happens, specificity is the name of the game because vague language and gaps invite probate litigation fights that no one really wants. Lay out the plan as completely and as thoroughly as possible.

A successful inherited property sale really starts with the text in the will and trust, and this text must be specific and purposeful — not generic.

For example:

- In addition to the percentage of ownership, add language regarding the disposition of the property, whether it is to be retained, sold to any buyer, or sold with strings attached (e.g., no sale to a commercial developer).
- Name a preferred REALTOR® in the document, preferably one with experience in selling inherited property, because it is a rather specialized area.
- Consider appointing one heir as a chief among equals who has the power to resolve tie votes or other disagreements.


Make this language as specific as possible, because if circumstances change, the will can always be altered later. Even if these terms are not legally enforceable (which they probably are), they indicate the parties' intent.

Why Planning Ahead Matters

A will can do much more than firm up inheritance provisions. If the estate has real property, and most all do, a will can give guidance to heirs on this issue. For example, instead of simply saying "I bequeath

my house to my heirs in equal shares,” the will can contain language like “I bequeath my house to my heirs in equal shares and request that it remain a single-family home.” That additional provision would encourage heirs to either keep the home, rent the house, list the house, or sell it to a non-developer investor.

Estate Plan Basics

Although most people do not have a comprehensive estate plan,  most people do at least acknowledge the fact that they *should* have one. A decision not to have a will or trust can cost a family dearly, both financially and emotionally. Having these documents is the first step towards a comprehensive estate plan, but it is only the first step.

In addition to words on paper, testators need plans of action that breathe life into those words. Inherited real property is a big issue, especially in New Hampshire, Massachusetts, and other jurisdictions with rather obscure probate laws.

When crafting an estate plan, ask your attorney about local REALTORS® who focus on trust properties.

Both testamentary documents and a plan of action are often necessary to preserve your legacy.

There are some very good reasons to prepare or revise your will.

- **Control:** If a person dies intestate (without a will), government bureaucrats control every element of your estate, from who will raise your children to how your assets will be distributed. Intestacy laws have not changed much over the years, but they are not set in stone and are subject to the whims of individual politicians.
 - In as little as one visit, a testator can prepare a reasonably


comprehensive estate plan. As a bonus, an attorney can ensure that the will and other documents are legally enforceable and give solid advice as to estate planning issues. A document preparation service cannot do either of these things.


- **Example:** We all want our children to emulate us in some ways, and planning for the future is one of these ways. After all, many parents sacrifice their time and their money to make things easier for their children in later years, and a written, enforceable will with clear provisions for the future is the next logical step.
- **Peace of Mind:** People who make wills have done all they can to provide guidance for their heirs and dispose of their property in the way they choose. Such peace of mind is rare and well worth the modest investment of time and resources that this peace of mind requires.



Specifics to Massachusetts

A recently proposed measure would require real estate sellers in the Bay State to provide energy audits of the inherited real estate that they sell.

Consumer and housing groups say the bill is a good idea. “Buyers need to avoid being duped into buying a ‘money pit,’” urged the Massachusetts Affordable Housing Alliance and a few other advocacy groups. But REALTORS® aren’t convinced. The Massachusetts Association of REALTORS® called the proposal “mandatory energy labeling” which is also repetitive, because other similar rules are already in place. Time will tell, but recent activity indicates that the bill may not pass. 

About a third of new home buyers address the concerns that come up in an energy audit. For your own edification, be aware of a program with Mass Save® offering no-cost energy assessments. 

Specifics to New Hampshire

Contributed by Attorney Alexander S. Buchanan

Good estate planning during your lifetime is arguably the best present that you can give your heirs after your death. A good estate plan should include a Last Will, Healthcare Powers of Attorney, Durable Powers of Attorney, and a Revocable and/or Irrevocable Trust. Having these documents in place not only means that you have taken the steps to protect those you love after your death but those efforts will assist you during your lifetime.

An estate plan that includes a Trust, and if the Trust has been properly and completely funded with your assets, means probate can be avoided. Avoiding probate will save your heirs time and money, and its administration will be private. On the other hand, the administration of an Estate in the Probate Court is public information and your file in the Court is available for anyone to see.

If you die without a Will, or even if you die with a Will and a Trust but still had assets standing in your individual name at the time of your death, probate will be required. It's extremely important to fund your Trust during your lifetime because not doing so could mean that your Trust is of no benefit in avoiding probate at the time of your death.

If you have a Will, you can direct who you want your executor and beneficiaries to be. If you have an estate plan that includes a Trust, you can direct who you want the trustee and beneficiaries to be, and the beneficiary of your Will is your Trust. If you die without a Will, then the Laws of Intestacy of the State of New Hampshire will direct who your beneficiaries will be and anyone may petition the Court to be named the administrator of your Estate.

Administration Types in New Hampshire

- **A Waiver of Full Administration.** This type of administration is open to estates, with or without a Will, where the surviving spouse, an only child, a parent or parents, or a trust created by the decedent, is the sole beneficiary and the surviving spouse, the only child, the parent or parents, or the trustee of the Trust, is appointed to serve as the executor or administrator. This type of administration does not require an Inventory or Accounting to be filed with the Court and does not require a fiduciary or corporate surety bond to be filed with the Court. This type of administration can typically be closed within 6 months to a year.
- **Regular Administration.** This type of administration is the standard administration that most estates fall under in New Hampshire. Estates being administered in this way typically are open for a year to a year and a half. There are many forms to file and a fiduciary or corporate surety bond may be required for the executor or administrator depending on the value of the estate assets.
- **Voluntary Administration.** This type of administration is only open to estates with a value of \$10,000 or less if the decedent died prior to January 1, 2006. Also, this type of administration cannot be used if the decedent owned real estate of any value. Again, this type of administration is only available if the death occurred prior to January 1, 2006.

