**BASICS OF MARYLAND ESTATE CONVEYANCES AND DEATH TAXES**  *(Updated 08.20.21)*

1. **MARYLAND DOMESTIC ESTATE**
2. **Who holds legal title to property upon death?**
3. For persons dying as of January 1, 1970, all legal title to real and personal property of a decedent passes directly (by operation of law) to the personal representative, who holds legal title for the purposes of administration and distribution pursuant to the last will and testament of the decedent or where no will exists, pursuant to the laws of intestacy. (Section 1-301 of the Estates and Trusts Article of the MD Code).
4. For persons dying **prior** to January 1, 1970, title to real property passed directly to the heirs at law of the decedent or devisees under the decedent’s probated will. The personal representative/executor of the estate, unless expressly indicated in the will, has no title to the real property. Goldman v. Walker, 260 Md. 222, 271 A.2d 639 (1970) (Section 1-301 of the Estates and Trusts Article).
5. **Power of Personal Representative/Authority to Convey**
6. For deaths occurring **on or after** January 1, 1970, the power and authority of a personal representative to convey real property is derived from the general power of sale pursuant to Estates and Trusts Article, Section 7-401(n), whereby a personal representative may “. . . invest, sell, mortgage, pledge, exchange, or lease property.” Additionally, the power of the personal representative to convey real property is derived from the provisions of the decedent’s last will and testament. The authority of the personal representative to convey real property is not conditioned upon the grant of an order of the Orphan’s Court of the county where the estate is being probated unless the will specifically prohibits the personal representative from selling (so no court order is typically needed).
7. A deed from the personal representative is required.
8. If the will devises specific real property to a specific individual (which is not usually the case), that specific devisee (individual) should join in signing the deed (along with the personal representative) to acknowledge his or her consent to the transfer of real property to a bona fide purchaser. In lieu of the specific devisee joining in the deed, the specific devisee should sign an affidavit indicating his or her consent to the transfer. The affidavit should be filed with the Estate Administration and/or held in the settlement file.
9. For deaths occurring **before** January 1, 1970, devisees under a probated will or heirs at law (if no will), in whom title to the property is vested, have the authority and power to convey.
10. Intestate (to die with no will)
11. Property passes directly to the heirs.
12. Formal estate administration is not required to pass title to real property. Only an appraisal and inventory are needed for paying inheritance taxes and claims. However, to establish title in the heirs, a title insurer would require evidence of who the exact heirs of the decedent are (dis-interested party affidavits of heirship needed).
13. **Note:** If a leasehold property is involved and no will exists, formal administration is required. Md Code 1957 Article 93 Section 156.
14. Testate (to die with a will)
15. Where a probated will exists, the probating of the will is required to pass the title to both real and leasehold properties. Matthew v. Fuller 209 Md 42 (1956).
16. A deed from Executor to specific devisees is not required. However, if a will calls for the property to be sold, a deed from the Executor is required.
17. If no administration was opened and administration is required, estates must be opened and administered under applicable statutes/rules in place at the time of decedent’s death; not the applicable statutes/rules in place at the time the estate administration is opened.

