

To: New Jersey Law Revision Commission

From: John Cannel

Re: Unclaimed Real Property

Date: December 5, 2016

MEMORANDUM

In 1998, the Commission recommended a provision concerning unclaimed real property. The Commission's recommendation was that real estate should be handled as much like other unclaimed property as possible, that it should be sold and the proceeds put into the unclaimed property fund awaiting a claimant. Current law provides only for the escheat of real estate. Escheated property becomes the property of the State, and a later claimant has no right to it. The more modern approach of the Uniform Unclaimed Property Act gives control of property to the State but preserves a claimant's eventual rights. However, the Uniform Act does not cover realty.

The Commission's recommendation was made part of its recommendation of an old version of the Uniform Unclaimed Property Act. Since that time, the Commission has withdrawn its recommendation of the Uniform Act and, with it, the provision on unclaimed real property. This Memorandum raises the question of whether the Commission should re-open consideration of the issue of unclaimed real estate. If so, should any provision be a stand-alone Report, or should it be made a part of an anticipated Report on the newly revised Uniform Unclaimed Property Act. It is unclear how proposed provisions would pertain to property on which there is a mortgage; they do not supplant foreclosure or other remedies potentially available in such cases.

The 1998 recommendation was:

Section 32. Unclaimed real property

a. An action seeking a Judgment of Abandonment of an interest in real property may be brought by the Attorney General, the representative of a decedent's estate that includes the property, or another person who owns an interest in the real property which is the subject of the action. The party who brings the action shall give notice to any person known to claim an interest in the real property which is the subject of the action.

b. The Court may declare that an interest in the real property which is the subject of the action is abandoned if, after reasonable efforts, the owner of the interest cannot be ascertained or cannot be located.

c. The Judgment of Abandonment shall include a legal description of the parcel of property and the interest in it that is abandoned, and shall transfer the property to the Administrator. A Judgment declaring that certain interests in a property are abandoned shall not affect any other interest in the real property which is the subject of the action.

d. Within one year after the Judgment of Abandonment, unless the court for good cause orders otherwise, the Administrator shall sell the property as provided in Section 12 of this act.

e. The Administrator shall give notice of the sale of the owner's interest in the property and of the owner's right to reclaim it, upon receiving the Judgment of Abandonment and again thirty days prior to the sale:

(1) to the last known address of the owner of the interest, and to any other person known to have an interest in the parcel of property, by registered or certified mail, return receipt requested, and simultaneously by ordinary mail; and

(2) by an advertisement in a newspaper circulated in the county in which the property is located.

f. The interest shall be sold by public auction in the county where the property is located. The sale shall be final, and upon receipt of the sale price, the Administrator shall deliver a deed to the property.

g. A purchaser shall take the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The purchaser shall take subject to any interest in the property not included in the Judgment of Abandonment.

h. The Administrator shall be compensated for expenditures for advertising, sale and transfer of the property. The remaining balance shall be deposited in the Unclaimed Personal Property Trust Fund and held in perpetuity for the owner.

Source: New

COMMENT

New Section 32 fills gaps in New Jersey statutory law. Current escheat law, N.J.S. 2A:37-1 through -10, pertains to real estate of intestate decedents only. While the Uniform Unclaimed Property Act provides for the proceeds of real property sold, as in an eminent domain proceeding or a partition action, it does not apply to unclaimed real property. As a result most escheat of real property is governed by the common law alone. The section is intended to replace all escheat of real property, and to formalize the process for declaring real property abandoned, enhancing the quality of title transferred.

Subsections (a) and (b) explicitly require the bringing of a court action in order to have an interest in real property declared abandoned. Subsection (a) includes real property of both testate and intestate estates. It also allows a person who owns an interest in a piece of real property to bring an action to adjudge another interest in the same property as abandoned. In addition, it gives general authority to the Attorney General to bring an action whenever it appears that real property is unclaimed. Generally, the section follows the approach of the Uniform Unclaimed Property Act: The State takes custody, not title, to unclaimed property, and holds the property in perpetuity for the owner. Subsection (c) protects the holder of an interest in the property, such as an easement holder, tenant or mortgagee. Any title transferred will be the abandoned interest only and will be subject to other interests. See also, subsection (g).

Subsection (d) provides for sale of the property by the Administrator, and subsection (e) specifies how and to whom the Administrator shall give notice of the sale of the owner's interest in the property and the right to reclaim it. Subsection (f) provides for sale by public auction, and delivery of a deed transferring ownership. Subsection (g) clarifies the purchaser's title. The purchaser takes the interest that was abandoned; if others hold interests in the property, he does not take those interests. See also, subsection (c). Subsection (h) provides compensation to the Administrator for expenditures directly related to advertising, sale and transfer of the property. The subsection also reflects the custodial nature of the Act as opposed to the escheat nature of the pre-Uniform New Jersey statute.