Deceased Estates vs Material Fact

Deceased estates have often been referred to as the holy grail of property sales, with a motivated seller on one side and buyers expecting to grab a bargain on the other. One thing we at the College have observed is that many agents are unsure of the difference between a deceased estate and the need for the disclosure of material fact.

We have received many calls over the years asking if a material fact disclosure has to be made when the owner of the property has died. Our first question is always “have they died in the property?”.

Therein lies the difference.

A deceased estate does not necessarily mean that the vendor has died within the property under one of the disclosure circumstances. In fact, deceased estate simply refers to the property of a person who has passed away. When a person passes away and a grant of probate is made through the Courts, the Executor of the Will is obliged to settle all accounts of the deceased person and, where items have not been bequeathed to an individual, business or charity, the executor has the job to sell those items. The funds from these sales form the estate of the deceased person. A property owned by the deceased is considered part of that person’s estate, hence the title deceased estate.

A general deceased estate does not require a material fact disclosure.

A material fact disclosure should be reserved for the events that are set out within the Property, Stock and Business Agents Act 2002 as well as the Residential Tenancies Regulations 2010.

The Property, Stock and Business Agents Act 2002 in its current form does not define what a material fact is, as it simply refers to the need for an agent to disclose any situation that may significantly affect the decision making capacity of the purchaser. However, the definition for the disclosure of material fact during the property sales process is currently being clarified within the property industry reforms.
This will most likely reflect the current requirements under the Property, Stock and Business Agents Regulation 2014, which are:

- that the property was subject to flooding or bush fire within the preceding 5 years
- that the property was the scene of a serious violent crime within the preceding 5 years
- that the property poses known significant health or safety risks
- that the property is listed on the Loose Fill Asbestos Insulation register

A deceased estate where the home owner has passed away at the property by means other than by serious violent crime, that is, by natural causes and ill health does not constitute a material fact in line with the definitions as set out above. However, there may be circumstances in which a disclosure should be made for the purposes of transparency. If the deceased person was not found for some time for example, it would be in the best interests of the agent to make such a disclosure. Keep in mind, even if a fact does not fall within the definitions as set out, if you question whether it should be disclosed, then perhaps you should be disclosing. Perception from consumers can often harm you more than a breach of the actual legislative requirements.

‘Til next time,
Wishing you every success in your business ventures,
Rosy Sullivan

From Rosy, John, and the team
From the Office

With our new 2017 CPD courses up and running, the College has been doing the rounds of our usual Sydney and greater NSW course venues to deliver some of the first courses for the year. The last fortnight has seen CPD training in Parramatta, Castle Hill and our CBD office, as well as courses in Orange, Newcastle and four different venues on the Central Coast. Licensing studies have also been well underway, with Trust Accounting and Property Management training in our CBD office apparently being a fan favourite - if the number of students attending are anything to go by!

In addition to our usual training, the College has been offering short, 30 minute seminars (free of charge) to agencies looking to learn more information about the proposed reforms to the property industry. These seminars cover how the proposed changes will affect the day-to-day operations and training requirements for agents and agencies. John Roberts, with his newly crowned title of Executive Officer, has thoroughly enjoyed presenting these seminars to agencies throughout Sydney and is happy to organise a convenient time for any agency that is interested in learning more. You can contact the College by phone or email if you are interested in booking a time or learning more.

With the flying start the College has had into 2017 and the hard work going into the new initiatives that come with the New Year, our College Directors, Rosy and John Sullivan, are always deserving of a break away from their busy schedules. That is why they were pleasantly surprised and very grateful for the wonderful gift they received from our friends at Smooth FM, when they received two tickets to Bruce Springsteen’s concert on Tuesday night. From what Rosy and John have told us it was a night nothing short of spectacular, with the performance good enough to even get John up and dancing along. The other staff members at the College don’t know what they’re more disappointed in missing out on, the concert or John’s dance moves.

This week in the office, the College welcomed back our Licensing Co-Ordinator, Ben Phoebus, who has returned from his 5 week holiday throughout the United States. Fortunately for the ACOP team, Ben made his return a day before his birthday so the College got to celebrate with cake. In addition to this, it was also Kristin Eaio’s birthday from our accounts team. This resulted in the pleasant predicament of consecutive days of cake, and before you know it - many New Year’s Resolutions in the College have been ruined.

Click on the enrol now button to go to the College online enrolment forms (pdf versions of the newsletter only).
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**MAKE 2017 YOUR YEAR**

With proposed reforms coming for the real estate and property industry, make 2017 the year that you get the qualification and obtain a full property licence.

ACOP provides licensing training programs, and will recognise your prior learning and experience, for the following licence categories:

- real estate agent’s licence
- strata manager’s licence
- business agent’s licence
- stock and station agent’s licence
- buyer’s agent’s licence
- on-site residential property manager’s licence

If you are seeking Recognition of Prior Learning (RPL) or Recognition of Current Competence (RCC), talk to us about the types of evidence that you will need to provide to seek these exemptions from training.