

Real Estate Sale After Death

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In recent months we have had a number of calls coming to our office with the following problem: The caller is attempting to sell a home owned by a family member; a buyer has been found, but then shortly before the closing the sale hits a snag.

The buyer's attorney does a search and discovers that the deed shows the owner to be someone who has died. The caller is being told that they need to be named as Personal Representative (formerly known as Executor/trix) proving that they have the authority to sell the property. The caller feels trapped with a buyer ready and does not where to start.

So, how did this happen? No one realized that when the owner died, a legal process was necessary to determine who has the authority to sell the property as well as to determine the individual(s) entitled to the proceeds from the sale. In Massachusetts, this is done through the Probate Court.

Probate? Why is there probate if my loved one had a Will?

A Will *is* Probate. The Last Will and Testament is a document in which you designate who will receive your property after your death. It is used by the Probate Court to transfer property that is owned in your name alone at your death to your heirs. In most Wills, you will name a person called a "Personal Representative" who will bear the responsibility for administering your estate. The personal representative works with your lawyer and the Probate Court to transfer your property to your heirs. The timeline for the entire process

which includes submitting the Probate petition, receiving authority from the court, filing an inventory of assets within the estate, liquidating assets, selling property, and finally closing the estate, could take 12 to 15 months, if not longer. Often, the cost and delay of Probate can be avoided through some basic estate planning techniques.

But why does it so often happen that this discovery is made only after a buyer is found and everyone is ready to close? At that point there are deadlines to be met. For example, the Buyer may have a mortgage lined up at a certain interest rate, but that rate lock is set to expire. The time it takes to get a Personal Representative appointed may be longer than the buyer has to save the rate.

How can Probate be avoided?

Most people are unaware of what Probate is and when it applies. But asking questions of your loved ones before they pass is the key so you understand future steps for the property. There are many different strategies available to help avoid the cost, delay, and public nature of the Probate process.

Create a Trust

A trust is a document wherein an individual "Grantor" creates a trust instrument and names an individual (usually themselves) as "Trustee." The Grantor then transfers property into the trust and the Trustee manages the property and distributes the property according to the terms of the trust. A trust allows you to specify how you wish your property to pass. A trust may also avoid some of the adverse tax consequences associated with other strategies, while accomplishing the same goal of avoiding probate.

Joint Ownership

Adding another person to your home as a joint owner or "joint

tenant with rights of survivorship" will allow your property to pass to the other individual upon your death without the need for a probate proceeding. The obvious pitfall to this is that while you are alive the other owner has equal rights as you and the asset is subject to any claims of the owner and/or any of their creditors.

Life Estate Deed

A life estate is a deed in which you transfer your home to the persons whom you want to have it after you pass away (remainderperson), but reserve unto yourself the right to live in your home until you pass away. There are different types of life estate deeds with benefits and drawbacks, but all avoid probate.

Understanding how your loved one owns their home can help to avoid the costly and expensive Probate process. We encourage you to meet with a qualified estate planning attorney and review the strategies available to help you determine which is right for you.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.