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A GUIDE TO SMOOTH PROBATE ADMINISTRATION INVOLVING REAL ESTATE

With over 60% of Americans owning homes, it is no surprise that the home is often one of the largest assets that someone will own at the time of their death.

Consequently, selling or buying real estate from an estate can be very tricky, time-consuming and very expensive for both parties involved in the transaction.

While there are times when a person's estate is well prepared to avoid the probate process, most cases require court approval before you even get started. As soon as a property is offered for sale, take the extra step to have the chain of title reviewed to see if there is a deceased person on the title. If so, it is critical to understand the timeframes and additional challenges that accompany the probate process.

Here is a quick reference checklist of things to consider when entering a real estate deal that is tied up in probate.

- How property is titled before you take on a listing
- Who can sign the listing agreement
- Who can sign the real estate contract
- All aspects of homestead
- All timeframes involved in the probate process
- The value of the title commitment
- Who will have to be notified and who will have to sign off on the real estate deal
- Who should sign a quit claim deed to use belts and suspenders
- When Court approval is necessary or when the estate/trust rules or documents authorize the sale without Court approval

- What must be done with the proceeds upon the consummation of the real estate deal
- Tax consequences of the real estate sale - both income and estate taxes and liens associated with the same (when are tax releases necessary)
- Obstacles that can destroy the real estate deal midstream
- Who can set the price of the real estate and who must consent to the reduction of the price throughout the sales process
- How to title real estate
- Step up in cost basis upon the decedent's death

As always, it is better to plan early and often, however, if you or your client does run into a situation where questions arise, an experienced real estate lawyer can not only assist in a smooth probate process but also help answer industry-specific questions and guide you to a smooth closing.

Visit www.probate-florida.com to read more about this subject and other estate planning matters.

Ed Wollman is a Florida Bar Board certified Attorney specializing in wills, trusts, and estates with over 26 years of experience practicing in the state of Florida.

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