



Real Estate Bulletin

RIOPELLE GROUP PROFESSIONAL CORPORATION

Estate properties: Who to deal with, how

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1 Who owns the property now?

At first blush, any property that has a deceased person on title may seem like an estate property, but this is not always the case.

For example, the deceased's name can be removed from title by the remaining owner(s), through a lawyer, with proof of death prior to or in conjunction with a sale where the deceased:

- held a *life interest*; or
- owned as a *joint tenant* (except where the property was the deceased's matrimonial home at death and it was not owned jointly with their married spouse).

If the deceased owned the property solely or as a *tenant in common*, the deceased's ownership interest passes to their estate.

2 Who represents "the estate?"

It is absolutely critical the person you deal with has legal authority to act for the deceased's estate. If they don't, any agreements made will be void.

Firstly, obtain a death certificate for the deceased. Next, find out if the deceased had a valid Will. If they did, obtain a true copy and identify the estate trustee or *executor/ executrix*. If the first named trustee has predeceased, is incapable or has waived the right to act, obtain written proof before looking to the named alternate estate trustee. If at any time the identity or authority of the estate trustee is unclear, your client must obtain legal advice.

Where multiple trustees are named

jointly, **all** trustees must sign to bind the estate. If multiple trustees are said to be "joint and several" they may act separately and still bind the estate.

If the deceased did not have a Will or if there is no named trustee in a Will who can act, no person has authority to act for the estate until an estate trustee is appointed by the Court.

3 When is consent required to transfer the deceased's real estate?

Obtain consent where:

- The property was the deceased's matrimonial home at death and less than 60 days have passed since death. As the surviving legally married spouse has a right to possession of the property for this period, their written consent is required. **Note:** This right does **not** apply to common-law spouses.
- The deceased was legally married at death and less than six months have passed since death. The surviving spouse may elect to equalize net family property for up to six months from the date of death. Provided that spousal rights have not been waived by agreement or court order, the spouse's written consent must be obtained. **Note:** This right does **not** apply to common-law spouses.
- The property is the subject of a specific gift in the deceased's Will. The consent of the beneficiary involved must be obtained.

Next time, we'll discuss when probate is required and offer insider tips for listing and selling estate properties. Regards,

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