

 DMH Stallard

Guide: Selling Your Loved One's Home After Death



Anyone who has lost a loved one knows there is a never-ending to-do-list after the death of somebody close. Sadly, some of these tasks take you into new territory, cruelly at a time when you are grieving the loss of the familiar. Selling property is likely to be one of those tasks and given, according to nationwide surveys, it's one of life's most stressful experiences (more so than having a child and second only to going through a divorce) it is especially difficult whilst bereaved.

To guide you through this difficult time, we chat to Partner & Head of Private Client at DMH Stallard, Nadia Cowdrey.

What do people need to consider when selling a home after the loss of a loved one? What are the first steps?

- Approach two, or three recommended estate agents; choose on the quality of service you will receive, not price alone. It's sometimes worth paying slightly more commission for an estate agent who is focused and has their team work hard to achieve the sale at the best price.
- Ask the agent whether the property should be presented empty or partially furnished; think about a professional

clean and make sure the marketing particulars are accurate.

- Once a property goes on the market, it's important that the estate agent manages a prospective buyer's expectations about how long the probate process might take, particularly if the estate has to pay Inheritance Tax ("IHT"). Given current delays with the Probate Registry (circa 16 weeks after submission of a probate application) it might be prudent to wait for 8 weeks or so after a death before starting the marketing process, as contracts cannot be exchanged on a sale until probate is obtained.

"The days of obtaining probate at around 14 days after submission to the Probate Registry have long gone"

What are the common pitfalls/challenges many sellers in this position might encounter and what are the solutions?

- A probate sale to a cash buyer without a chain is the best scenario, although 'cash' doesn't always mean 'cash'. If your buyer says they are a 'cash' buyer, make sure your estate agent has verified the source of funds and that 'cash' doesn't mean cash that will come from a mortgage. A sale to a buyer who needs a mortgage will take longer. Mortgages often take in excess of 8 weeks to organise. Check if your buyer is selling their own property and the position of others in the chain.
- If you get more than one offer, accepting the highest offer might seem the obvious choice but if that prospective purchaser is not in a position to proceed, it might not be a viable offer. They might not have a buyer for their related sale, they might not have a mortgage offer in place, they might be waiting on a family gift to assist with the purchase. Always make sure the estate agent has evidence to support what position the prospective purchaser is in.
- When selling property in the sole name of your loved one, you cannot exchange contracts to sell without probate, but you cannot obtain probate without paying part of any IHT due on the estate to HMRC upfront. This is a catch 22 situation if there are no liquid assets with institutions prepared to release funds direct to HMRC to pay the initial IHT due. In this event, you may need to consider a loan to the estate or securing credit from HMRC.
- Another challenge is if the property was let to a tenant. This is usually straightforward unless the tenant does not wish to leave. In this event, you may need to consider applying for a court order. Even then, they may still refuse to leave, and enforcement action may be necessary.

Have there been any recent changes (i.e., in the last couple of years) to the probate process/inheritance tax etc that sellers should be aware of?

- Yes. Backlogs caused by lockdown, the closure of local Probate Registries and the move to digital applications for the bulk of probate applications, have all resulted in unprecedented delays by the Probate Registry. The days of obtaining probate at around 14 days after submission to the Probate Registry have long gone. In non-excepted estates (those that exceed the IHT current nil-rate band) the executors need to complete Form IHT400. It will also need to be submitted to HMRC (and, if relevant, any IHT paid) before dealing with the remainder of the application for probate online. In excepted estates, the process is much more straight-forward and can be completed almost entirely online.

Has the recent fall in house prices and/or slowing of the property market had implications for people selling after the loss of a loved one? For instance, what if the house fails to sell before the inheritance tax deadline, or sells for less than its probate value?

- It's impossible to know the best time to try to sell a property. Do you wait a while and you might have probate in place, enabling a sale to proceed as soon as your buyer and the rest of the chain are ready, or do you go to the market straight away and hope that probate arrives by the time all parties are ready to exchange? Regardless, a long period between agreeing a sale price and being ready to exchange may see your prospective buyer asking for a price reduction in a falling market. Your estate agent is best placed to advise you on whether to remain firm (albeit risk losing your buyer) or recommence negotiations.

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- When selling a probate property, a figure is declared for IHT and probate purposes, and it's entirely possible (particularly in the current market) that the property might not achieve the price you intended. If the estate is liable to IHT, and the IHT values have already been submitted to HMRC, you can submit a Corrective Account to HMRC to substitute the actual sale price for the original value declared (although there are time limits and certain other conditions which must be satisfied). During the Covid property boom, the opposite was often the case, and it was important to consider how to mitigate the impact of Capital Gains Tax ("CGT"), a tax on growth in value between the value agreed for IHT purposes and the actual sale price. Without specialist advice from a private client lawyer or accountant, executors and beneficiaries risk paying more CGT than necessary.
- If the estate is liable to IHT, you have 6 months from the end of the month in which your loved one died to pay any IHT due, without interest charges applying. If you cannot meet this deadline, HMRC will charge interest (current rate 6%) until the IHT bill is paid.

How can a private client lawyer help with navigating the house sale process after a bereavement?

A lawyer specialising in probate can advise on all aspects and support you through this process. There is so much organisation and paperwork to deal with after a loved one dies that it can feel quite overwhelming without the right support. Not taking advice can also be costly if you are unaware of how tax operates on death. A Private Client lawyer may also be able to advise on steps to reduce IHT for future generations and timely advice is essential as some steps have strict time limits.

Contact us

For an informal discussion, or if you have any questions about probate and the estate administration process, please get in touch with our legal team.

Call us on 03333 231 580

e-mail us enquiries@dmhstallard.com

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