

# NAVIGATING PROBATE ISSUES FOR REALTORS

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## General Overview of Probate

- What does Probate Court do?
  - Control solely held assets when a person is incompetent, unable to act, or deceased
- Guardianship/Conservatorship
- Decedent Estates

# Conservatorships

- There must be a petition filed with the Court to appoint a Conservator

The Petition can be filed by:

- The individual looking to be protected
- A person interested in the individual's estate or welfare
- A person who would be adversely affected by the mismanagement of the individual's property or business affairs
- The Department of Health and Human Services on behalf a vulnerable adult

# Conservatorships

- Priority for appointment given in the following order:
  - Person chosen by individual to be protected
  - Spouse
  - Adult child
  - Parent
  - Relative with whom the protected individual has lived
- Hearing Held – What to expect
- The One Shot Deal - Protective Order

# Powers of a Conservator Regarding Real Property

- Collect, hold, or retain property until disposition should be made
- Make ordinary or extraordinary repairs or alterations to the building
- Enter into a lease as lessor or lessee with or without option to purchase
- Invest or reinvest property
- Dispose of property
  - Requires approval of the court
  - Court will look at what is in the best interest of the protected individual



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## Selling Real Estate with a Conservator

- File a Petition for Approval of Sale of Real Estate
  - Petition must state:
    - Purpose of the sale
    - The buyer
    - The selling price
    - Attach purchase agreement
  - The Court will issue order approving the sale
  - The Court may set bond
- Convey by Fiduciary Deed



## Avoiding a Conservatorship with a Real Estate Power of Attorney

- Gives an Agent the power to sell, bargain, transfer, and mortgage real estate
- Agent is able to execute all documents
- Appoint a trusted person to carry out the sale
- Power can be for a limited purpose
- Power is revocable
- Requires no court action
- Person must be competent to sign the power
- Title company should review it in advance

## The Probate Process After Death

- Admission and administration of an estate with or without a will
- Determining and Preserving Assets
- Notice to Creditors and Payment of Claims
- Inventory
- Fees
- Timeframe



## Selling a House in a Decedent's Estate

- No need for prior Court approval if informal probate with unrestricted Letters of Authority
- If Letters of Authority are restricted, Court approval is needed
- Petition Process and Timeline
- Build Extra Time into the Purchase Agreement
- Convey by Fiduciary Deed



## Selling a House Through a Trust

- Determine who the Trustee is
- Powers to sell within the Trust
- Statutory Powers
- Certificate of Trust Existence
- Court Involvement

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