

Listing a Property that is Part of an Estate

When a property owner passes away, there are certain steps that must be taken before a family member can begin the process of selling the assets of the estate.

If there is a Will, the person or people named as executor in the Will must apply for and be granted Letters Probate before they can begin distributing the assets of the estate in accordance with the testator's instructions.

If there is no Will, a relative of the deceased can apply for Letters of Administration, which will grant them authority to deal with the assets of the estate.

Until Letters Probate or Letters of Administration are granted by the court, no one has legal authority to dispose of real property that forms part of the estate of the deceased.

If a registrant is approached by a person who wants to list a property that forms part of an estate for sale, there are a few things the registrant should do before accepting the listing.

The registrant should search title to confirm that the person they are dealing with actually has authority to sell the property. If the person has been granted authority to deal with the assets of the estate, he or she will often be named on title in a representative capacity, such as "John Doe, Executor of the Estate of Jane Smith", although this is not always the case.

The registrant should also ask the person they are dealing with some questions to get a sense of what has happened with the estate. The registrant should confirm that the person has been in touch with a lawyer and recommend that they contact a lawyer if they have not already done so.

This is important because trying to sell the property without confirming that Letters Probate or Letters of Administration have been issued by the court can result in a sale being delayed or lost. Sometimes the person named as executor or administrator is unaware of the steps required to apply for court approval, the cost of the application, or the time delay that can be involved in such an application. It is quite possible that it will take months, not weeks, to obtain Letters Probate or Letters of Administration.

A registrant is not required to know how to obtain Letters Probate or Letters of Administration, but they should be aware that there are special considerations when a property forms part of an estate and ensure that their client has obtained appropriate legal counsel before proceeding.