



All Ohio Homeowners Need Wills: The Power of "Power to Sell"

All Ohio homeowners need a Last Will and Testament ("Will") that explicitly gives the Executor or Administrator ("fiduciary") the power to sell real estate. This is crucial for the home to be sold after death in the same manner as during life. Without this provision in a Will, the fiduciary cannot sell real property without resorting to one of the two following statutory processes.

Obtaining Consent from Interested Parties

The first process involves obtaining consent from all interested parties to sell the real estate. However, note that the Ohio Revised Code precludes consent to sell if an interested party is a minor. Even if all interested parties are adults, there is a risk that an interested party refuses to consent to the sale, necessitating the use of the second process.

Land Sale Proceedings

The second process is a land sale, which requires the fiduciary, on behalf of the Estate, to sue all interested parties to obtain a judgment entry allowing the sale of the real estate. Land sales begin with the Estate serving a complaint on all interested parties, which includes the lender(s), the County Auditor, all other lienholders and all beneficiaries of the estate. Land sales can be costly and time-consuming, often running into thousands of dollars to litigate and taking months to complete. A land sale proceeding can be avoided with the signing of a simple Will that includes the power to sell real estate, which is a more cost-effective and time-efficient option.

Real Estate Titling and Transfer on Death

Real estate titling dictates how real property

passes at death. Suppose the real property is titled joint with the right of survivorship, and death of an owner vests the title in the surviving owner(s). Once a title is in the name of one owner, the property passes through a Will or the statute of descent and distribution unless the property is designated as transfer on death (TOD) to a designated beneficiary or beneficiaries by Transfer on Death Affidavit. TOD works best when there is one beneficiary. Multiple beneficiaries all have to agree to sell the real estate and spouses of those beneficiaries also have to release dower. If no TOD beneficiary survives the owner, the Will or statute of descent and distribution controls who receives the house.



Cost Comparison: Simple Will vs. Land Sale Proceeding

A simple Will may cost about \$1,000 and often includes the preparation of powers of attorney, which allow for the management of real estate and other assets during incapacity. In contrast, a land sale proceeding may cost \$3,000-\$10,000, depending on the cooperativeness of the defendants.

Protecting Your Largest Asset

For many Ohioans, the family home is the largest asset. Protect your largest asset by executing a Will with power explicitly given to your fiduciary to sell your real estate. But it's not just about the property. A homeowner with minor children also needs a Will to designate the guardian of minor children. This is a crucial aspect of comprehensive estate planning. Every title agent at closing should encourage real estate purchasers to make a Will. It's the best closing advice they can give a home buyer.

Secure Your Future with Proper Estate Planning

Don't leave your estate planning to chance. Ensure your real estate and other assets are managed and transferred according to your wishes with a properly drafted Will. Whether you're a new homeowner or updating an existing estate plan, our team is here to help. Call your CPM attorney or any member of our estate planning group today to secure your future and protect your family.