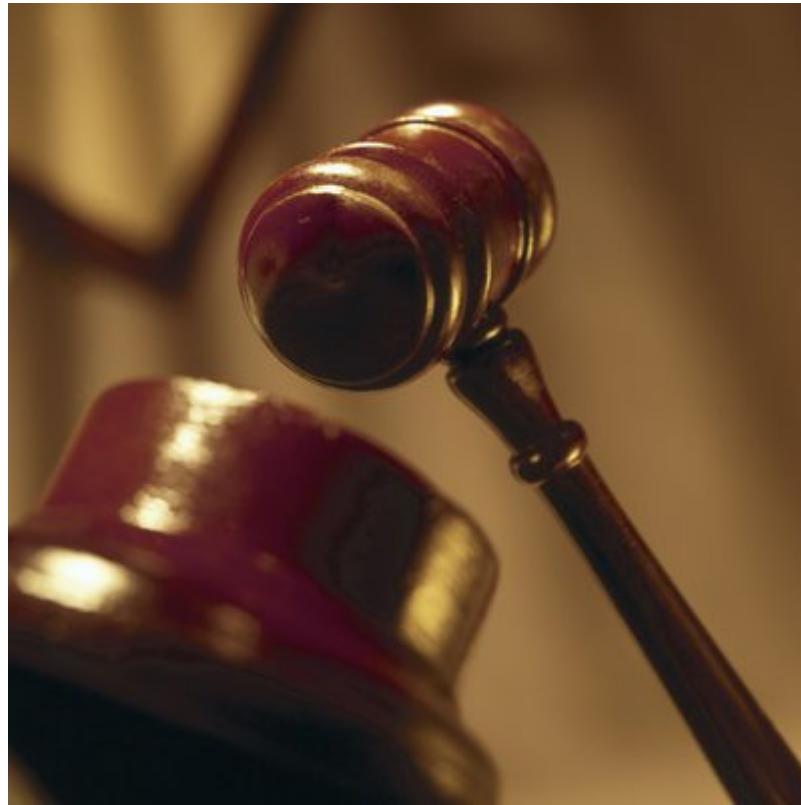


Can a Seller Accept an Offer on a House Still in Probate?



Selling a home in probate involves specific rules and deadlines, which must be followed.

You can accept an offer to buy a house while it is still in probate, if you strictly follow your state's rules. The probate court will monitor all aspects of the sale. Be aware that the executor or administrator of the estate also must monitor and approve the terms of sale. Buyers must submit offers to the court and all parties must strictly follow the guidelines -- and deadlines -- of probate court rules. The court will retain a real estate agent experienced with the probate process to market the property.

Executors and Administrators

Per the Independent Administration of Estates Act (IAEA), executors will establish and/or approve the selling price for a house in probate. Usually, the executor will order a fair market value (FMV) appraisal to determine an appropriate selling price for the property. The executor will list the home for sale with a probate-experienced real estate agent. Executors will then work with the real estate agent to negotiate an acceptable sale to qualified prospective buyers.

Real Estate Agents

Either the court or the executor will recommend and retain a real estate agent familiar with the local probate rules to market the house. Experienced real estate agents understand that a probate sale typically attracts buyers seeking bargains. However, in most cases, they know to advise buyers that offers should be at least 90

percent or more of the listing price, as the selling price reflects the home's fair market value. Once an acceptable buyer is found, the real estate agent works with the executor and the court to negotiate acceptable terms.

The Court

Once the court accepts the offer and its terms, it mails a notice of proposed action, with the details of the sale to all heirs. These people, with a vested interest in probate proceedings, have 15 days to review the terms of sale and advise the court if they have objections to the sale or its conditions. If an heir has an objection, notice of the sale must be published in a well-distributed local newspaper in many jurisdictions. Much depends on the authority of the executor, who may have "full independent powers," eliminating some publishing requirements in other jurisdictions.

Confirmation Hearing

The estate's attorney or executor then applies for a court date, confirmation hearing, to complete the sale. After the confirmation hearing is requested, the court typically sets a date around 30 to 45 days into the future. Once again, heirs and other interested parties receive a mailed copy of the confirmation hearing application and all terms of the house sale. At the confirmation hearing, another buyer, willing to over-bid the accepted sales price, may appear with a cashier's check for at least 10 percent of the minimum over-bid price, as determined by the prevailing probate rules. Should there be multiple over-bid buyers, the rules are simple: Highest bidder wins the house.

Probate Rules "Rule"

Probate rules differ from state to state. In all cases, however, there are specific processes, requirements and deadlines that rule every case and every asset of the deceased person. Selling a house while it is still under probate court jurisdiction permits little "creativity." The probate court rules and deadlines must be followed precisely. All but the most minor deviations can make agreed-to terms null and void. The "seller" of real estate in probate is technically the court. Learn your local probate rules if you wish to sell or purchase homes while they are still in probate.