

Death and Real Estate

by Richard Stanley

We all know that, so far as possessions are concerned, we “can’t take it with us” after our demise. What, then, happens to real estate upon the death of a sole owner? The short answer is, “It depends.” Planning before death is key, of course. Here are some scenarios:

-No will: this scenario is the “no planning” one, that is, where the sole owner dies without a will, i.e., “intestate”. Here, property, real or personal, passes to next of kin according to state law. In the event that there is no known family, the property can be claimed by the state.

-Living trust: a living trust is a legal entity that survives the death of a trustee, the living person who administers the assets of the trust, including real property, on behalf of the trust’s beneficiaries. Upon the death of a trustee, a successor trustee assumes the former trustee’s duties. The trust continues to survive until dissolved voluntarily. In a living trust, no court intervention occurs, nor does real property need to be sold merely because of the death of a trustee. Many families prefer to hold real property in the name of a living trust because the costs and delays of a probate proceeding are avoided. Real property in a trust may be liquidated immediately by the successor trustee, if desired.

-Probate: When a sole owner of real property dies leaving a will, real property may be sold per the will’s instructions, or become part of the estate’s “remainder” assets. If the will grants the executor, the person or entity entrusted by the decedent to carry out the will’s instructions, independent administrative powers to sell real property without a probate court confirmation of sale hearing, the executor performs the role of a conventional seller of real property.

If the executor does not have powers of independent administration, then the sale of real property will involve the action of the probate court in a sale confirmation. In that event, the executor first engages an appraiser to perform an appraisal for probate court purposes. Next, a realtor is selected to market the property and to solicit offers.

Prospective buyers must conduct any property inspections before making an offer, as the property is sold “as is” and without any contingencies. An offer from a prospective buyer must be at least 90 percent of the value of the court appraisal. If the executor wishes to accept a lower offer, the consent of the beneficiaries of the estate and the probate court may be needed.

But that’s only the beginning! Any offer the executor accepts is subject to a probate court confirmation--at which time the buyer’s offer may be overbid. The first overbid in a probate sale is five percent plus \$500 more than the accepted offer. The estate’s attorney must petition the probate court for a confirmation hearing. The hearing is usually at least five weeks or more in the future. In the meantime, the attorney often must advertise the sale details, and the realtor continues to solicit buyers to overbid the prospective buyer’s “accepted” offer. On the day of the hearing, the judge certifies the accepted offer and solicits overbidders. The clerk verifies the bidders’ funds (bidders must have at least ten percent of whatever they bid with them in liquid funds--cashier’s checks or, even, cash). After the first overbid, the judge becomes an auctioneer and

solicits subsequent offers in increments the judge deems appropriate. The original prospective buyer may defend his or her “accepted” offer by placing a higher overbid. When the bidding stops, the judge gavel down a final sale.

While the estate is not required to do any work to the property, it will usually do some government-mandated retrofitting--but not much else. A customary escrow is opened that closes within 30 days. Remember, there are no contingencies. If the buyer fails to perform, the buyer’s ten percent deposit is forfeited, and the process must start anew. This whole ordeal can take up to a year or more. The costs are considerable. Further, buyers, especially in a slow market, are reluctant to buy real property without expected contingencies--or to tie up ten percent of the purchase price while waiting for a court hearing at which they may be overbid. Finally, because the process discourages many prospective buyers, probate sale prices tend to be lower than customary sales.

Moral of the story: If you care about settling your estate in a speedy, simple, economical way, ask your attorney and accountant about the benefits of living trusts. Richard Stanley, a Los Feliz resident, is a 20+-year veteran of the local real estate market. He may be contacted via www.richardstanleyrealtor.com.