Once all the proper paperwork is filed with the Probate Court, it will take about 4 to 5 weeks to receive a Certificate of Appointment naming you as the executor or administrator. This Certificate of Appointment will give you the authority you need to act on behalf of the decedent's estate. When your estate plan consists of a Trust, Revocable or Irrevocable, the successor Trustee can act immediately without the need to file anything with the Probate Court.

When Real Estate is Involved

When real estate is part of the probate process, and if it is not necessary to sell the real estate to pay demands of the estate, title to that real estate passes to those designed to receive it by Will or by law. A "Notice to Towns and Cities" is filed with the Court and with the Town or City in which the real estate is located. This is the legatees' or heirs' deed to the property. However, if the real estate has to be sold, the executor or administrator can sell the real estate at any time after he or she has been appointed by the Court by a fiduciary deed which the executor or administrator must sign along with consents signed by each of the legatees or heirs. If however, the decedent owned real estate situated outside of New Hampshire, the New Hampshire Circuit Court has no jurisdiction and an ancillary administration would have to be opened in that state to administer the real estate.

If your real estate has been properly transferred to your Trust, then it is not a part of the probate process, and selling the real estate, or conveying it to the named beneficiary, will just require a fiduciary deed to be signed by the successor Trustee. This can be done on the day of your death. There is no waiting period for you to be appointed as it is if probate administration is required.

As you can see, having your estate plan in place is very important. Many people put off doing an estate plan and oftentimes it is too late to do one when it is needed the most.



RESOURCES

Here are the links to all of the articles mentioned throughout the ebook, by chapter.

CHAPTER ONE

- <http://www.safeguardtheworld.com/statistics.html>
- <http://cultureofsafety.thesilverlining.com/safety-tips/protecting-vacant-property/>
- <https://www.youtube.com/watch?v=t0Y631z-W2E>

CHAPTER TWO

- <https://www.vahomeloancenters.org/passing-your-home-inspection/>
- <https://www.irs.gov/taxtopics/tc409.html>
- <http://www.nhhfa.org/news/rents-increase-nearly-15-percent-in-new-hampshire-over-last-five-years>
- <https://www.quickenloans.com/blog/sale-owner-pros-cons-seller>
- <http://www.realtor.com/advice/buy/whats-difference-real-estate-salesperson-broker/>
- <http://www.bankrate.com/finance/real-estate/advantages-selling-house-for-cash.aspx>
- https://www.washingtonpost.com/blogs/where-we-live/post/selling-a-home-to-a-real-estate-investor/2012/12/11/5907944e-40bb-11e2-a2d9-822f58ac9fd5_blog.html

CHAPTER THREE

- <https://www.irs.gov/publications/p523/ar02.html>
- <http://www.forbes.com/sites/nextavenue/2014/10/14/what-to-do-when-you-inherit-your-parents-house/2/#4abd5a4e45ca>

CHAPTER FOUR

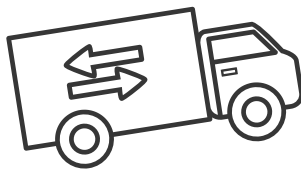
- http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure
- <http://inheritedpropertyolutions.com/unfortunate-inheritance-property-fates-are-often-avoidable/>

CHAPTER FIVE

- <http://www.forbes.com/sites/nextavenue/2014/04/09/americans-ostrich-approach-to-estate-planning/#adf9ff4f07b6>

CHAPTER SIX

- http://www.jlconline.com/coastal-contractor-news/massachusetts-ponders-mandatory-energy-audits-for-real-estate-sellers_o
- <https://malegislature.gov/Bills/189/S1761/BillHistory>
- <http://www.massave.com/en/residential/home-energy-assessments/about-home-energy-assessments/what-is-a-home-energy-assessment>



About the Author



New England native **Joe Theriault** is the owner of Inherited Property Solutions, a licensed REALTOR® in MA and NH and member of the Greater Manchester/Nashua Board of REALTORS®. Joe and his team specialize in probate and trust properties and in doing so, they have brought closure to a number of families over the years.

Some of the benefits of trusting Joe and his team to help you sell your probate or estate property:

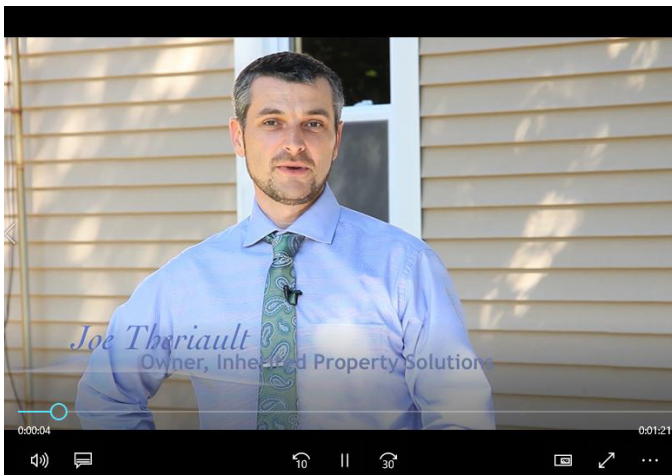
- Multiple selling options including the ability to purchase “as-is” for cash within 7 days
- Security system installations for vacant estate homes
- Recommendations of local trade professionals

Learn more at www.inheritedpropertiesolutions.com.

Connect with Joe at joe@inheritedpropertiesolutions.com

or **603-558-8604**.

Watch this video to learn more:





About the Contributing Author

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