



PROBATES AND ESTATES

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FACTORS TO CONSIDER - ESTATES FROM LISTING TO CLOSING

Effect of how title is held when one Seller is deceased, with Will and Without Will.

What if a Buyer or Seller should pass away before closing?

Effect if property was Homestead.

What might cause a delay in closing?

How to treat various other transactions depending on how title is held.

PROBATE ESTATES

- Testate: With Will
- Intestate: Without Will

PROBATE ADMINISTRATION

In Florida, there are 2 types of Probate Administrations

- Summary Administration
- Formal Administration

SUMMARY ADMINISTRATION

- A shortened form of Florida probate that does not allow for the appointment of a Florida personal representative.
- Typically requires less time, effort, and expense than a formal administration.
- To qualify for summary administration decedent must have been deceased for more than 2 years OR value of the entire estate subject to administration in Florida, less exempt property like homestead property, must not exceed \$75,000.00.

FORMAL ADMINISTRATION

- For all Larger Estates (\$75,000 and above).
- Preparation of the Petition for Administration stating how the assets of the estate are to be distributed and to whom.
- Appointment of personal representative.
- Requires publication if decedent is deceased for less than 2 years (Notice to Creditors-90 day claim period).
- Filing of the inventory of decedent's estate.
- Determination of homestead (if applicable).
- Payment of debts and distribution of the assets to creditors and beneficiaries.
- Advantages of using a formal administration are if Will leaves a large number of beneficiaries, some beneficiaries are minors, whereabouts of one or more beneficiaries are unknown or one or more of the beneficiaries refuse to cooperate.
- Typically takes 6 – 12 months.

HOMESTEAD PROPERTY

- If the decedent owned a home in Florida that was used as a primary residence, Florida homestead law must be considered.
- A Florida homestead passes automatically to the deceased person's heirs pursuant to the Florida Constitution BUT that does not mean that the heirs have *clear title*. Title underwriters may require an Order Determining Homestead before issuing a title policy. Until then, the heirs will not have clear title.
- If the decedent owned a Florida homestead, a petition to determine homestead property should be filed at the same time that the probate estate is opened.

TITLING OF REAL PROPERTY

- Individual Name – John Doe, a single man
- Life Estate – John Doe, a single man, for life, than to Jane Doe, a single woman, **No Probate**
- Joint Tenants with Right of Survivorship – John Doe, a single man, and Jane Doe, a single woman, as joint tenants with rights of survivorship, **No Probate**
- Tenants by the Entireties (Married Couples) – John and Jane Doe, husband and wife, **No Probate**
- Tenants in Common – John Doe, a single man, and Jane Doe, a single woman
- Trusts – Land Trusts/Living Trust – Jim Doe, as Trustee of the John Doe Living Trust dated 10/13/2016, **No Probate**
- LLC/Corporation – John Doe LLC

How does a death of a Seller effect your contract?

Florida Contract Law – General Rule

Under Florida law, when a party to an executory contract dies, that death will not void or nullify the contract.

A real estate contract is an executory contract that remains legally valid until the closing is completed. The personal representative of the seller's estate must deal with the contractual responsibilities created under the sales agreement, the contract will be considered an obligation of the decedent's estate.

There can be complication of course, the personal representative may not have the power or legal authority to act on behalf of the decedent's estate until the proper probate procedures are undertaken and this can delay the original closing date.

It may be possible for the Buyer to argue that the closing date being delayed is a reason to terminate the transaction altogether. The Buyer, due to the Sellers death and resulting probate administration, point to the time provisions in the contract as basis for ending the deal and requesting their return of deposit.

How does a death of a Seller effect your listing agreement?

A listing agreement is a promise by a real estate agent to market a property in order to find a buyer and a seller agrees to pay a commission for this service. If the seller dies before the end of the listing agreement term, the listing agreement is considered cancelled without obligation EXCEPT if there is express language to the contrary.

Exclusive Right of Sale Listing Agreement – "This Agreement is binding on Seller's and Broker's heirs, personal representative, administrators, successors and assigns". The estate is responsible for the commission.

What happens when the Buyer passes away?

If the buyer passes away after the sales contract is signed but before the title has been transferred, the buyer's interest in that real estate is considered to be an "Estate of Inheritance". The heirs or beneficiaries must decide if they want to go through with the purchase or not.

NOTE: There are insurance policies provided like AssureClose that offer seller's protection in the event that the buyer passes away before closing. In these policies, if the buyer dies, then the insurance company will buy the home from the seller.