Title Chat

Volume 9, August 2002

Homestead, Part 4, Incapacity

Continuing on with our closing that never ends because someone on the seller's side will not sign, let us "chat" about what happens when just before the closing you are told that the titleholder or his or her spouse is incapacitated and is unable to sign the deed.

You ask, "How is the person incapacitated?"

You could be told:

(a) The person suffered a stroke over the weekend, is in a coma and cannot physically sign the deed; or
(b) The person suffered a stroke some time ago, has lost the use of the hand that he or she would have used to sign papers and therefore cannot physically sign his or her name to the deed; or
(c) The person suffers from some sort of mental condition and is unaware of what is happening.

You ask if that person had ever signed a power of attorney and are told "no." What can be done to allow the closing to go forward?

In situations (a) and (c) in Florida, a court order appointing a guardian and authorizing the guardian to sign for and on behalf of the incapacitated person is probably the only thing that can be done. This would apply to homestead and non-homestead property. The same is true in Texas although it may be possible to have the guardian sign the deed without being authorized by an order of Court. *Tex. Prob. Code $ 883 (2002).*

In situation (b) the person may be able to place a mark ("X") on the deed in lieu of the actual signature and acknowledge to the notary and witnesses that the mark is his or her signature. The deed would probably have to contain a statement to the effect that the mark is the signature of the person.

What if you were told that the person had signed a power of attorney before he or she became incapacitated? That is what we will "chat" about next month.

Of course, in these situations as well as those previously discussed in earlier "Chats", you should discuss the problem with those who represent the parties to the transaction as well as any title insurer that may be involved.

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