

Transferring property after parents' death usually determined by last will and testament

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Q: Both of my parents have died. My dad died in 2006 and my mom passed away a couple of months ago. Their home is paid off, but it's listed in both of their names at the property tax office. What can I do to transfer the property in my name?

A: Our condolences on your loss. Without more information, we can only assume that you believe that you are entitled to the title to your parents' home, but that assumption may be incorrect. The first question we have to ask is how they owned the home.

Most married couples own a home jointly with rights of survivorship. That means that when one spouse dies, the other spouse automatically becomes the owner of the home. Now if your parents owned the home jointly with rights of survivorship and in their own names, your mom would have become the sole owner of the home when your father died. Some people own real estate in the name of living trusts for estate planning purposes or to avoid probate courts having to approve the sale of the home to the person's heirs.

It gets a bit more complicated to answer your question at this point. If your mother had a will at the time of her death, the home should pass on to the person designated in her will. If you are entitled to the home under the will, then you might have to take the will to court to have the will probated. The probate court would first approve the executor of the will. Once the executor of the will is approved, the executor could move to have the court approve the transfer of the title to you from your mother.

When there is no will you might have to do a bit more, particularly if you have relatives and siblings. Assuming you have brothers and sisters, they may be entitled to a share of the home, too. You might all share and share alike when it comes to the home.

When a person dies without a will, the laws of the state in which the person died and where real estate is located



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may kick in to provide a method for distributing the property owned by the decedent.

For example, if you have two brothers and one sister, each of you may inherit a one-quarter interest in the home. You may feel that your mother wanted you to have the home, but without a will you would have to share the home with your siblings. On the other hand, if you are the only child, you may be entitled to the home especially if no other relatives have a claim to the home and there are no creditors that have liens against the home.

As we usually say, if you have specific questions pertaining to your particular circumstances, you may want to talk to a real estate attorney or probate attorney about your case.

(Ilyce Glink is the creator of an 18-part webinar+ebook series called "The Intentional Investor: How to be wildly successful in real estate," as well as the author of many books on real estate. She also hosts the "Real Estate Minute," on her YouTube channel. Samuel J. Tamkin is a Chicago-based real estate attorney. Contact Ilyce and Sam through her website, ThinkGlink.com.)



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