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“Tip of the Month”

The License to Sell Real Estate in Probate Estate Administration

Most probate estates are relatively modest in value and do not have many complicated assets. The big asset is usually the house. One important step for the estate fiduciary is to clean out and sell the house. The estate fiduciary is the Executor named in the Will or the Administrator appointed by the probate court in an intestate (no Will) estate. In many cases, selling the house is necessary to pay obligations of the estate.

The estate fiduciary cannot just sell the house without probate court involvement because the probate estate does not own the real estate. The property ownership vests immediately at time of death in the Will beneficiaries or in the statutory heirs in an intestate estate. But the beneficiaries or heirs usually do not want the house, so the fiduciary arranges to sell the house.

The fiduciary must first file with the probate court a Motion for License to Sell Real Estate to Pay Debts of the Estate. The Motion form includes reference to the list of debts that will be paid from the proceeds from the real estate sale. When filed with the court, copies of the Motion will be sent to all the parties on the probate list of parties in interest, which includes all beneficiaries or heirs, and all creditors who have made claims.

That way, all the parties in interest are notified and can object if they want. The court will usually grant the Motion for License to Sell promptly if there are no objections. Then, when the fiduciary sells the real estate, the fiduciary will file a Return of Sale indicating the value of proceeds from the sale.

An alternative to the Motion for License to Sell is to obtain signed Assents from all the beneficiaries or heirs. If Assents are used, the deed will be called a Fiduciary Deed. The Assents will be recorded with the Deed in the Registry of Deeds as a way of assuring clear title.

Where the probate process can sometimes be slow and the opportunity to sell the real estate can spring up quickly with a buyer who wants to sign a purchase and sale agreement, the estate fiduciary should consider filing the Motion for License to Sell or obtaining the Assents early in the estate administration process.

If you need help with estate administration in probate or trust, or need help with a real estate transaction, the attorneys at Mesmer & Deleault, PLLC are able and ready to help. Call us today at 603-668-1971, or contact us by email at mailbox @ biz-patlaw.com.

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