|  |  |  |
| --- | --- | --- |
| **Date of Death** | **Testate – Die with a Will** | **Intestate – Die without a Will** |
| Prior to January 1, 1970 | * Title passes to devisee(s) under the probated will
* Probated will required
* P.R./Executor has no title to property unless expressly stated in the will
* If will calls for the property to be sold – a deed from the Executor to devisee(s) is required
* If no administration opened and is required – estate must be opened and administered
 | * Title passes directly to heir(s)
* Estate administration is not required to pass title
* Appraisal and inventory needed
* Evidence of heirs needed (affidavits of heirship)
 |
| On or after January 1, 1970 | * Title passes to Personal Representative
* Power of P.R. comes from E&T Article 7-401(n)
* Power to convey comes from the will
* Deed from P.R. is required
* If will devises to specific individual, that individual must sign the deed
* In lieu of signing deed – sign an affidavit consenting to transfer to be filed in the Estate proceedings
 | * Title passes to Personal Representative
* Deed from P.R. is required
 |

1. **Schedule B-1 Commitment Requirements/Estate Documentation**

The following documentation must be received and reviewed prior to settlement and recited as Schedule B-I commitment requirements where an estate is mortgaging or selling real property:

1. Required Estate Documentation
2. Raised seal original death certificate or a copy of a death certificate; and
3. Authenticated copy of the will, if applicable; and
4. Copy of the Letters of Administration appointing the personal representative. (Sections 6-103, 6-104 and 6-105 of the Estates and Trusts Article); and
5. Proof that will (if applicable) has been admitted to probate. Pursuant to Section 5-101 and 5-102 of the Estates and Trusts Article, unless a will is admitted to probate, it is ineffective to transfer property or to nominate a personal representative; and
6. Copy of court filed Inventory of all estate property/assets (Section 7-201 of the Estates and Trusts Article) although not always required; and
7. Proof that the Notice of Appointment of Personal Representative to Interested Persons and Creditors was sent/published. (Section 7-103 and 7-103.1 of the Estates and Trusts Article); and
8. Claims filed within the estate administration (Note: do not have to be paid off and released at settlement as long as we have a conveyance to a bfp.) (Section 8-101, et seq. of the Estates and Trusts Article); and
9. Maryland Inheritance tax (Note: does not have to be paid at settlement as long as we have a bona fide purchaser, the estate is not a foreign estate and no Notice of Lien is filed/recorded.) (Sections 7-101, et seq. of the Estates and Trusts Article).; and
10. Verification of payment or payment (and release) of Maryland Estate tax, if a Notice of Lien for Maryland Estate tax has been filed/recorded or we do not have a bona fide purchaser; and
11. Verification of payment or payment of Federal Estate tax if total value of all of the decedent’s assets exceed the unified credit in place for year the decedent died; and
12. Execution of personal representative’s title affidavit.
13. **Claims Against a Maryland Estate**
14. Limitation on presentation of claims
15. Pursuant to Section 8-103 of the Estates and Trusts Article, in general, claims against an estate of a decedent are forever barred against the estate, the personal representative, and the heirs and devisees, if the claimant did not present his/her claim to the Register of Wills or the personal representative within the earlier of:
16. 6 months after the death of the decedent; or
17. 2 months after the personal representative mails or delivers “Notice of Appointment of Personal Representative” to the creditors.
18. The failure of a creditor to receive “Notice of Appointment of Personal Representative” from the personal representative does not extend the time within which the creditor may present his claim beyond 6 months from the date of the decedent’s death. (Section 7-103.1 of the Estates and Trusts Article).
19. Conveyance by Personal Representative to Bona Fide Purchaser
20. A bona fide purchaser for value/consideration, purchasing from a personal representative is protected against a valid claim against a domestic estate, even if the personal representative did not give “Notice of Appointment” to the creditor and even if 6 months have not yet passed from the date of the decedent’s death. There is no need to pay off the claim at settlement or to escrow funds until the claim is registered. Claims would attach to the proceeds generated by the sale. The personal representative has the fiduciary duty on behalf of the estate to pay all valid claims and the bona fide purchaser’s title is not clouded if the personal representative should misapply funds. (Section 7-404 of the Estates and Trusts Article).
21. Conveyance by Personal Representative to Heirs/Devisees (Distributees)
22. A conveyance by a personal representative to an heir/devisee (distributee) for value/consideration is insurable and there is no need to pay off a claim at settlement or to escrow funds until the claim is registered. That heir/devisee would be considered to be a bona fide purchaser for value/consideration. But must be a full value purchase.
