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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

January 22, 1990

SUBJECT: Taxation & Revenue - Time Title And  
Ownership Of Real Property Vest In  
Heirs Or Devisees.

SYLLABUS: The title to real property passes upon death  
and that date is the date to determine the  
transfer of title from the decedent to the  
heirs or devisees.

TO: Honorable Annette Conner  
Florence County Assessor

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTION: Does the title to real property pass upon death  
or upon the execution of the deed by the estate's personal  
representative?

APPLICABLE LAW: Section 62-3-101, Code of Laws of South  
Carolina, 1976, as amended.

DISCUSSION:

Section 62-3-101 provides in part that:

"Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting the devolution of intestate estates, subject to exempt property, to rights of creditors, and to administration."

Honorable Annette Conner  
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The reporter's comments are as follows:

"Real property devolves to the devisees or substitutes, under decedent's will, or to his heirs or substitutes, in an intestate estate, at the death of the owner whereas personal property devolves at the expiration of three years after decedent's death if not yet distributed by the personal representative."

Under this clear language, title to real property passes upon death to the devisees or heirs. That title is, however, subject to being divested for payment of the estate's debts and for application of exempt property. For purposes of property taxation, the date of death is the date that is determinative of ownership. If that ownership is later divested, then one would look to that date for the subsequent owner of the property.

**CONCLUSION:**

The title to real property passes upon death and that date is the date to determine the transfer of title from the decedent to the heirs or devisees.

JLAJR/jws