

Estates and real estate — what you should know



When someone dies and their house, condo or agricultural property needs to be sold, the executor might engage a realtor. Executors and their realtors need to be aware of complicating factors regarding the sale of real estate held by an estate.

Obtaining probate

If the executor (or estate trustee in Ontario) is planning to sell real estate held in the estate and the deceased was the sole owner, probate^{i ii} will be required to transfer the property. When listing the property for sale before probate is granted, both the listing and any offers to purchase are to be made ‘subject to obtaining probate.’

Check with Land Titles

It may be prudent to check with Land Titles to confirm the registered owner, as the transfer of title from jointly owned to solely owned might have been overlooked upon the death of the first spouse or common-law partner. A death certificate for the first spouse/partner would have to be located, and if not available, requested from Vital Statistics.

When joint isn’t joint

Where an asset is registered jointly as tenants-in-common and one of the owners dies, their share of the title will not pass to the joint owner as it would with right of survivorship. It will form a part of the deceased’s estate. Probate will be required to transfer the property.

Minor, dependent and disabled beneficiaries

When there are minor, dependent or disabled residual beneficiaries, there might be additional requirementsⁱⁱⁱ for the proper transfer of the property. It is best for the executor to check with a professional such as Concentra Trust or an estate lawyer.

Market vs. appraised value

When reviewing probate applications, the courts in some provinces are becoming stricter in their desire to see values for real estate determined by appraisal rather than a traditional market valuation. In certain markets, such as Ontario and British Columbia, it is becoming the norm.

Saskatchewan

All residual beneficiaries are required to approve the sale price of real estate in Saskatchewan. The listing should indicate that additional time might be required to accept offers to purchase. If there are challenging family dynamics and beneficiaries are unable to agree, there could be delays. One option is for executors to obtain the beneficiaries' written approval for a pre-determined value in advance; e.g., the sale is approved if the offer to purchase exceeds \$500,000.

Concentra Trust, a national trust company, has been serving clients, corporations and communities for more than 65 years with tailored estate and trust solutions designed to preserve and transition wealth to future generations. We are well versed in navigating the intricacies of estate planning and administration and our experts have the skill to support all aspects of the process. Given our passion for trust governance, our unbiased advice and guidance, and our inclusive leadership culture and co-operative values, we provide exceptional client service.

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A word from our lawyers

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i Letters of administration for intestacies (no Will); known as the Certificate of Appointment of Estate Trustee in Ontario

ii Certain exceptions will apply in Ontario

iii Saskatchewan requires a Certificate of No Infants