23. A conveyance by a personal representative to an heir/devisee (distributee), where no consideration is involved, usually necessitates the need for the claim to be paid off before Old Republic National Title Insurance Company (ORNTIC) would insure. Generally, no consideration transfers are not insured.
24. Conveyance by Personal Representative to an Heir/Devisee (Distributee) who then conveys to a bona fide purchaser
25. If property is sold to a bona fide purchaser (for value/consideration) by an heir/devisee (distributee), who had taken title to the subject property by deed of distribution from the personal representative, then the bona fide purchaser takes title free and clear of claims against the estate and incurs no personal liability to the estate. The bona fide purchaser need not inquire whether the personal representative acted properly with respect to distributing the property to the heir/devisee (distributee). (Section 9-106(c) of the Estates and Trusts Article).
26. **Maryland Inheritance Tax**
27. Why?
28. Maryland Inheritance Tax is a tax imposed on the privilege of receiving property that passes from a decedent and has a taxable situs in Maryland. (Section 7-202 of the Tax-General Article). The inheritance tax is not a tax upon the property itself, but is merely the price exacted by the State of Maryland, for the privilege accorded, in permitting property to be transmitted by will, or by descent or distribution. State v. Dalrympe, 70 Md., 294, 17 A.82 (1889). The Maryland Inheritance Tax is imposed on the privilege of becoming a beneficiary under a will or succeeding to an inheritance.
29. Maryland Inheritance Tax Lien for persons dying on or after January 1, 1989
30. Maryland Inheritance Taxes are a lien on real property owned by the decedent for a period of 20 years from date of distribution. (Section 13-805 of the Tax-General Article). However, a “Notice of Tax Lien” must be filed by the tax collector, in the Circuit Court for the county where the property that is subject to the lien is located, before the tax lien can be valid against any purchaser, holder of a security interest, mechanic’s lienor or judgment creditor. (Section 13-807 and 13-809 of the Tax-General Article). In summary, Maryland Inheritance Tax does not have to be paid at settlement as long as no Notice of Lien has been filed/recorded, the estate is not a foreign estate, and we have a bona fide purchaser.
31. By filing a “Notice of Tax Lien” under Section 13-807 of the Tax-General Article, the State of Maryland obtains a lien as of the date of the filing of the Notice but is subordinate to any prior perfected security interest.
32. Underwriting Guidelines
33. ORNTIC does not require its title agents to collect the Maryland Inheritance Tax at settlement as long as:
34. A bona fide purchaser for value/consideration is purchasing the real property; and
35. No “Notice of Lien” has been filed with the Circuit Court; and
36. No heir or devisee (distributee) is taking title from the personal representative by way of a Deed of Distribution (not for value/consideration); and
37. The estate is not a foreign estate/foreign personal representative.
38. The logic for not requiring the collection of Maryland Inheritance Tax at settlement, centers around the theory that the lien follows the proceeds of sale, not the property. (Section 13-809 of the Tax-General Article). Essentially, the inheritance tax is imposed once the estate has been distributed. Bouse v. Hull, 168 Md., 176A 645 (1935).
39. ORNTIC requires the personal representative to sign a “Personal Representative’s Title Affidavit.”
40. Surviving Spouse
41. Maryland Inheritance Taxes are not assessed on the receipt of property that passes from a decedent to the surviving spouse of the decedent, if title to the property was held in the name of the decedent and the surviving spouse, as husband and wife. (Section 7-203(j) of the Tax-General Article)
42. Trust
43. In general, when title agents are conducting settlements where a family trust/trustee has legal title to real property that is being conveyed and the settlor has died, Maryland Inheritance Tax does not need to be collected at settlement.
