

IMPORTANT INFORMATION WHEN LISTING A HOME OF A DECEASED SELLER



Assisting Your Clients

Listing a home comes with a large checklist and many things to prepare before going live on the open market. In cases where there is a deceased home seller, this can cause some extra steps throughout the process. In order to help equip you with pertinent information regarding deceased home sellers, we have put together the below informational guide. Please note that the information below is only applicable when a property is titled to an individual who passes away without some other non-probate transfer instrument (e.g., joint tenancy with rights of survivorship, beneficiary deed, trust, etc.).

If a real estate agent determines that the owner of a property has passed away and probate is required to transfer the property, the agent should ask whether the deceased owner died with a will (testate) or without a will (intestate)?

If there IS a will, the real estate agent should ask about some terms of the will – mainly:

1. Who is named as the personal representative/executor?
2. To whom/where is the property supposed to go after the seller's death?

The answers to those questions will determine who is authorized to transfer the property (personal representative/executor) and whether the property can be sold (or if it is supposed to be given to someone/somewhere else).

If there IS NOT a will, then the real estate agent should ask about the relationship of the individual communicating on behalf of the seller – like:

1. How is the individual related to the deceased owner (e.g., surviving spouse, child, parent, sibling, etc.)?
2. Are there other individuals who are also closely related to the deceased owner who may have an equal right to control the property (e.g., other children(s), other parent(s), other sibling(s), etc.)? If so, are those individuals in agreement about who should be appointed personal representative and/or where the property should be transferred after the seller's death?

Regardless of whether there is a will, in order to transfer the property, the personal representative will need to file to open probate for the estate in the county where the property is located, or where the decedent passed away. If there is a will, then filing will require the PR to bring the original will to the court (or to a law firm to give to the court). A document issued by the court (Letters of Appointment) will permit the PR to transfer/sell the property by personal representative deed.

The content presented herein is strictly for informational purposes only and shall not constitute legal advice about your specific facts, circumstances, and/or case. If you have any questions, please contact an attorney of your choosing or, if you do not have an attorney, Spaeth & Doyle LLP. Please be aware, if you choose to represent yourself, you are bound by the same rules and procedures as an attorney.

For further questions, please contact Spaeth & Doyle LLP
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