Attorney’s Corner-Legal Tip of the Month

             **How the Probate Process Can Affect Your Closing**

Sell real estate long enough and you will inevitably run into a situation involving a deceased seller. While this is not deal killer, it can often delay a closing or cause last minute scrambles if this is missed or discovered late in the closing process. Understanding how assets transfer between deceased sellers and their survivors and how the probate process works, is imperative to having a smooth closing process.

How was title to the property held?

One of the many questions you need to ask when having your listing “interview” is “How was/is the title to the property held?” This will reveal to you whether or not you have the ability to list and sell the property. When dealing with the surviving spouse, find out if the sellers owned the property as “joint tenants with rights of survivorship” or “tenants in common.” Most sellers are not going to know the difference between the two much less which way they held title. Because of this, trust what they say but verify and research the most recent vesting deed to the property to confirm how title is actually held.

“Tenants in common” or “TIC” is the default way 2 or more people to take title. There must be an action taken by the closing attorney or the owner to make sure the title is taken as “joint tenants with rights of survivorship.” Taking title as “as joint tenants with rights of survivorship” or “JTWROS” is actually a relatively new thing. If people bought their property before the early 1990’s, there is a good chance that they took title as “TIC” and not as “JTWROS.”

What’s the difference?

Title held as “JTWROS” provides that the ownership interest of the deceased owner automatically passes to the survivor at the decedent’s death. All that is needed to transfer the property between the decedent and their survivors in this situation is a copy of the decedent’s death certificate. This enables the survivor to convey the property in the survivor’s sole name.

Title held as “TIC” means that the ownership interest of the deceased owner remains in the estate of the deceased owner. There is no automatic passage of ownership interest. The only way to convey the decedent’s ownership interest is to probate the decedent’s estate.

What is Probate?

Probate is the legal process that takes place after someone dies. It is the process of administering the estate of a deceased person, resolving all claims and settling all debts, and distributing the deceased person's property  including transferring legal title to the decedent's assets and real property held in the decedent's name alone or as “TIC” and not as “JTWROS.” If a decedent had a Will, and the decedent had property subject to probate (held title to the property as “TIC” or individually), the probate processbegins when the executor named in the decedent’s Will, presents the Will along with a petition to probate to the Probate Court in the county where the decedent lived, or owned property. If there is no Will, someone must volunteer and ask the court to appoint him or her as administrator of the decedent's estate. Often, this is the spouse or an adult child of the decedent. Once appointed by the court and given what is called “Letters Testamentary” if there was a Will or “Letters of Administration” if there was not, the executor or administrator becomes the legal representative of the estate. This person then has the power and authority to convey the deceased person’s interest in the property.

How does this affect the closing?

It depends on whether when or if the probate process has begun. If the probate process has already happened and someone has the authority to sign on behalf of the decedent’s estate ,then there should be no problem or delay in the closing. If it is discovered that probate is necessary at your listing appointment or even worse after the closing attorney reviews the title, then you will more than likely have a delay in closing. The probate process can take anywhere from 4 weeks to over a year depending on many factors. Just a few of these factors include how long it takes to find a valid Will, the willingness and cooperativeness of the heirs of the decedent, the complexity of the decedent’s estate, and the place in the queue the petition is with the Probate Court.

How to avoid problems and delays?

The easiest way to avoid last minute problems and minimalize delays is to ask the right questions up front. How was the title held? Is there a deceased owner? Have you or someone been named executor, personal representative or administrator? If not, has the probate process been started? Also, regardless of the answers you get, ask us to check the ownership on the title records just to be sure.

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**CFPB Announces New Policy to Allow Consumers to Share Complaint Stories**

*Source:* [*themreport.com*](http://themreport.com/)

Handling consumer complaints is an integral part of the work of the Consumer Financial Protection Bureau (CFPB).    [Read more >>](http://themreport.com/headline/03-19-2015/cfpb-announces-new-policy-to-allow-consumers-to-share-complaint-stories)

**February 2015 Existing Home Sales Up 4.7 Percent From a Year Ago**

*Source: Ted C. Jones*

February 2015 existing housing sales increased 4.7 percent from a year ago, on pace to a seasonally adjusted annualized rate (SAAR) of 4.88 million according to the National Association of Realtors®.  [Read more >>](http://blog.stewart.com/stewart/2015/03/25/february-2015-existing-home-sales-up-4-7-percent-from-a-year-ago-median-price-up/)

**CFPB Will Not Extend New Mortgage Disclosure Deadline**

*Source:* [*themreport.com*](http://themreport.com/)

Consumer Financial Protection Bureau Deputy Director Steven Antonakes hinted at possibly extending the August 1 implementation deadline for new mortgage disclosure if vendors weren't ready, in a speech he gave today, sending industry talks into frenzy. [Read more >>](http://themreport.com/news/government/03-25-2015/cfpb-will-not-extend-new-mortgage-disclosure-deadline)