44. Surviving Joint Tenant/Remainderman
45. A surviving remainderman is liable for all Maryland Inheritance Taxed imposed by reason of the death of the life estate tenant. Additionally, surviving joint tenants are jointly and severally liable for Maryland Inheritance Taxes arising by reason of their succession to an undivided interest in the property from the deceased cotenant. See 63 Op. Att’y Gen. 626 (1978). In situations where you have a surviving joint tenant or remainderman (not a probated estate with a personal representative) conveying real property, ORNTIC requires its title agents to collect the Maryland Inheritance Taxes at settlement, regardless of when the deceased cotenant or life estate tenant died. If you contact the Register of Wills in the county where the subject property is located, they will forward to you an Application to Fix Inheritance Taxes on Non-probate Assets (Form RW-1 125) and an Information Report (Form RW-1124), that must be completed and signed by the surviving joint tenant or remainderman and sent back to the Register of Wills, who will then provide an exact amount to collect at settlement for the payment of Maryland Inheritance Taxes. The Register of Wills takes the position that the lien does not arise until they receive notice of the joint tenant’s or life estate tenant’s death.
46. If your present grantor is not the surviving joint tenant or remainderman (i.e. the surviving joint tenant or remainderman was a grantor in your chain of title but is no longer your present owner) and no “Notice of Lien” has been filed, ORNTIC will not require its title agents to collect Maryland Inheritance Tax at settlement.
47. Maryland Inheritance Tax Rate
48. 1% Lineal Tax Rate (grandparent, parent, spouse or child of the decedent) has been repealed for decedents dying as of July 1, 2000 and thereafter. (Section 7-203 of the Tax-General Article).
49. 10% Collateral Tax Rate (non-lineal descendants). The collateral tax rate has been repealed relative to brothers and/or sisters of a decedent, if that decedent died on or after July 1, 2000. However, the Collateral Tax Rate remains in place with regard to all other non-lineal descendants. (Section 7-203 and 7-204 of the Tax-General Article). Because the tax is imposed on the right to receive, the relationship between the deceased and the person to whom the property passes, determines the rate of tax. Mercantile-Safe Deposit & Trust Co. v. Register of Wills, 52 Md. 311, 250 A.d. 76 (1969).
50. The tax rate takes a percentage of the “clear value” of the property which is defined as fair market value minus expenses of administration and debts. (Section 7-204 of the Tax-General Article)
51. Foreign Estate
52. See outline topic at II. D. “Maryland Inheritance Tax and Maryland Property Subject to a Foreign Estate”
53. **Maryland Estate Tax**
54. Why?
55. Maryland Estate Tax is imposed on the transfer of a Maryland estate of a decedent who at the time of death was a
56. Resident of Maryland; or
57. A nonresident of Maryland whose estate includes, for purposes of the Federal Estate Tax, any interest in real or tangible personal property located in Maryland. (Section 7-302 of the Tax-General Article)
58. Lien of Estate Tax/Notice of Lien/Bona Fide Purchaser
59. Unpaid Maryland Estate Tax becomes a lien on the estate and the fiduciary/person responsible for paying the tax once a Notice of Lien is filed. (Section 13-805 of the Tax-General Article). If no Notice of Lien for Maryland Estate Tax is filed/recorded, then Maryland Estate Tax does not have to be paid at settlement where you have a conveyance to a bona fide purchaser.
60. If a Notice of Lien is filed, the Maryland Estate Tax lien is enforceable for 20 years from the date of assessment. (Section 13-806, 13-807 and 13-808 of the Tax-General Article).
61. Under Section 13-809 of the Tax-General Article, a Maryland Estate Tax Lien is not valid against any purchaser, holder of a security interest, mechanic’s lienor, or judgment creditor until a “Notice of Lien” has been filed in the Circuit Court for the county where the property that is subject to the lien is located.
62. Underwriting Guidelines
63. Generally, Maryland Estate Tax is not a lien if the estate is selling to a bona fide purchaser for value and no Notice of Lien has been filed in the Circuit Court. ORNTIC would require the personal representative to sign a “Personal Representative’s Title Affidavit.”
64. **Federal Estate Taxes**
65. The Federal Estate Tax Lien arises immediately upon the death of the decedent, where there are sufficient assets to make the Federal Estate Tax applicable. (26 USC 6324).
