



HULL & HULL LLP
Barristers and Solicitors

Probate and Real Property

Most solicitors are aware that, typically, in order to complete the sale of real property that is registered in the name of someone who is deceased, a Certificate of Appointment of Estate Trustee (with or without a Will) must first be obtained. However, clients who are eager to sell property who have not yet received such a grant of “probate” can nevertheless take steps in the sale of real property.

Even before probate is granted, an estate trustee who is named in a Last Will and Testament may list a property for sale and accept a conditional offer on behalf of the estate.

Such agreements are conditional on the vendor obtaining probate, as he or she otherwise lacks the confirmation of authority as estate trustee that is required to sell the property. Most often, the agreement of purchase and sale will provide that the sale of the property can be delayed several times if probate has not yet been granted by the original closing date. If there is extreme delay in obtaining probate, the sale may not go through.

Where there is an upcoming closing date for the sale of an estate property, solicitors may wish to update the registrar accordingly and request that the processing of the application for probate be expedited, if at all possible. Court staff will generally assist in fast-tracking a probate application so that the estate and/or purchaser are not prejudiced by a delayed or cancelled sale.

Advising a client with respect to a conditional sale of an estate property should be limited to circumstances in which a will challenge is highly unlikely and there is either a will naming the client as estate trustee or the individual is the only person authorized to be appointed as estate trustee pursuant to Section 29 of the *Estates Act* (or such other individuals entitled to apply for probate have renounced). If there is reason to believe that a will may be invalid, if there are individuals with a financial interest in the estate who take issue with the appointment of the estate trustee, and/or it is suspected or known that a notice of objection to the issuance of a Certificate of Appointment of Estate Trustee may have been filed, assisting in arrangements for the sale of the estate property is inappropriate.

It is important that the realtor, any real estate lawyers involved, and the purchaser are made aware of the status of the probate application and understand that the sale is conditional on obtaining probate.