



SHINE BRIGHT

LIFE CHANGES THAT IMPACT A CLOSING PART 1 - WHEN SOMEONE ON TITLE DIES

In this two-part series, we'll explore a few common life changes – beginning with the death of someone on title – that can put the skids on closing a transaction, and what, you can do to prevent, foresee, or learn to live with it.

How the death of a sole property owner affects the validity of a sales contract varies from state to state and may depend upon whether there is a will. Check with an attorney, because in some states, the burden and benefit of the contract simply passes to the seller's personal representatives, who are bound to complete it.

When there are dual owners, the effect if one of them should die mid-transaction depends on how title is held. Again you should check with an attorney because there may be nuances in certain states and other issues involved, but generally speaking:

If in joint tenancy, title passes to the survivor with no need for a new deed or probate. The only delay – which varies in length from one jurisdiction to another – is obtaining a valid death certificate and possibly having the survivor attach it to an affidavit attesting the death and recording in the property records.

If title is held as tenants-in-common, whereby each owner's interest does not automatically pass to the survivor, then the estate must be probated – generally a lengthy procedure – in the county where the property is located. In most cases, if the decedent has left a will conveying the property to an heir, the executor may convey the property to a third party for cash to be paid to the heir named in the will. The necessity of a probate proceeding and the powers of an executor vary widely from state to state.

If there is a living trust in place, the trust document controls what happens next; whether ownership and the right to sell passes to a named beneficiary, for example, or whether the property may be sold with the proceeds to be divided between the heirs named in the trust. In any event the terms of the trust agreement will need to be determined to convey title of record out of the trustee for the trust agreement.

The listing agent, during the course of listing, may have seen the deed to the property and might know how title is held. In the case of unexpected death of someone on title, the agent can do little more than offer condolences and, if title is held in other than joint tenancy, recognize that a delayed closing is inevitable – and that termination of the purchase agreement, even if that is what the survivor wishes, will depend upon the terms of the sale agreement.

But suppose one owner – let's say the husband, is incapacitated or terminally ill when the sales agreement is signed – and the wife has Power of Attorney (POA). You should know that the POA is valid only as long as the husband is alive and if the husband is incapacitated the POA must have a durable provision allowing the POA to remain in effect after the husband becomes incapacitated. A POA is terminated upon his death and under the conditions stated above, the estate may need to be probated before the property can be sold.

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