66. Automatic lien arises at date of death if total value of all decedent’s assets exceeds the “unified credit” for the year of death. If the value of all the decedent’s assets does not exceed the “unified credit” there will be no automatic Federal Estate Tax Lien.
67. “Unified Credit” (Probate property is exempt from any automatic Federal Estate Tax Lien if total value of all of decedent’s assets do not exceed the “unified credit” amount for year of a person’s death).

|  |  |  |
| --- | --- | --- |
| Date of Death | Unified Credit | For example, no Federal Estate Tax would be assessed nor would a Federal Estate Tax Lien arise where a decedent dies in the calendar year 2021 and his or gross estate value does not exceed $11,700,000.00. |
| 2004 | $1,500,000.00 |
| 2005 | $1,500,000.00 |
| 2006 | $2,000,000.00 |
| 2007 | $2,000,000.00 |
| 2008 | $2,000,000.00 |
| 2009 | $3,500,000.00 |
| 2010 | Opt Out (No estate tax assessed) |
| 2011 | $5,000,000.00 |
| 2012 | $5,120,000.00 |
| 2013 | $5,250,000.00 |
| 2014 | $5,340,000.00 |
| 2015 | $5,430,000.00 |
| 2016 | $5,450,000.00 |
| 2017 | $5,490,000.00 |
| 2018 | $11,180,000.00 |
| 2019 | $11,400,000.00 |
| 2020 | $11,580,000.00 |
| 2021 | $11,700,000.00 |

1. Federal Estate Taxes are a lien for a period of 10 years from the date of death. (26 USC 6324)
2. There is no filing requirement. Consequently, Federal Estate Tax Liens are often called “special” or “secret” liens by reason of the fact that such liens will take priority from the date of death of the decedent, even though the exact lien amount may not be set until sometime in the future and even though no lien or “Notice of Lien” is ever filed among the public records.
3. The Federal Estate Tax Lien attaches to probate property even when there is a transfer of the probated asset/property to a bona fide purchaser or lender. (26 USC 6323).
4. The Federal Estate Tax Lien does not attach to non-probate property (property that does not pass through the decedent’s estate) when there is a transfer to a “purchaser” or “holder of security interest”. (26 USC 6324 and 26 USC 6323).
5. Classification of Decedent’s Property

For title insurance purposes, it is important to identify all property comprising the estate of a decedent (whether it is “probate property” or “non-probate property”). Both types of properties must be considered for the purpose of determining whether a Federal Estate Tax Lien attaches to probate property. A review of an estate’s filed “inventory” report (which would only recite the value of probated assets), is a good place to start, however, review of only the filed “inventory” to make a determination that the total value of the gross estate does not exceed the unified credit, is dangerous. ORNTIC, at a minimum, requires that the title agent review the “inventory” and contact the attorney for the estate to request, in writing, that attorney’s determination of the total value of the decedent’s assets (gross estate). If it becomes clear that the total value of the gross estate will be under the amount of the unified credit, then ORNTIC will accept an affidavit and indemnity from the estate as to Federal Estate Taxes and not require the title agent to collect or escrow Federal Estate Taxes at settlement.

1. Probate Property
2. This is property in which the decedent’s title is assumed to survive death, and pass on to heirs or devisees. The title of a successor to the decedent is not considered marketable or insurable unless administration (an estate is setup and the personal representative signs the deed) has been had of the decedent’s estate.
3. The Federal Estate Tax Lien attaches to probate property even when there is a transfer or probated assets/property to a bona fide purchaser or lender. (26 USC 6323).
