PROBATE AND REAL ESTATE SALES

Sometimes the sale of a house, condo, or vacant lot is delayed because of probate problems. The need for a probate does not have to stop a real estate sale. I would like to explain what you and your realtor need to know so that you will be able to sell property quickly even if a probate is necessary.

First, let's discuss some basics about probate. The person who died is called the "decedent." Probate is a court proceeding that is required to transfer title to property if the decedent owned assets in his or her name alone, without a beneficiary named. If the decedent owned real estate as a "joint tenant," or "tenant by the entirety," or in a revocable living trust, no probate is necessary. However, if the decedent owned real estate in his or her name only, or as a "tenant in common," in Hawaii, a probate is required no matter how small the value of the real estate.

Sometimes a person hires a real estate agent to sell property, not knowing that a probate is necessary. The real estate agent finds a buyer. Escrow is opened. The escrow company orders a title search. The title search shows that someone who used to own the property died, and that a probate is necessary. The real estate sale is stopped. The sale cannot be completed until a lawyer is hired to begin a probate in court. How long will it take before the sale can be completed? Many times, the sale can be completed within 2 to 6 weeks. This is a surprise to many people, because most people know that probate takes one year or longer.

It is true that probate usually takes a minimum of 6 to 8 months to complete. Often it takes more than a year. However, in order to sell real estate that is in probate, <u>you do not have to wait until the probate is completed</u>. The real estate can be sold as soon as the "personal representative" is appointed by the court. The "personal representative" is the person who is appointed by the court to be responsible for the affairs of the person who died. The personal representative's job is to gather

the assets of the person who died, to pay the bills, and to distribute the property to the persons who are to inherit the assets. When someone hires our law office to do a probate, we can usually get the court to appoint a personal representative within 6 weeks. If the beneficiaries or heirs agree to the sale, the real estate can be sold at that time. If any of the beneficiaries or heirs disagrees with the sale, then there will have to be a "confirmation hearing" in court, which will delay the sale of the property.

If all of the assets owned by the decedent is worth $100,000 or less, then it is possible to have the Small Estates Division of the Circuit Court handle the probate, without an attorney. However, the Small Estates Division does not like to get involved in the sale of real estate, and you would probably have to wait 6 to 8 months or more before the property could be sold. By hiring your own private attorney to do an "Informal Probate" instead of a "Small Estate" proceeding, you may well be able to sell real estate in 6 weeks, instead of having to wait 6 to 8 months or longer.

If the decedent lived in the mainland, but owned property in Hawaii, sometimes a probate was already done in a mainland state. In that case, if we get certified copies of the mainland probate papers, we can use a special procedure called "Acknowledgment of Authority." With this procedure, we can often get the personal representative authorized to sell the real estate in Hawaii within 2 to 3 weeks, instead of 6 weeks.

Probate does not have to delay the sale of real estate for months or years.

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