

Death and Taxes

News and Notes on Estate Planning, Probate and Residential Real Estate Topics
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Estate Planning

TRUST ASSETS GONE TO THE DOGS (AND CATS AND FISH AND...)

The nice thing about estate planning is that, with a small number of exceptions, you can leave your property to whomever you wish. Want to give your dentist \$5,000 at your death, or leave Dr. Jack Kevorkian one-fifth of your estate? Feel free! But for pet lovers, things have until now been a bit trickier. You can't exactly leave property directly to Fido or Boots – animals aren't particularly good at managing money. However, under a law recently passed in Illinois (and found at 760 ILCS 5/15.2 in the Illinois Compiled Statutes), trusts for domestic or pet animals are specifically held to be valid. How would such a trust work? To begin with, you would execute a trust document, in which you specify:

1. Which pet or pets are the beneficiary or beneficiaries;
2. Who should carry out the terms of the trust (i.e. who is the trustee);
3. How money or property in the trust should be used to care for the beneficiaries; and
4. To whom any money or property remaining in the trust at the death of the last beneficiary should be distributed (to specific individuals, your heirs, charity, etc.).

You would then make arrangements to transfer money or property to the trust upon your death. Probably the trickiest part of this arrangement is making sure the trust property is being used correctly. To do so, it may be appropriate to name a "trust enforcer" in addition to the trustee. This person would monitor the trustee's actions and make sure that he or she is acting appropriately; if the trustee is not following the terms of the trust, the trust enforcer could then file a lawsuit against the trustee.

For more information regarding trusts for pets, please consult a qualified estate planning attorney.

Real Estate

A BRISK JOG THROUGH A BUYER'S CLOSING COSTS AND PAYMENTS

In the last issue I discussed the amount and nature of a seller's closing costs and payments, so I'll now move on to the question of what a buyer must pay at closing.

Professional Fees

The buyer doesn't need to worry about a **broker's commission** – typically his or her broker will simply be paid a portion of the seller's broker's commission.

Your **attorney** will most likely be charging a flat fee, and that fee will be somewhere between \$300 and \$600. (I charge \$500 to represent a buyer.)

Transfer Taxes

State and **county** real estate transfer taxes are payable by the seller. However, some localities have their own transfer tax, and a few of these localities require the tax to be paid by the buyer. The following is a list of Cook and DuPage County localities that require the **local transfer tax** to be paid by the buyer, either in whole or in part (localities that require the local transfer tax to be paid equally by the buyer and the seller are indicated by the word “split” following their name):

Addison	Bolingbrook (split)	Burnham
Calumet City (split)	Calumet Park	Chicago
Countryside	East Hazel Crest	Harvey (split)
Harwood Heights	Hillside	Mount Prospect
Naperville	Niles	Wheaton
Wilmette		

Title and Closing

As I mentioned in the last issue, title insurance lets the prospective buyer know exactly who owns the property he or she is buying, and whether anything (unpaid real estate taxes, liens, etc.) clouds the property's title. Under most contracts, the seller is required to purchase title insurance for the buyer. However, the buyer will also be required to purchase **title insurance** for his lender (this is called a “loan policy” or “lender's policy”), at a cost of around \$300.

The buyer will also probably be required to pay the title company an **escrow or closing fee** of \$400 - \$500. This fee is typically charged to the buyer because the title company is essentially acting as the buyer's lender's agent (making sure that the buyer has signed all necessary documents to get his or her loan, and coordinating the distribution of the loan proceeds with the lender).

Condominium Fees

If the property to be purchased is a **condominium**, the buyer should expect to incur some fees connected to **move-in** – these fees vary greatly among condo associations. The buyer should also expect to give the seller a prorated credit for any monthly assessments that the seller paid for the month of closing. For instance, if you were closing on the purchase of a condo unit on September 15, and the seller had already paid the entire \$200 **monthly assessment** for September, you would need to give the seller a \$100 credit at closing for your share of the September assessment.

Recording Fees

The buyer will typically be required to pay the fees to record (1) the deed by which he or she acquires the property and (2) the mortgage(s) on the property. The **recording fee** for a typical residential purchase in Cook County is usually \$80 - \$90, although it will be higher if you have more than one mortgage.

Loan Fees and Costs

Loan-related fees and costs may be the largest item the buyer will need to pay at closing. These fees and costs can usually be broken into three categories:

1. **Fees.** Names mean almost nothing in this area, where the buyer will encounter underwriting fees, processing fees, application fees, tax service fees and flood certification fees. There's no normal range of fees here, but the buyer and his or her attorney will want to compare the lender's final numbers with the numbers given to the buyer when his or her loan was initially approved, on the Good Faith Estimate.
2. **Prepaid Interest.** The buyer will be required to prepay interest -- calculated on a daily basis -- on his or her loan from the closing date to the first day of the following month. For instance, one of my clients purchased a home on August 18, and was required at closing to prepay interest on her loan from the date of close to September 1 (14 days @ \$19.97 interest per day, or \$279.58).
3. **Escrow Items.** Lenders hate the idea of losing their security interest in your home, so they typically require the buyer to pay a portion of the real estate taxes and homeowner's insurance premiums for the property each month along with the regular mortgage payments. This money is then placed in escrow -- when taxes or insurance premiums then come due, the lender pays these bills directly from the escrow. In theory, this should eliminate the possibility that the underlying property will be lost, either because of a tax sale or because the property is damaged by fire or some other disaster. To get the escrow up and running, the lender will typically ask that 3 -- 6 months of real estate tax payments (and up to an entire year's insurance premiums) be paid by the buyer into the escrow account at closing.

For more information regarding typical buyer-related closing costs and payments, please consult a qualified real estate attorney.

Probate

**ESTATE AND TRUST ADMINISTRATION EXPLAINED, PART I:
AN OVERVIEW OF THE PROCESS**

In this, the first of a three-part series, I would like to talk about the administration of trusts and estates in somewhat general terms. In future issues, I'll speak more specifically about how the administration process works. But first things first: what do we mean when we talk about estate and trust administration? For the most part, we are simply talking about wrapping up a person's affairs after he or she dies. Whether we are talking about estate administration or trust administration depends on whether the deceased person created a trust prior to his or her death, but the general outline of what needs to be done remains the same:

1. Take stock of and collect the deceased person's assets. What did the deceased person own? The executor or administrator (in the case of an estate) or the trustee (in the case of a trust) will want to know about the nature and extent of these assets, even though they may not be able to collect certain assets (like joint assets, or assets subject to a beneficiary designation).
2. Take stock of the deceased person's debts. This is similar to the above. Careful attention needs to be given to debts that are questionable – can or should they be settled?
3. Use the assets to pay the debts.
4. Distribute (or hold) the remaining assets to (or for) the beneficiaries. For the most part, estates are intended to be short-term affairs. They have to be left open for at least six months (so that creditors have time to file claims), but can generally be closed out soon after that time via final distributions to beneficiaries, so long as no matters (such as an estate tax return or estate-related litigation) are still pending. In the case of a trust, the trustee will focus on holding the remaining assets for the long-term benefit of the beneficiaries, and will need to be concerned about things like investment choices and standards for distributions.

For more information regarding estate and trust administration, please consult a qualified probate or trust attorney.

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