



What Brokers Should Know About Estate Sales, Part I Of II

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An estate sale of a property presents brokers with a set of unique issues that they must be aware of before listing a property. An estate sale differs from a normal sale by an individual in that the person whose name appears on the property deed is no longer alive and therefore cannot transfer the property over. Therefore, the property is being sold by the deceased person's estate. A broker must know the right questions to ask in order to properly represent an estate sale or a purchase from an estate.

What exactly is an "estate"? In the context of inheritance, an estate of a deceased person consists of all the property owned by the person at the time of death, whether real, personal, tangible or intangible.

The estate is also comprised of all the decedent's liabilities and it must pay any debts owed by the decedent before distributing the balance of the estate's assets to the beneficiaries of the estate. An estate is a legal entity created as a result of a person's death and it arises whether the person died with or without a Last Will and Testament ("Will").

The first question a broker must ask is whether the decedent has a Will. In order to be effective, the Will must be deemed "valid" in the eyes of the law. Certain formalities make a Will valid, for instance such as proper execution, and this is a good time to involve an attorney in the sale, if one is not involved already.

Additionally, the estate must be in possession of the original Will since a mere copy will not be accepted in court. If the relatives can only locate a copy of a Will, then unfortunately the decedent will be treated as not having a Will at all.

When a person dies with a Will, the Will must be probated. Probate is the legal process by which the Surrogate's Court (handles all estate proceedings in the state of New York) decides the validity of a Will, resolves all claims and debts and approves distribution of property to the beneficiaries under the Will. A probated Will becomes a legally enforceable document and a probated estate becomes a separate taxable entity.

A properly drafted Will names an executor, who is the decedent's personal representative in wrapping up his/her affairs. The nominated executor initiates the probate proceeding and petitions the court to be officially appointed to this post. Once the executor is appointed, the court issues an important one-page document

titled "Letters Testamentary," or you may have heard them called "Letters of Administration" or "Letters of Representation." The executor must be armed with this letter and a death certificate to take any action on behalf of the estate, such as real estate transactions, banking, stock trading, and other actions necessary to marshal and dispose of the decedent's assets in the manner specified in the Will. Letters Testamentary are valid for six months in New York, and are subject to renewals thereafter. The property can be listed for sale once there is an executor appointed who is armed with Letters Testamentary. The Letters Testamentary must not be expired at the time of the closing since the executor will have to sign all the transfer documents for the estate.

Another vital question a broker must ask is whether the estate has the power to sell the property. The Will must be reviewed to confirm that the decedent intended for the property to be sold and for the proceeds to be distributed to the beneficiaries specified in the Will. The estate may not be authorized to sell the property if the Will leaves it to a certain beneficiary.

It should be noted that certain property falls outside the estate for probate purposes and is thus not disposed of by the Will. This property is said to pass by "operation of law" – which means a change or transfer which occurs automatically due to existing laws and not an agreement or court order. The most common example is a jointly owned apartment that passes by a right of survivorship on the death of the first co-owner to the name of the co-owner on the ownership documents.

If a residential property passes by operation of law, the estate does not have a right to sell it since its ownership automatically passed to the survivor on the deed or stock and lease.

The continuation of this article in Part II (to be published in the next issue) will lay out what brokers should know when a decedent dies without a Will as well as other issues that come up in an estate sale. Representing a party in an estate sale may be more complicated and lengthier than an individual seller or purchaser.

However, with the current limited inventory of apartments, brokers may want to familiarize themselves with issues that arise in estate sales so they can adequately represent parties to such a sale. ■

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