4. Non-probate Property
5. This is property in which title of the decedent ceases at death and is not succeeded to by heirs or devisees. The “new” title which arises at the death of the former owner is not dependent upon probate or administration of estate proceedings. Within this classification, however, there are characteristics of sufficient testamentary import to warrant the inclusion of this non-probate property in decedent’s gross estate for the purpose of determining whether Federal Estate Taxes apply. Non-probate properties (which would not be subject to the Federal Estate Tax Lien), but properties which are used to calculate the total value of the estate to determine if a Federal Estate Tax Lien attaches to probate property, as set forth in 26 USC 2034, et seq., include some of the following:
* Transfers with retained life estate for less than adequate and full consideration (Section 2036)
* Transfers taking effect at death if not a bona fide sale (Section 2037)
* Revocable transfers (Section 2038)
* Certain annuities other than policies of insurance (Section 2039)
* Proceeds of life insurance (Section 2042)
* Survivorship interests such as joint tenancies (Section 2040)
1. Responsibility for Payment of Tax
2. The personal representative of a decedent is responsible for the payment of the Federal Estate Taxes.
3. Payment of the Tax
4. The tax shown to be payable in the estate tax return is to be paid by the personal representative at the time the return is filed (26 USC 615 1-2002 et seq.)
5. Ordinarily, evidence of the payment of the tax should be in the form of a receipt found in the probate proceedings. In practice this is seldom done. Clues as to payment of the tax are frequently noted in the recitals of a petition for distribution of the estate or in the decree of distribution itself. In any event, if no receipt for payment of the tax is on file, inquiry must be made of the personal representative or of the estate attorney; and evidence of payment must be obtained.
6. Lien of Tax
7. If an estate tax is due, a lien to secure its payment attaches at date of death to all probate property, included in the estate of the decedent (26 USC 6324).
8. The lien is valid as a secret lien; there is no necessity of a demand for payment of the tax; it makes no difference if there has been a refusal or neglect to pay the tax; and, no recording is necessary in order to perfect the lien. Detroit Bank v. U.S. 317 US 329,87 L. ED 304 (1943).
9. If Federal Estate Taxes are due, a valid and enforceable lien must be assumed to have attached to all probate property in the decedent’s estate.
10. Duration of Lien
11. The lien of a Federal Estate Tax endures for 10 years from the date of death unless the tax is sooner paid in full; unless the tax becomes unenforceable by reason of lapse of time; or, unless the lien of the tax is otherwise divested.
12. The life of the lien may be extended beyond the 10-year period. Normally, suit must be instituted, or levy made in enforcement within 6 years after assessment. (26 USC 6502).
13. Priority of Lien
14. Judgment lien creditors, trustees in bankruptcy, and other statutory lien creditors, who normally enjoy priority over unfiled Federal Tax Liens have no such protection against the Federal Estate Tax Lien if those creditors perfected their lien after the decedent died.
15. The Federal Estate Tax Lien is inferior in priority to transfers, mortgages, and other liens on the property which attached prior to the death of the decedent.
16. In the event of the foreclosure of a prior lien involving probate property, a Federal Estate Tax Lien subordinate to the mortgage being foreclosed would require the joinder of the U.S. or the giving of notice to the IRS and a waiver by the IRS of their “Right of Redemption.”
17. Enforcement of the Lien
18. As a special lien (unrecorded) the Federal Estate Tax Lien is enforceable only by means of judicial foreclosure. Furthermore, it is enforceable only against property included in decedent’s estate. However, in the event a “Notice of Lien” is filed of record it may be enforced by administrative levy and distraint sale proceedings against any other property or right to property of persons liable for payment.
19. Extinguishment of the Lien

A Federal Estate Tax Lien may be ignored for a particular parcel of real property in any of the following circumstances:

1. The tax has been paid in full, evidenced by an Estate Tax Closing Letter issued by the IRS indicating that the Estate Tax Return, as filed has been accepted without audit or further adjustment; or
2. Evidence of the recording of a Certificate of Release (26 USC 6325(a)); or
3. Evidence of the recording of a Certificate of Discharge of the property from the Lien (26 USC 6325(b));
4. If the fair market value of the estate’s remaining property is at least 2 times greater than the amount of the federal estate tax that is due, then the IRS will issue the Certificate of Discharge.
