



Renunciation of Rights and Interests in Real Property

By Gregory Henshaw, Branch Manager and Title Counsel, Triad District

I recently attended a Continuing Education program that included a presentation by a Claims Counsel for one of the larger national title underwriters. She noted that, year after year, one of the largest sources of title claims is errors by attorneys and paralegals in performing title searches. There are obviously countless mistakes that can be made in searching a real property title, but some mistakes are the result of not recognizing the potential problem, as opposed to simply missing a common issue. One area of title searching in which we receive an abundance of questions is Decedent's Estates. When an estate appears in the chain of title for real property being searched, the title searcher must take the time to review the estate file for the decedent to determine how the real property was passed and who the legal heirs or beneficiaries became following the death of the decedent. Although not something that appears in most estate files, the existence of an instrument of renunciation in the file is one of those matters that may lead to a mistake in the title work.

Although the right to renounce can apply to rights and interests in property, insurance, trusts, annuities and many other financial vehicles, this article will be concerned only with the effects of renunciation on real property rights. There are specific statutes on this issue, which are found in NCGS Chapter 31B, the Renunciation of Property and Renunciation of Fiduciary Powers Act. An heir or beneficiary may choose to renounce an interest in real property for any reason, but that decision to renounce often has to do with the tax obligation that may arise upon the transfer of the real property. Under NCGS §31B-1, an heir, next of kin or devisee may renounce an interest in real property at any time by filing a written instrument of renunciation. The renunciation is effective when filed with the clerk of court in the county where the estate file has been commenced. If no estate administration has been commenced, the instrument can be filed in the proper county as an estate file. Such a renunciation may be a fractional share or limited interest unless the instrument creating the interest states that such a partial renunciation is not allowed. A fractional renunciation would obviously be important to note when searching the title, since this would potentially result in multiple owners. The instrument of renunciation appearing in the estate file shall identify the transferor of the property, describe the property renounced, declare the renunciation and extent thereof and be signed and acknowledged by the person renouncing. Note that to be a qualified disclaimer for state and federal tax purposes, the instrument of renunciation must be filed not later than nine (9) months after the date the transfer of the interest in real property was complete, unless there is a different time period found in an applicable federal statute. When a renunciation of real property is made within the proper time period, the spouse of the renouncing party does not have to sign the instrument of renunciation, nor does the spouse have any inchoate marital rights, elective share or any other marital interest in the real property.

If, while reviewing the estate file, an instrument of renunciation is found to exist, the title searcher should then check in the Register of Deed's Office to verify that the instrument has been properly filed in that location as provided by NCGS §§47-18 or 47-20. This requirement, as set forth in NCGS §31B-2(d), only applies to the renunciation of real property. The instrument should be indexed both in the name of the person renouncing an interest in real property and in the name of the deceased. Note that the failure to file the instrument in the Register of Deed's Office does not affect the effectiveness of the renunciation as between the person renouncing and the person to whom the interest passes as a result of the renunciation, but record title does not pass to the person receiving the renounced interest until the instrument of renunciation is recorded.

Upon the location of a validly filed instrument of renunciation in the Clerk of Court's Office and in the Register of Deed's Office, the title searcher must then determine the effect of the renunciation to determine the record owner(s) of the real property. The various effects of renunciation are set forth in NCGS §31B-3. With regard to real property devised by a probated will, the effect of the renunciation is determined by whether or not the instrument of renunciation is properly filed within the correct time period, as discussed above. If the instrument is filed within the correct time period, the property renounced devolves, and the interest in the real property is treated as though the person renouncing the interest had predeceased the date the transfer of the renounced interest was complete for state and federal tax purposes. The renunciation relates back for all purposes to the date the transfer of the renounced interest was complete for the purpose of those state and federal taxes. Also, note that the spouse of the renouncing party has no elective share or other marital rights in the renounced real property. If the instrument of renunciation is not filed within the appropriate time period, the renouncing party is deemed to have made a transfer of the property and the property devolves. The interest in the real property is treated as though the renouncing party had died on the date the renunciation was filed. The title searcher would then need to review the will to determine the record owner based on the outcomes set out above.

In the event that the decedent died intestate, and the renouncing party has living issue who would have been entitled to an interest in the property if the renouncing party had predeceased the decedent, then the real property renounced shall be distributed to such issue, per stirpes. If the renouncing party does not have issue, then the real property is distributed as though the renouncing party had predeceased the decedent. In the latter scenario, the title searcher would need to analyze Chapter 29 to determine the proper intestate heirs.

Although not a common occurrence, the use of renunciation for tax planning purposes may appear in your title searches. Be aware of the requirements, and thoroughly review the estate file and statutes to make sure you issue an accurate opinion on title. As always, please contact your title insurer if you have questions.