

Selling an Inherited House



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Selling an inherited house

How an inherited house actually gets sold: who has the legal right to sign, why the tax bill is often smaller than people fear, what to do about a remaining mortgage and a vacant home, and what happens when heirs disagree. Rules vary by state, and every rule here links to its official source.

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Before you read

This guide is general information, not legal, tax or financial advice. Contracts, local rules and costs vary, so check the details for your home with your agent, title company or attorney.

HomeSellersUSA connects homeowners with licensed local agents and cash buyers. We are not a real estate broker and don't value homes.

Selling a house you inherited mixes paperwork, family and money at a time when you may still be grieving. The order matters: first work out how the house passes and who can sign, then protect the property, then decide how to sell. This guide walks through each step in general terms. It is general information, not legal or tax advice, and the rules vary by state, so check your state page under /states and talk to a probate attorney or tax professional about your situation.

1 How the house passes: probate or not

How the owner held title decides whether a court needs to be involved.

- **Joint tenancy with right of survivorship.** If the home was owned in joint tenancy, the surviving owner gets the property (California Courts Self-Help Guide). The survivor usually records a death certificate or affidavit with the county to clear the title.
- **Transfer-on-death deed.** Where state law allows it, the owner can record a deed naming who receives the home at death, and it passes to that person without probate (California Courts). Not every state recognizes these deeds, and the names and steps differ.
- **A living trust.** Property in a living trust can be transferred to beneficiaries without going through probate court (California Courts). The successor trustee named in the trust usually handles the sale.
- **Probate.** If the home was in the owner's name alone with none of the above, it usually goes through probate, the court process for transferring property after someone dies. In California, for example, the courts say formal probate typically takes 9 to 18 months and sometimes longer (California Courts). Many states also have simplified procedures for smaller estates, with limits and rules set by each state.

Rules vary by state

Probate procedure, small-estate limits and whether transfer-on-death deeds exist are all state law. The examples above come from California's court self-help pages. Your county probate court or state court self-help center is the place to confirm the rules where the house sits, and your state page under /states covers the transfer tax and disclosure rules that apply to the sale itself.

2 Who has authority to sell

A buyer's title company will want proof that the person signing the deed has the right to sign.

- **In probate**, that person is the personal representative: an executor named in the will and appointed by the court, or an administrator appointed when there is no will (California Courts glossary). The court issues **Letters** (often called letters testamentary or letters of administration), which the personal representative uses to prove to others that the court has officially appointed them (California Courts, form DE-150).
- **Court approval may be needed.** In California, a personal representative with "full" authority under the Independent Administration of Estates Act can sell real property after giving a Notice of Proposed Action; with "limited" authority, a hearing and court approval are required first, and the court strongly recommends an attorney experienced in probate sales (Superior Court of California, County of Alameda). A court-confirmed sale uses a report of sale and petition for the court to confirm it (California Courts, form DE-260). Other states handle this differently.
- **Outside probate**, the surviving joint owner, the transfer-on-death beneficiary or the successor trustee usually signs, once the title company is satisfied with the recorded paperwork.

Until someone has clear authority, you can prepare the house and gather information, but a buyer generally cannot close.

3 Taxes: stepped-up basis

Many heirs expect a large capital gains bill and find it is much smaller. The reason is basis.

The IRS says the basis of inherited property is generally its **fair market value on the date of the owner's death**, or on an alternate valuation date if the executor files an estate tax return and elects it (IRS). Receiving the inheritance is not reported as income; if you later sell for more than your basis, you have a taxable gain (IRS).

Example, an estimate only: a parent bought a home decades ago for \$90,000, and it was worth about \$400,000 when they died. If the heirs sell soon after for \$410,000, the gain is measured from about \$400,000, not \$90,000, so the taxable gain is around \$10,000 before selling costs. A date-of-death appraisal is worth getting because it documents that starting point.

The home sale exclusion of up to \$250,000 (\$500,000 on a joint return) requires that **you** owned and lived in the home for at least two of the last five years, so it usually does not apply to an heir who never lived there. IRS Publication 523 explains the inherited-home basis rule and a special case for surviving spouses (IRS Publication 523). Estate and state inheritance taxes are separate questions; ask a tax professional.

4 Protect and clear out the house

A vacant house is exposed to leaks, break-ins and insurance gaps.

- **Call the insurer right away.** Tell the company the owner has died and the home is empty. The Texas Department of Insurance, for example, warns that most companies stop coverage if a house is vacant for 60 days or more, and that losses during a vacancy period set by the policy are often not covered (Texas Department of Insurance). Policies differ by company and state, so ask about vacant-home coverage in writing.
- **Keep the basics running.** Keep paying the mortgage, property taxes, HOA dues and utilities you need for heat and to prevent frozen pipes. Keep receipts; they may matter for the estate accounting.
- **Secure it.** Change locks if many people had keys, stop mail, check on the house regularly, and keep the yard maintained so it does not look abandoned.

Cleaning out the house

- Do not give away or sell valuables before the executor or the heirs agree; personal property is part of the estate too.
- Look for paperwork as you go: the deed, the mortgage statement, tax bills, insurance policies, survey, warranties and repair records. The title company and buyer will ask for some of it.
- Photograph the contents and condition before you start.
- Estate sale companies, donation pickups and junk removal services can clear what is left. Some cash buyers will take a house with contents, which is worth weighing if you live far away.

5 A remaining mortgage

A mortgage does not disappear when the borrower dies, but heirs have federal protections.

