

What happens to a patent when the owner dies?

Many inventors have protected their inventions with a patent. But what happens to these patents when they die? Do they simply terminate or can they be passed on? Is it possible to leave patents to a specific person?

Patents can pass via a will or trust designating who should be the beneficiary of that property. Ideally, there is a specific provision in the will or trust designating the beneficiary of the patents(s). In the absence of a specific bequest of the patent property, it will pass with the residuary estate according to the will. If the patent owner died intestate with no will, the patent property will pass via the state's laws of intestate succession.

If an inventor dies before a patent application is filed or during the application process, the estate can apply for and prosecute the patent application.

The beneficiary(ies) should file a patent assignment with the US Patent and Trademark Office to reflect the new ownership. The estate's executor or administrator will sign the assignment on behalf of the estate. These assignments must be carefully drafted and contain specific language not generally found in boilerplate assignment documents. Assigning patent rights will include assignment of the subject matter of the invention and will include derivative and foreign patents arising from the assigned patent registration or patent application. (That language is not commonly used in other areas of law.)

Patent assets present a unique set of considerations. When in doubt, a fiduciary or estate attorney can and should hire knowledgeable IP counsel to advise on these assets. Evans Fox LLP has experienced estate and probate attorneys as well as intellectual property attorneys to help navigate these complex issues. If you find yourself navigating patents in your estate matters, reach out to our team for representation or co-counseling.

The forgoing is not intended to be and should not be construed as legal advice. Only after an attorney client relationship is established in writing may legal advice be given.

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Tracy Jong is a Senior attorney at Evans Fox LLP with 30 years of experience focusing her practice in business law, intellectual property and licensing for alcohol and cannabis. Tracy Jong is a member of the New York Bar and is a registered attorney at the United States Patent and Trademark Office. She can be reached at Tjong@EvansFox.com.

