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Probates – What Happens When an Heir Won't Sell in a Probate?

Probates are a wonderful source of deals. Often the seller lives out-of-area and wants to get cash out of the estate as quickly as possible. Because probates are shown in the public record, they are fair game for all sorts of people – real estate investors, attorneys, creditors, other family members and people who believe they are heirs, and also scam artists.

In the worst time of grief, often a close relative to the decedent has to deal with all the details of the liquidation of the estate. In many cases, there aren't a lot of assets besides the property itself. Furniture and fixtures can sometimes be worth more than the house, but that's another story that I already shared with you about treasure hunting. As a note – don't treasure hunt in a property you don't own or it is called burglary.

I am going to do this once more – if you have a will, you have a document that could very likely cause your heirs tons of money and grief. An attorney will do a will for \$50 - \$75 because when you pass on, the probating process is an annuity for him. I can hear the attorneys' cheering section shouting that probates only cost a couple of percent of the value of the estate. This is true in some isolated cases – and still that's a couple of percent a year. All wills have to go through the probate process in the court system and are "petitioned" by an attorney. That means you can't do a probate "pro se" – or by yourself.

There are notable examples of estates that have lost half of their value because the wills were contested in court – Adolph Coors (beer guy) lost over 2/3's of his estate because he had a simple will that was heavily contested and the estate had to pay income taxes and estate taxes besides, but only on the "remainder" that the attorneys didn't get. Marilyn Monroe's estate wasn't resolved for over 25 years because her simple will was contested. Howard Hughes' probate proceeding had over two hundred wills surface when he died and every one had to be reviewed and adjudicated by the court to determine which one was authentic.

The solution is very, very simple. Have an attorney draft a Revocable Living Trust for you. He will likely have you make a "Schedule A" that shows all your assets and he'll use this to determine how much to charge. This trust document doesn't save on income or estate taxes but it does give the Trustee express powers for controlling the assets of the trust.

It also will make provisions for the handling of "what if" in the event the Trustee or Beneficiaries are incapacitated. It is not a Living Will but often contains one in the trust documents. **What it actually does VERY efficiently, is to virtually and completely bypass the probate process.** So for a one-time fee, you and your beneficiaries don't have to go through the openly public aspect of probating

your estate. Haven't you seen when a movie star passes, that the press knows the terms of his will? That's because the will is public knowledge and can be copied for a \$1 a page at the court house. It also means he got poor legal advice when he was alive, or didn't take the good advice he did get.

In a recent probate deal that took seven months to complete, the Personal Representative (Executrix – female or Executor - male) of an estate signed a contract to sell us the probate property. The court had to approve the sale and that was done timely. However, out of nowhere, comes another heir and he decides he won't sign the documents needed to sell the property. I'll bet you thought the Personal Rep was the only signature required – wrong, if there is more than one heir (beneficiary).

In one case there were seven heirs and they were inconveniently scattered all over America and two foreign countries. We did get them all to sign their respective deeds but it took months. Simply send them an attorney's letter explaining they are getting an inheritance (don't mention the amount). This usually gets a swift response. I hope the Nigerian scammers don't read my Insights. Otherwise, I will start getting more emails about how to get a hold of my part of an estate's proceeds!

Usually, if you have two or more beneficiaries, one will be thinking about rehabbing the property himself. His thought process is simple – "I am buying the property for ½ of the FMV so I have a discount to start. He's right and he usually protests until he gets his way or he realizes he has to buy out the other heir(s) with cash - no financing of probate properties. Once probated property has been transferred to the heirs through the court process, the new owners can decide on financing – doesn't happen very often but it could.

Here is an actual example we dealt with. There were five beneficiaries and all but one was agreeable to the price we offered and the court had approved. This hold-out heir was adamant that he wanted much more for the property and he wouldn't sign anything. Here's the insider secret to probates – the attorney almost always gets paid from the proceeds of the sale of the assets. No sale, no pay in this case. We asked the attorney to intervene and he did by suing the rogue heir! I am not even sure if he had a case but intimidation by attorney's fees can sometimes make a stone move. It worked, and we went ahead with the closing and immediate resale to a buyer who had been waiting for months.

Some cases aren't this simple as witnessed by another one we did. All of the following numbers have been changed slightly to protect all parties involved. The offer we made was \$30,000 to the Personal Rep who agreed to the price, as did the court. There was a \$15,000 lien from an attorney as the sole debt and it was over 5 years old. The net proceeds to the two heirs would have been only \$6,500 with court costs, probate attorney's fees and tax certificates payable. The

second heir wanted \$30,000 and said “he wouldn’t take a penny less!” I love it when a seller says that, it’s like waiving a red flag in front of a bull!

We made the decision to buy the lien at a discount and foreclose. The short story is that with the foreclosure costs, tax certificates and all the associated fees and expenses, our cost for the property would be \$18,000 with no money going to the heirs. Oops – remember how the stubborn heir wouldn’t take less than \$30,000? Well, he got nothing which is what he would have gotten if it went to a tax deed sale.

We just completed another probate – by completed I mean we put it under contract and marketed it and then gave it back to the estate. The student and I worked on this deal for at least 6 months and he may have been on it for another two months before I saw it. I negotiated through him for the purchase. I initially offered \$165,000. The property was evaluated for estate purposes at \$460,000 from a recent appraisal. Boy, I wish appraisers had to buy properties for what they appraised at.

The Personal Rep was out of state and really stubborn. She had a realtor tell her it was worth much more than we offered. She wouldn’t return calls, couldn’t make any decision and the process droned on for months and months. To the student’s credit, he stayed on it like a pit bull biting an aged NY Strip Steak. Just a couple of weeks ago the Personal Rep agreed to the final price offer we made at \$200,000.

The house had been full of antiques and expensive paintings that the Personal Rep had to sell before we could get access to the property. This took another month. In the mean time, the property value was declining and we alerted her of this problem. We actually sent comparables in the neighborhood on a regular basis, but still she dragged the process out.

Finally, she was ready and signed the contract. She wouldn’t release the keys and wouldn’t allow us to put a lock box on it. Her idea was that we should go to her attorney locally each time we wanted to show the property, get the key, show the property and return the key the same day. By the way, she also wanted a list of everyone who had been in the house! After talking to her, I got her to allow us to keep the keys and show the property as a realtor® would do – except that we now had it under contract.

When we finally got to inspect the property without it being covered with furniture and antiques. The place was a mess and there was an extensive termite infestation. We had no interest in the deal and gave it back to the Personal Rep within the inspection period. This is an example of a deal a long time in the making with no results. Usually we would have renegotiated with the seller, but we didn’t bother because of all the broken promises the seller made and the time

it took her to make a decision. There are seven beneficiaries in the probate – all of whom have to agree to the sale.

Our longest probate took 51 weeks. But as with all probates, the actual time was about ½ hour per month of time until the property could be shown and sold. So for the 51 weeks we had about six hours of actual time involved in the deal. The profit was \$33,000 or a little over \$5,000 an hour. Some of our students have taken over a year to get a probate deal from the first time they spoke to the Personal Rep, but again, the hourly rate was very good. Always mail or talk to the Personal Rep not the probate attorney – until such time as there becomes a problem with one hold-out heir.

To your limitless success,

Dave Dinkel