



ESTATE RELATED REAL ESTATE MATTERS

Recently, we have seen a number of files involving estate matters. We thought we'd give a general overview of the process and issues, and try to give you some pointers that may help make your deals run more smoothly.

The process for dealing with a property when someone passes away differs somewhat depending on the circumstances.

For example, if there are two people on title (i.e. a husband and wife), the process will depend on whether or not parties are on title as joint tenants. When parties are on title as joint tenants, the title will indicate that the parties are joint tenants. In that case, we need to file a transmission to transfer the property to the surviving spouse. However, if the parties are on as tenants in common, we cannot do the transmission. Rather, their interest in the property must flow through their estate.

In other cases, where there is only one person on title and they pass away (or two people but where they hold title as tenants in common), the process is more onerous. In most cases, it is necessary for the person's estate to go through the probate application process (if the deceased had a will) or the process of applying for letters of administration (if the person did not have a will) prior to their estate being in a position to transfer the property to a subsequent owner. Both of these processes can take anywhere from a couple of months (2-3 months) to a year or more depending on the circumstances. In these cases, it is not until the court order (whether it is a Grant of Probate or Letters of Administration) that the executor actually has the power to sell the property.

In the case of an executor wanting to sell property that is an estate asset, these varying factors can be significant to realtors who are taking listing instructions from their clients. First of all, you want to make sure that the person who is giving you instructions has the authority to do so. In many cases, you will need to review the will. Even if the will appoints a particular person as executor, it does not necessarily mean that person has that authority. There may be another will or a codicil out there that changes that appointment that you do not have in your hands. As a result, it really is not until the court reviews and approves of the individual's application that they really do take on that responsibility.

In many cases, properties get listed before the Grant of Probate or Letters of Administration are obtained. In those situations, it is necessary to ensure that Contract accurately reflects the situation and that subjects are adequately worded to deal with the obligations of the seller to obtain the Grant of Probate. The most common way we see it set up is to provide a subject for receipt of the Grant of Probate and then completion being set 10 days after the Grant of Probate. In most cases, this works without a problem. However, in some cases, it can be problematic.

Once the Grant of Probate is obtained, the lawyer acting for the executor in the application for probate will need to file a transmission to transfer the property from the deceased to the executor. While this can usually be filed within a couple days of obtaining the Grant of Probate, there is the possibility for hiccups. It usually takes between 3-6 days for the transmission to reach final registration status with the Land Title Office. When there is only a 10 day window, this can leave a pretty tight timeline for trying to get the transmission done and filed and then the transfer documentation to the actual purchaser(s) done as well.

One example of how this can go sideways arises from a file I was previously involved with. In this particular case, I was acting on a file for a purchaser who was buying a property from an estate. The transmission was submitted for registration once the Grant of Probate was obtained, but the transmission was defected by the Land Title Office because the probate documents did not include the correct legal description (there was a one digit typo). Although this shouldn't sound like it is difficult to fix, the probate documents need to be resubmitted to the Court to be amended and then the transmission needs to be rectified for it to obtain final status.

The moral of the story is that a bit of extra protection can be provided by leaving a bit longer of a time frame. For example, you would still include the subject to obtaining the Grant of Probate by a particular date, but then leave a period longer than 10 days (30 days would be ideal) to ensure that the transmission from the deceased to the executor goes through without problem. If 30 days is not doable, even 15 business days may be sufficient to avoid additional delays if the 10 day time frame is not sufficient.

In most case, it is recommended that you contact the lawyer who will be acting on the sale or the purchase prior to having a contract executed to ensure your proposed contract will work with the particular file they're handling.

This information is intended to be general information only. We recommend contacting a lawyer or notary with respect to any particular transactions you may be dealing with to ensure you get the best advice. Please do not hesitate to contact us if you have any questions. We look forward to working with you.

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