- **Due-on-sale protection.** For homes with fewer than five dwelling units, federal law bars the lender from calling the loan due because of a transfer to a relative resulting from the death of a borrower, or a transfer on the death of a joint tenant (12 U.S.C. 1701j-3, the Garn-St Germain Act). That gives heirs time to keep paying and decide whether to keep or sell.
- **Successor-in-interest rights.** Under the CFPB's mortgage servicing rules, a person who receives the home from a borrower, for example through inheritance, is a successor in interest, and once the servicer confirms your identity and ownership you become a confirmed successor in interest (CFPB, 12 CFR 1024.31). Confirmed successors generally receive the same servicing protections as the original borrower (CFPB).
- **What to send.** Contact the servicer, the company that sends the monthly statement. Proof might include the will, the death certificate or a letter from the executor, and you can ask how to keep making payments or seek a loan modification (CFPB). If payments have already fallen behind, a HUD-approved housing counselor can help (find one at [hud.gov](https://www.hud.gov)).

When the house sells, the loan is paid off from the proceeds at closing, like any other sale.

6 When co-heirs disagree

If several people inherit the house together, they usually all have to agree to sell, or the personal representative sells it during probate. When co-owners cannot agree, one of them can generally ask a court for a **partition**: either dividing the land or, more often with a single house, a court-ordered sale with the proceeds split. A co-owner can file without the others' consent (Alabama Cooperative Extension System). States that have adopted the Uniform Partition of Heirs Property Act add protections for family-held property, such as an independent appraisal, a right for co-owners to buy out the one who filed, and an open-market sale rather than an auction (Alabama Cooperative Extension System). Partition is slow and costly, so a buyout or agreed sale is usually worth trying first, perhaps with a mediator.

7 Your options to sell, and your next step

- **List with an agent.** Usually the widest pool of buyers. A home in reasonable shape often suits this route.
- **Sell as-is.** Price for condition instead of making repairs. State disclosure rules still apply and vary; check your state page under /states.
- **Take a cash offer.** Often simpler for out-of-state heirs or a home that needs work, usually at a lower price. See cash offer vs listing.

Whichever route you consider, get a realistic number first. Ask one licensed local agent for a free market report through home value, or one local cash buyer for an offer through cash offer, and compare what each would leave the estate with the net proceeds calculator. HomeSellersUSA is not a broker and does not buy or value homes; how it works explains the introduction.

Questions sellers ask

Can I sell an inherited house before probate is finished?

Often, once the court has appointed a personal representative and issued Letters. Depending on the state and the authority granted, the sale may need a notice to heirs or court approval (Alameda County Superior Court). Check with the probate court where the house is.

Do I pay capital gains tax on an inherited house?

Only on gain above your basis, which is generally the fair market value on the date of death (IRS). If you sell soon after inheriting, the gain is often small. This is general information, not tax advice.

Will the lender demand the full mortgage when the owner dies?

For homes with fewer than five units, federal law bars the lender from enforcing a due-on-sale clause because of a transfer to a relative on the borrower's death (12 U.S.C. 1701j-3). Payments still need to be made. Contact the servicer as a successor in interest (CFPB).

What if one sibling will not agree to sell?

A co-owner can usually ask a court for partition, which can end in a court-ordered sale. Some states give heirs extra protections such as an appraisal and a buyout right (Alabama Cooperative Extension System). Talk to a local attorney before it gets that far.

Is my homeowners insurance still valid if the house is empty?

Possibly not for long. Many policies limit coverage after a set vacancy period; the Texas Department of Insurance notes most companies stop coverage after 60 days of vacancy (TDI). Call the insurer as soon as the owner dies.

Sources

1. California Courts Self-Help Guide: <https://selfhelp.courts.ca.gov/probate/simple-transfer>
2. California Courts: <https://selfhelp.courts.ca.gov/probate/formal-probate>
3. California Courts glossary: <https://selfhelp.courts.ca.gov/wills-estates-probate/terms>
4. California Courts, form DE-150: <https://selfhelp.courts.ca.gov/jcc-form/DE-150>
5. Superior Court of California, County of Alameda: <https://www.alameda.courts.ca.gov/divisions/probate/property-transfer/administering-estate>
6. California Courts, form DE-260: <https://selfhelp.courts.ca.gov/jcc-form/DE-260>
7. IRS: <https://www.irs.gov/faqs/interest-dividends-other-types-of-income/gifts-inheritances>
8. IRS Publication 523: <https://www.irs.gov/publications/p523>
9. Texas Department of Insurance: <https://www.tdi.texas.gov/pubs/consumer/cb025.html>
10. 12 U.S.C. 1701j-3, the Garn-St Germain Act: <https://www.law.cornell.edu/uscode/text/12/1701j-3>
1. CFPB, 12 CFR 1024.31: <https://www.consumerfinance.gov/rules-policy/regulations/1024/31/>
2. CFPB: <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-expands-foreclosure-protections/>
3. CFPB: <https://www.consumerfinance.gov/ask-cfpb/how-do-i-get-mortgage-information-about-a-home-i-inherited-en-217/>
4. find one at hud.gov: <https://www.hud.gov/findacounselor>
5. Alabama Cooperative Extension System: <https://www.aces.edu/blog/topics/home/partition-actions/>

Last reviewed September 30, 2026. Rules and costs change; check the current figures before you rely on them.



Thinking of selling? Ask one licensed local agent for a free market report, or one local cash buyer for an offer. Free to ask, no obligation.

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