

Death of a Client

by Quenda Behler Story

A lot of senior citizens are retrofitting their houses, some for handicapped accessibility, others just to fix them up now that the kids are finally gone. Whatever the reason behind the trend, it's good news for remodelers — unless in the middle of one of these projects, the elderly client dies. Surely the remodeler would feel a personal loss, especially if in the course of the project the client had become a friend. But the homeowner's death would also create uncertainty about the status of the contract for the remodeling project.

When a personal acquaintance dies, it's difficult enough to deal with one's own grief and that of the surviving spouse or other relatives, and the business relationship serves to compound the problem. I'm not a grief counselor, so I can't offer any advice on how to handle the emotional ups and downs that are sure to color any business deal-

ings when a client dies. But I can shed some light on how you should respond legally to the death of your client. Difficult as it may be to address business issues under such emotionally charged circumstances, you must take certain steps to protect your own interests.

The Contract Survives

If it is a commercial job for an incorporated business, the death of a shareholder has no legal affect on the corporation. Even if the deceased client was the sole shareholder, legally speaking, his or her death doesn't change the business relationship. Practically speaking, however, everything will change, especially in a one-person corporation — Whom do you talk to? Who pays you? — but those are not legal problems. In the eyes of the law, the shareholder may be dead, but the corporation is not.

The situation is different, however, when it's a homeowner who dies. The main thing to remember is that the homeowner's death does not automatically cancel the contract unless one of the parties was supposed to do something so unique or special that no one else could do it. Fortunately, there's nothing unique about paying a bill. But the rule that death doesn't cancel a contract works both ways: If the remodeler just stops work, perhaps because of the uncertainty the death creates, the remodeler has breached the contract.

Joint Ownership

The simplest case would be if the house you're working on is jointly owned and both co-owners signed the contract. If one co-owner dies, it probably makes sense to find out as soon as possible if the surviving co-owner wants to continue with the project. If not, make arrangements to be paid for the work that has been completed. Since the contract will be terminated abnormally, you or your attorney will need to write an addendum to the contract explaining why.

The situation is more complicated if only the deceased co-owner signed the contract. You still have a valid contract with the deceased homeowner, but not with the survivor. While you could simply continue to work and count on being able to collect payment from the estate or from a lien on the property, under most circumstances, in my opinion, you should offer to work something out with the surviving co-owner or joint tenant. If that person wants to go ahead with the project, he or she should sign onto the contract. This will enable you to avoid the problems associated with collecting from the



deceased homeowner. If the co-owner or joint tenant wants to cancel the contract, that's okay, too. Just be sure to get his or her signature on a notice of cancellation or similar contract change that includes an agreement to pay for any work already done.

If the deceased was sole owner, you can make the same offer to the heirs. If they want to proceed with the project, they should sign the contract; if they want to cancel the project, they should sign a notice of cancellation.

You Can't Take It With You

If the co-owner or heirs will not sign onto the contract, you still have the right to finish the contract and to get paid for the work, but you can only collect from the now-deceased homeowner, since that person is the other party to your contract. As you might expect, it's complicated to collect a debt from somebody who's dead. They can't take it with them, but that doesn't mean they left it where you could get at it.

The situation is simpler when the real estate you're remodeling was jointly held. If this is the case, the house itself

is still subject to a construction lien, which should encourage the surviving co-owner or joint tenant to sign onto the contract. And if he or she doesn't sign, you can still foreclose on the property. It may be unpleasant to have to do that under the circumstances, but it's an option.

The catch, however, is that regardless of how the real estate is owned, the contract itself is part of the deceased homeowner's estate, so the probate process can still terminate the contract. It's the job of the executor to wind up any contracts and to pay off the deceased's debts before any money or property is distributed to the heirs. The heirs get only what's left over after the debts are paid, but anyone who is owed money by the deceased must give legal notice of a claim to the executor. Without such notice, once the executor distributes the money and the probate court discharges the estate, that's the end of it. After the estate is discharged, the money that had belonged to the deceased homeowner — money that could have been used to pay off the contract — is legally gone. That money

now belongs to somebody else who, unlike the executor, is under no obligation to use it to pay off the deceased's debts. If you didn't make your claim known to the executor, then you're just out of luck.

Contact your local probate court and ask what the procedure is to file a claim against an estate. The probate court usually has a standard form you can use, and will also likely have someone on staff whose job it is to help people like you with those forms. Don't delay on this, because there's always a time limit on filing the form.

If there is a problem in probate — maybe you didn't file on time, or maybe there isn't enough money to pay all the bills — remember that you may still have a construction lien on the property, if you haven't signed a waiver, and if you've given the kinds of notices you have to give to preserve your lien.



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