5. The property to be insured is probate property which has been transferred to a purchaser or encumbered in favor of a holder of a security interest under the following condition:
6. The personal representative has been discharged, by the IRS, from personal liability for payment of the tax (26 USC 6324(a)(3)); or
7. A transfer of non-probate­ property to a bona fide purchaser (or encumbering it in favor of a holder of a security interest) by one liable under 26 USC 6324(a)(2) for the payment of the tax. Parties liable for payment of such tax are:
8. A trustee
9. A surviving tenant
10. A beneficiary
11. When a surviving tenant by the entirety title holder or surviving joint tenant title holder, by operation of law (automatically), takes title to the property, the Federal Estate Tax Lien is discharged if the surviving tenant is selling to a bona fide purchaser and no Notice of Lien has been filed. Essentially, the lien follows the proceeds (26 USC 6324(a)).
12. Underwriting Guidelines
13. If an estate has a value in excess of the unified credit, ORNTIC would require the payment of the Federal Estate Tax at settlement or the escrowing of all sale proceeds until formal discharge of the lien by the IRS.
14. Payment or discharge of the Federal Estate Tax Lien is required even though no Notice of Lien has been filed and even if we have a bona fide purchaser.
15. **Miscellaneous**
16. Personal Representative’s Deed
17. Fiduciary deed
18. Do not use a “Special Warranty” deed. A fiduciary cannot be compelled to convey real property by special warranty since a fiduciary can convey no better title than he or she has. Preissman v. Harmatz 264 MD 715, 288 A 2d (1972)
19. Closed Estate
20. If property is discovered after an estate has been closed and the personal representative’s appointment has been terminated, the Orphan’s Court, upon petition of an interested person, may appoint the same personal representative or a successor personal representative (Section 10-104 of Estates and Trusts Article). Consequently, the personal representative of a closed estate must be reappointed to sign a new deed.
21. Under Section 10-105 of the Estates and Trusts Article, a personal representative has the authority to perform “ministerial or confirmatory acts” even after the estate is closed or the appointment of the personal representative has been terminated. Consequently, the personal representative of a closed estate does not have to be reappointed to sign a confirmatory deed.
22. **MARYLAND PROPERTY SUBJECT TO A FOREIGN ESTATE**
23. **Who holds legal title to Maryland property upon death of an out-of-state decedent?**
24. Under Sections 5-501 and 5-502 of the Estates and Trusts Article, the foreign personal representative/executor (person who was appointed in foreign jurisdiction to hold title and handle administration of the estate) holds legal title to Maryland real property.
25. In Maryland, “A foreign personal representative has the same power to sell, mortgage, lease, convey or otherwise transfer or assign real property or an interest in real property which is located in Maryland as a Maryland personal representative has with respect to real property and an interest in real property.” (Section 5-502 of the Estates and Trusts Article).
26. He or she may sell, mortgage, lease, convey or otherwise transfer or assign real property in Maryland. Same powers with respect to real property that a Maryland personal representative has.
27. Title to real property located in Maryland, sold, mortgaged, leased, conveyed, or transferred by a foreign personal representative before or after July 1, 1981, is not defective solely by reason of the failure of the foreign personal representative to comply with the requirements of the jurisdiction in which the representative was appointed concerning the sale, mortgage or transfer of real property.
28. A foreign personal representative is not required to take out letters of administration in Maryland. But must provide the Maryland Orphan’s Court with a copy of the foreign State’s equivalent of them (Section 5-501 of the Estates and Trusts Article)
29. “Ancillary” administration is no longer required under Maryland law. However, in Maryland, the foreign personal representative/executor must send and publish notice to creditors, file a copy of the Personal Representative’s/Executor’s out-of-state appointment, file an authenticated copy of the will and appraisal and have Maryland Inheritance taxes filed and paid.
