

WHAT AN AGENT SHOULD KNOW ABOUT PROBATE PROPERTY



Finding that your client is unable to transfer his or her property until a probate occurs can be discouraging. However, it is important to note that when a probate must be opened, this does not have to ruin a deal if both parties are flexible. It can be possible to transfer a property in two to three months if the probate is opened quickly and other complications do not arise.



When Does a Property Have to Go Through Probate?

There are a number of reasons a property may have to go through probate. The most common is when a property is held as “Tenants in Common” with the deceased person. When property is held by two parties in Joint Tenancy, the property usually does not have to go through probate unless other title issues must be resolved. Trust property is also generally transferable without having to open a probate.

How Are the Sale and Transfer Documents Different When a Probate is Involved?



Additional care should be taken in the drafting of a purchase agreement contemplating probate. As with most purchase agreements, an attorney should be retained to draft or review the purchase agreement to ensure that it contains the appropriate disclosures. If your client has not lived on the property and the purchase agreement has not been completed, care should be taken to disclose that the client has limited knowledge of the condition of the property and an as-is purchase agreement should be considered. It may also be best if the sale is contingent on the client becoming personal representative and obtaining any necessary court or heir approvals.

At closing, personal representative’s deeds are generally issued, so the purchase agreement should state that a personal representative’s deed will be given rather than a warranty deed. Additional documents are also generally given to the closer which include the Letters Testamentary, a Certified Copy of the Will (if there is a will), and the Personal Representative’s Deed (if the title company does not draft it). If it is “Torrens Property” these documents generally will need to be submitted to the County Examiner for approval prior to the closing to ensure that the personal representative is able to make the transfer.

How Soon Can a Property Be Sold After a Probate is Opened?



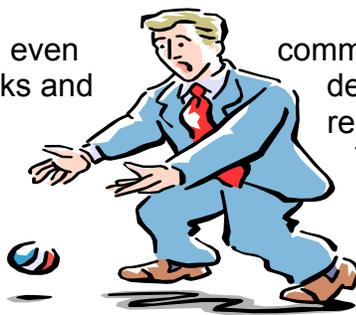
This often depends on the type of probate that is opened. In order to open a probate, whether formal or informal, an application needs to be prepared and a notice to creditors needs to be published once a week for two successive weeks. Then depending on the county and the type of probate, the court may then require a hearing.

After the application is approved a document called “Letters Testamentary” is issued, this grants certain powers to the appointed personal representative. One of these powers is to sell probate property (the property or property interest which is determined to be owned by the deceased individual). In a Formal Probate and unsupervised probate, the personal representative can generally sell property right away. In an Informal Probate, the personal representative must wait 30 days from the date of issuance of the letters before he or she can transfer property. If the probate is both Formal and Supervised, then a hearing may need to be held and court approval obtained prior to the personal representative’s sale of the property.

If the deceased party has been dead for over three years, a “Determination of Descent” instead of a probate is opened, publication is usually required, but a personal representative is not appointed and the process is similar and at times simpler than an informal probate.

What Are the Risks Involved In the Sale of Probate Property?

While possible and even also be subject to more risks and property. The personal until the Letters (and 30 days later for an purchase agreement also occur that could disputes can result in the removal of your client as personal representative, a court may disapprove a sale, a hearing may be called to resolve family disputes, etc.



common, sale of probate property can delays than the sale of non-probate representative cannot sell the property Testamentary have been issued informal probate) even though a may already exist. Issues may prevent or delay the sale. Family non-appointment of your client or

What Should I Do If Issues Indicate That a Probate May Be Needed to Transfer My Client’s Property?

The client should discuss the matter with a qualified attorney promptly after

discovery of this issue. This is especially true when a purchase agreement has been signed because it will need to be determined if the probate will delay the closing, and if so, is this delay acceptable to the purchaser.

The sooner the probate-related issues are discovered and addressed, the sooner the transaction can proceed.



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