By Phil Hunt

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Q: My husband and I are buying our dream home. Everything was going well until a few days ago, just before close of escrow… the seller died. Our agent told us that this would delay the closing for at least four weeks. The escrow on our current house is scheduled to close very soon. When it does we will have no place to live. With the condition of the market today, and the time it took to find a buyer for our home, what do you recommend we do? I am very sorry about the seller's death but why can't we just go ahead and close as scheduled?

A: A common question asked of me in a transaction that has seemingly passed all of the hurdles is: "Can anything go wrong now?" My standard answer is: Not much except fire, flood, windstorm, petulance, earthquake, riot, war, loss of your income, collapse of the economy, serious injury, divorce and, of course, death of one of the principals. Other than these things, it should close on time.

A transaction is never over until it is recorded, then it is closed.

These things do not happen often, but they do happen, as in your case. These are hazards for which there is no insurance. Whenever a person enters into a transaction, there are many unforeseen events between beginning and end. Quite often, death is one that can not be gotten around.

It all depends upon the way title is held. If it is a trust, it can be closed fairly soon, provided the trust documents are well drafted and the successor trustee is able to step in and sign to close it.

If there is a spouse and it is held as joint tenants, the deal can go forth with a minimum delay. As of the date of death, the title automatically vests in the surviving spouse.

If there is no spouse, the property vests in the names of the heirs. They are now the owners and if anyone does not want to sell, it will not happen.

It could have to go through probate. This could cause a delay of up to a year. And, in some cases, it will never close due to the desires of the heirs.

Regardless of the circumstances, it can not close until someone with proper authority steps forward to sign for the deceased.

If the property ends up in probate, attorneys must file court action on behalf of the deceased and a judge has to approve the deal. On the day of court confirmation of the deal, an outside third party can over-bid the offer on the table and buy the property away from the original buyer. The original buyer may have to go through a “bidding war” in court to actually be the buyer. If this sounds like an auction sale, it is just that.

The best advice I can give is to consult with a real estate attorney, look at all your options and try to work out a deal with the buyers of your house. Maybe you could rent back for a few months. Most problems can be worked out between motivated buyers and sellers — someone just has to make the effort.

If worse come to worse, you will just have to rent for a while.

Nothing here should be construed as legal advice.

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