30. **Schedule B-1 Commitment Requirements/Foreign Estate Documentation**

The following documentation must be received and reviewed prior to settlement and recited as Schedule B-1 commitment requirements where a foreign estate is mortgaging or selling real property:

1. Required foreign estate documentation:
2. A raised seal original death certificate or a copy of death certificate; and
3. Authenticated copy of the will (28 USC 1738); and
4. Proof that verified will, verified application describing the Maryland property and its value, and a copy of the Foreign State’s order appointing a personal representative/executor have been filed in Maryland. (Section 5-504 of the Estates and Trusts Article); and
5. Proof of Notice of Appointment of Personal Representative to Creditors and Interested Personal was sent and publication of the same (Section 5-504 of the Estates and Trusts Article); and
6. Claims filed within the Maryland foreign estate administration (Note: do not have to be paid off and released at settlement as long as we have a conveyance to a bona fide purchaser.) (Section 5-503 of the Estates and Trusts Article); and
7. Verification of payment or payment at settlement of the Maryland Inheritance Taxes even if we have a conveyance to a bona fide purchaser; and
8. Verification of payment or payment and release of Maryland Estate Tax, if a Notice of Lien for Maryland Estate Tax has been filed/recorded or we do not have a bona fide purchaser; and
9. Verification of payment or payment of Federal Estate Tax Lien, if gross estate of all decedent’s assets exceeds the “unified credit” in place for year decedent died; and
10. Execution of “Personal Representative’s Title Affidavit.”
11. **Claims and Maryland property subject to a Foreign Estate**
12. Limitation on Presentation of Claim
13. Pursuant to Section 5-503 of the Estates and Trusts Article, claims against a nonresident decedent must be filed with the Register of Wills or the foreign personal representative within the earlier of
14. 2 months after the foreign personal representative mails or delivers to the creditors “Notice of Appointment of the Foreign Personal Representative”; or
15. 6 months after the death of the decedent
16. Lien of Claim
17. Once a claim is filed it shall constitute a lien against the real property owned by the decedent in the county at his or her death for a period of 12 years from the date of death. However, if the foreign personal representative/executor is empowered by the will to sell the property, which is usually the case, the claim shall constitute a lien against the net proceeds from the sale, rather than the lien attaching to the Maryland real property (Section 5-503(c) of the Estates and Trusts Article)
18. If the decedent dies intestate (without a will) ORNTIC holds the position that the lien follows the proceeds and that the claims do not have to be paid off at settlement as long as we have a conveyance to a bona fide purchaser.
19. **Maryland Inheritance Tax and Maryland property subject to a Foreign Estate**
20. Under Section 5-505 of the Estates and Trusts Article, until the foreign personal representative pays the Maryland Inheritance Taxes and procures a Register of Wills receipt, the unpaid tax constitutes a lien against the subject Maryland Property for 20 years from the Date of Distribution. Prior to settlement, the foreign personal representative/executor must supply information to the Orphan’s Court in Maryland to allow for the fixing of the Maryland Inheritance Tax.
21. No “Notice of Lien” must be filed for the lien to exist
22. There are no specific protective provisions for bona fide purchasers
23. In any case where a decedent, owning Maryland property, is subject to an out-of-state estate proceeding (a foreign estate) ORNTIC requires its title agents to collect and pay the Maryland Inheritance Taxes at settlement or, prior to settlement, confirm that the taxes have been paid.
24. **Federal Estate Tax and Maryland property subject to a Foreign Estate**
25. In connection with Federal Estate Tax and Maryland property subject to a foreign estate, the automatic Federal Estate Tax Lien (if value of all decedent’s assets exceeds the “unified credit”) attaches as a lien against the decedent’s probated property and must be paid off at settlement. The title agent’s treatment of Federal Estate Tax is the same whether we have a domestic Maryland estate or a foreign estate.