

## LISTING A PROBATE PROPERTY REPRESENTING A BUYER IN PROBATE

If the property of the decedent is in Clark County, the property must be adjudicated in Clark County

If the property of the decedent is in Nye County, the property must be adjudicated in Nye County.

Remember, a probate is controlled by the Courts to make sure that the heirs/creditors receive their portion. All activities by the probate are “approved” by the Court. This is why, for example, listings and sales have a second set of eyes that look at/review documents, so you will see a theme of “approval” needed. Even when the representative of the Estate has agreed to something, it is not final unless the Court “approves” it.

Before you take a Listing:

1. Disclose in Agent to Agent Remarks, Sale is subject to Probate Court approval, Sellers and Seller Representatives are to familiarize themselves with the rules and operations of Probate Court Approval.
2. In the event a Probate Judge has issued “Letters Testamentary” or “Letters of Administration,” secure a copy of this document for your file. This document appoints an Administrator who will have the authority to list and sell real property.
3. Search the County Recorder by name and parcel number to determine what has been recorded on or against the property. Do not rely on the Assessor information.

Upon Listing:

1. Disclose in Agent to Agent Remarks, Sale is subject to Probate Court approval, Buyers and Buyer Representatives are to familiarize themselves with the rules and operations of Probate Court Approval.
2. Be aware Administrator may be limited in ability to make repairs.
3. You may be asked to create the date-of-death value for the property or the attorney advising the Administrator will require a date-of-death appraisal. This is determined on a case by case basis.

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## Purchase Agreement

1. Once a buyer is procured – the sale is contingent upon Court approval – the purchase agreement to include the language, “sale is subject to Probate Court approval.” Buyer and Buyer Representatives are to familiarize themselves with the rules and operations of Probate Court Approval. In many instances, the Buyer will be required to perform all due diligence and release all contingencies prior to petitioning the court for an approval hearing.
2. The probate attorney will submit the offer to the Probate Court to *approve* the sale. This is in the form of a hearing/auction where third parties are allowed to also “bid” on the property. Advise the Buyer that the Probate dockets fill quickly and it could take several months to get a court date.
3. Buyers should be advised to attend the hearing. It is strongly recommended that you have the Buyer personally attend this hearing to protect the Buyer’s position in the event of overbidding. There may be other people who would offer more than your client’s offered price. The first over-bid must be in the amount of \$5,000.00 over the purchase price submitted and then the bids must be in increments of at least \$1,000.00.
4. If a competing a buyer is the prevailing bid (not the Buyer that commenced the approval process), that agent that will be entitled to one-half of selling agent commission and the agent that procured the sale that commenced the approval process receives the other half, even though the original Buyer is no longer the Buyer. As a reminder, the successful bidder typically does not get to perform their own due diligence, and is responsible for the terms of the original purchase agreement usually a very short timeframe to close escrow.
5. The Probate Attorney will instruct you as to how soon after Probate Court approval the buyer will have to close the transaction.
6. As stated above, sale is subject to Probate Court approval, Buyers and Buyer Representatives are to familiarize themselves with the rules and operations of Probate Court Approval, which includes unique penalties for a buyer’s failure to close escrow.