

Dear Mr. Premack: I have been my mother and disabled sister's caretaker for several years. The home we live in has a loan in mother's name only. When my mother became ill I contacted the mortgage company and they stated they just want their money and if something were to happen, I just continue to make payments. Mother passed away a short while later, and I just kept making the payments. Then the bank where she had her auto loan told me I cannot keep the truck and cannot make the payments, since I cannot pay for something that is in the name of a person who has died. Will the mortgage company do that too? What am I missing here? J.S.

The mortgage company has a lien on your mother's house, which is a fairly secure loan because the real estate is secure. Also, they are required by federal law to allow the heirs to continue to make payments on the same loan held by the decedent.

The bank, on the other hand, has a lien against the truck, which is personal property, is mobile and can be wrecked (more easily than a house can be wrecked). Their loan is not as secure. They are not required by law to allow the heirs to continue to make payments when the heir is not obligated on the note and is not a co-owner of the car.

Even though they are each treating you differently, the mortgage company and the bank are both giving you correct advice. The advice is strongly from their own point of view. They care about protecting their security and getting paid. They are not allowed to give you legal advice. As such, here is what they are not telling you: regardless of how the loans are held, the underlying security (her house and her truck) must be legally transferred to the legal heirs.

Did your mother have a Will? If yes, then your next step should be hiring a probate attorney to have the Will admitted to probate and to have letters testamentary issued by the court to the Executor nominated in the Will. Her Will tells us to whom she gave ownership of the house and truck, but if it is not admitted to probate it has no legal effect.

If you fail to have her Will admitted to probate, or if she did not have a Will, then her house and truck pass according to the state's laws of descent and distribution. Without details about the full structure of her family, I cannot tell you exactly the identity of those heirs. What I can tell you is this: 1) to prove that they are heirs, there must be a court proceeding that is more complex than simple probate, and 2) if your disabled sister becomes an heir by law, she may lose whatever government benefits she receives as a consequence of her disability.

Hopefully, then, your mother had a Will that either excluded your disabled sister or set up a "supplemental needs trust" for her. If so, you should probate it immediately and allow the Executor to deal directly with the mortgage company and with the bank lender. The Executor should arrange for transfer of the actual titles of ownership to the named devisees. The lenders are likely to ask those devisees to refinance the loans after they become owners of the security. Then, as new owners with new loans, they can enjoy the properties and can continue to make payments or sell the properties without fear of foreclosure.