

**OPINION
45-176**

November 26, 1945 (OPINION)

LAND DEPARTMENT

RE: Grantees Where Purchaser is Dead

Re: Albert E. Krick Estate - Contracts Nos. 235, 236, 241, 212, and 209

The title clerk in the State Land Department has called my attention to your letter of November 19, in the above matter, in which you request that, the contracts having been paid in full, the patents issue to Annie Krick, as administratrix.

It is my opinion that this cannot legally be done and this has been my uniform holding over a period of nine years during which time we have had many cases where the contract holder had title and his estate was in the process of administration in the county court. In many of these cases the request has been made, as in this, that a patent issue to the administrator. Our uniform practice has been either to issue the patent to the heirs at law of the contract holder or to wait until the final decree has been entered and then patent the land to the heir or heirs named in the final decree, as the persons entitled to the particular land.

It is my opinion that upon the death of the ancestor, the title to real estate owned by him at the time of his death passes immediately to the heir. The only possible interest the administrator may have in the property is that if there is not sufficient other property to pay the debts of the decedent, then the real estate may be sold to pay the debts. This does not say, however, that title ever vests in the administrator. Title vests immediately upon the death of the ancestor in the heir subject to a lien for the payment of debts. Judge Burr in a rather recent case in this state said:

Hence, upon the death of the father, a 2/33 interest in all of the property - real and personal - passed immediately to the son, Christian, subject to the control of the county court for the purpose of administration, and for that purpose possession of the property may pass to the administrator. In reality it passes at once to the heirs, without any appointment of an administrator. (Citations) The property is the property of the heir at once. When the administrator is appointed, he may take possession of the property for the purpose of administration, and the county court will have control of it; but this administration is primarily for the purpose of paying the debts of the decedent and to see that the property descends and is distributed orderly."

Judge Burr then quotes from an earlier case as follows:

Property not disposed of by will passes to the heirs of the intestate Such property is to be distributed subject to the payment of the debts of the intestate."

Judge Burr further says:

The rights of the heir, therefore, in the property are not in any way affected, except insofar as it may be necessary, in the administration of the estate, to use the property for the purpose of paying debts of the decedent. In fact, the heir need not wait until the settlement of the estate. After the lapse of the time limited for filing claims, he may have his 'share of the estate to which he is entitled' . . . given to him upon his giving bond for the payment of his proportion of the debts of the estate.' Comp. laws 1913, sec. 8841. The property is his, subject merely to the administration."

From this reasoning it appears to me that the state land department has absolutely no authority and no jurisdiction for vesting title even temporarily by its patent in the administratrix. If you wish, patents can be issued immediately to "the heirs at law of Albert F. Krick" or upon presentation to the land department of the final decree, the patents will be issued to the distributees as named in the final decree.

NELS G. JOHNSON

Attorney General