

Do I need to do a probate?

Sometimes the probate process can be quick and sometimes it can be lengthy and time consuming. By having a basic understanding of when a probate is needed, an agent can help to manage the expectations of buyers and sellers regarding closing timeframes.

When someone dies holding title to property, the first step is to exam the deed to see if they held the property jointly with another person. For example, Joe Homestead and Samantha Homestead are married and Mr. Homestead dies. A quick review of the deed indicates that Joe and Samantha held the property as tenants by the entirety OR as joint tenants. The inquiry ends there. The title passes outside the probate process to Samantha Homestead who is now the record owner.

But now let's assume that Joe is deceased and then Samantha dies, now a probate will be necessary. If Samantha died and had a will granting the Personal Representative the authority to sell the house, then the will can be submitted to probate and once the Personal Representative's appointment is allowed, the property can be sold. However, if Samantha were to die without a will, a Personal Representative will still need to be appointed but now a license to sell must be applied for. This can extend the process and buyers and sellers need to understand that a conversation with the probate attorney is crucial in order to understand the time. Moreover, if anyone objects to the probate for any reason, this can also cause things to grind to a halt. A little due diligence can go a long way to manage the expectations of buyers and sellers.

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Submitted by the Affiliate/REALTOR® Committee*