

***Planning Ahead***



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**Probate Sales**

Real property in a decedent's estate attracts a lot of attention. People think they may get a good deal if they can find a probate sale. That's generally not true. The Executor has a fiduciary duty to the beneficiaries to get the highest and best sale price. And when the Court is involved, the Court won't approve a sale for less than 90% of a current appraised value.

There are special rules and procedures for sale of a decedent's real property in a Trust or Probate. It is critical that you work with an expert broker with long experience in this specialized area. Important differences in a sale from a decedent's estate include a lower commission. In a Probate sale, the broker's commission is capped at 5%. And the sale of a deceased person's home is exempt from some of the mandatory disclosures that otherwise apply in residential sales. It is critical that a purchase offer be made using specialized probate forms. A knowledgeable broker will make sure that all the paperwork is done correctly

In certain cases, a sale must be approved by the Court at a hearing with required notice, which may include publication in a legal newspaper. Failure to comply with notice requirements will delay the sale. A broker who specializes in Probate sales will make sure this isn't overlooked.

In a Court-approved sale, other people can come to the hearing and bid up the price in a sort of auction conducted by the Judge. The overbidding process has its own procedures. You will want a broker with you at the hearing who has experience with over-bidding.

In cases where Court approval is not required, all beneficiaries must receive notice of the terms of the sale with opportunity to object. If a beneficiary objects to the sale, it will go to the Court or fall out of escrow.

Before retaining a broker make sure he or she has the required expertise. An inexperienced broker will result in more legal fees since the lawyer will have to become more involved. The lawyer handling the Probate or Trust will have recommendations for the best broker to ensure the sale goes smoothly.

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