

Who Signs?

A Cheat Sheet for Liz Moore Listing Agents
 © 2009 Brian D. Lytle, Esq. – All Rights Reserved



| Putative Owner | Who signs? | Notes |
|------------------------------------|--|---|
| Individuals | | |
| Individual | that individual | |
| Married Couple | both husband and wife | |
| Divorced Couple | Both husband and wife unless <u>deed</u> exists conveying to one of them | See the comments below re divorce. Again, a separation agreement or divorce decree is insufficient to transfer legal title. There needs to be a deed. |
| Surviving Spouse | survivor | Check the deed. If they owned with right of survivorship (it will have those words) then just surviving spouse signs (get death certificate for later), but if not with survivorship then proceed with estate questions, and check with attorney right away. |
| Multiple Owners | every one of them | Suggest perhaps, a power of attorney if there are a lot of them or some are out-of-state. |
| Bankruptcy Debtor | debtors/owners | The key here is that the court/bankruptcy trustee will have to approve sale (and your listing) if property is not abandoned by the trustee (and evidence of that will be needed). You must find out status and contract disclosure is required. Please notify the settlement agent right away. Forget VREB, you can go to <i>jail</i> if you mess around with the bankruptcy court. |
| Estate | depends – see note | Sorry, it really does depend. |
| Entities | | |
| Corporation | President | Remind the President the settlement agent will need a Board of Directors resolution authorizing President and sale, certificate of good standing, etc. |
| Limited Liability Co. (LLC) | Manager <i>or</i> all Members | Corporations have Presidents. LLCs have (sometimes) a <i>Manager</i> , who must be given express authority to sell and convey real estate. Settlement agent will check bylaws. If no manager or manager not authorized then <u>all</u> members (owners of llc) must sign. |
| Sole Proprietor | The proprietor (individual) | A sole proprietor owns the property individually and personally. Best course is to track language in your source deed. |

| | | |
|--------------------------------|--------------------|---|
| Partnership | All Partners | Yes, all of them |
| Limited Partnership | General Partner | Limited partnerships are rare these days, but there are a few still around. Settlement agent will need evidence of authority of General partner and copy of partnership agreement. |
| Trust | Trustee | Trusts, particularly revocable living trusts, are popular. A trustee acts on behalf of a trust. Typically one trustee may act, but sometimes not and you'll need the signatures of all trustees. The trust itself determines this. Your seller likely will have an attorney's certificate describing the trust and trustee authority. This will be sufficient for you – ask for it. |
| Unusual & Difficult | | |
| Minor | Next friend | It is rare for a minor to own property, but obviously it happens. You will need court authority to do anything. Here, you must see an attorney. A next friend, e.g. parent or guardian, is the person who will bring the <u>required</u> legal action on behalf of the minor |
| Prisoner | Prisoner | Incarcerated sellers present many problems. If the person is incarcerated for a year or more then they are under a legal disability and court action likely will be <u>required</u> . Incarceration originally (i.e. not time remaining) for less than a year is not a problem (a legal one anyway). |
| Incompetent Person | Fiduciary | If a durable power of attorney already exists then the attorney-in-fact can sign. otherwise you'll need court approval so contact an attorney early and allow for court time on closing dates if so. |
| Estate | Depends – see note | Sorry, it really does depend, see below. |

Five Simple pre-listing questions regarding ownership:

1. *Who are the owners of the property?* (see what *they* say)
2. *How did you obtain the property?* (9 times out of 10 they bought it, however, here we are looking for red flags: I inherited it, I got it in the divorce, etc.)
3. *Do you have a copy of your deed?* (check the names on that deed, really should have a copy of the deed anyway).
4. *Are you in bankruptcy?*
5. *Do you or any owner need the permission of any court, lien holder, or other third-party to sell the property?* (not only will yes answers to 4 and 5 require additional, perhaps pre-listing actions, they are *required* disclosures in the REIN contract; also make sure no short sale, not upside down, etc.)

Check the tax records to see who the city/county says owns the property. If there is any variation between the tax records and the answers to 1 and 3 then find out why.

Potential additional questions depending on answers to 1 through 5 (and see the matrix for additional notes and suggestions):

Estate: In order to get the process started, I am ok with you taking a conditional/post-dated listing from the person who purports to have legal authority/ownership arising out of an estate. However, you should (must?) resolve status with an attorney prior to making the listing active, and in my opinion you definitely must do so prior to accepting an offer. It is not unusual for one person to “take charge” in an estate when they do not have the *legal authority* to do so, and just because you see someone named as executor in a will that does not necessarily mean they have the legal authority to sell the real estate of the decedent. As a general proposition, if an estate is involved then the owners of the property will be either those named as owners in a will or the statutory heirs if there is no will.

- a. Has someone qualified at the clerk’s office to administer the estate?
 - i. If there is a will, this is the executor
 - ii. If there is no will, this is the administrator
 - iii. If there is qualification, there should be paperwork: get it and go from there, and there may be an attorney for the estate (see that attorney or me early to determine status)

- b. If no one has qualified at the clerk’s office to administer the estate, then the owners of the property are most likely undefined/unestablished legally.
 - i. In an intestate estate (no will) then a list of heirs must be prepared and recorded. The recorded list of heirs will establish legal ownership in the heirs (and you would list each name as sellers, not “Estate of”. We will need a basic family tree: spouse, children of spouse (noting any stepchildren), and children of any deceased child.
 - ii. In a testate estate (with will) then the will establishes legal ownership, but it needs to be recorded, and a list of heirs should be prepared. Again, if the devisees (def. as the persons named as owners in the will) are the owners – the executor is not selling – then the names of the devisees should be listed as owners.

- c. Does the estate have an attorney? You can (and should) contact the estate attorney.

Divorce: All too often the problem in a divorce is that the property is never actually conveyed to the spouse who is supposed to get it in the divorce. That is, the separation agreement or divorce decree may say the spouse gets it, but there has to be a follow up recorded deed in order to make that agreement or court order effective. And so, you should seek a copy of *that deed* to make sure. Forgetting for the moment that you will have a listing not signed by all of the legal owners of the property, you may find yourself trying to get last-minute signatures from the ex-spouse who either could care less or is so bitter he or she will refuse. I don’t want you to lose a listing here by being overly, perhaps outside the standard of care, cautious, but please follow up.