“HANDLING INHERITANCE WHEN A REVERSE MORTGAGE IS INVOLVED”

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Question: My mother passed away, leaving her home as her only remaining asset. She had been very sick in the months prior to her passing and all of her resources were expended paying for her care. When she ran out of money, she was advised to get a reverse mortgage to help pay for her medical expenses – which she did. My mom did not leave a will or trust and I now have my siblings asking if they will inherit anything when the house is sold. I contacted a real estate agent who told me the value of my mom’s house was lower than the outstanding balance owed on her reverse mortgage. Since my mom’s death, no payments have been made on her mortgage and the bank has begun foreclosure proceedings. The real estate agent told me he could try to sell the property via a short sale before any foreclosure takes place, but my siblings and I would not receive anything from the sale. I have spent the last four years taking care of my mom in her home. I have no money or a place to live and I could really use some financial help to get back on my feet. Is the real estate agent right? Is there any way that my siblings and I could inherit anything from my mom’s house?

Answer: Your family is not the only one facing this type of problem. With reverse mortgages becoming more popular, many individuals are using them as a tool to help pay for healthcare costs. With a reverse mortgage, once the individual receiving the proceeds passes away, the bank expects payment in full from the individual’s estate. If the loan cannot be paid in full, the banks will usually begin foreclosure proceedings.

Your real estate agent correctly informed you that many banks will be willing to agree to a short sale in lieu of foreclosure proceedings. The banks agree to short sales because it is likely they will fetch a higher price than selling the property as a foreclosure. What your real estate agent did not correctly inform you about is the potential benefit to you and your siblings. This is specifically why I encourage anyone with questions about what to do when someone dies to see an elder law attorney, preferably one with experience in all aspects of elder law, not just probate. This type of overall experience allows an elder law attorney to fashion creative remedies to problems facing people today, not just cut-and-dried, one-size-fits-all approaches.
Your mom did not leave a will or trust, and unless your mother’s home was worth less than $60,000 at her time of death, your mom’s estate must go through a formal, court supervised probate. As is the case with any formal probate proceedings, the person responsible for administering the estate is entitled to fees which are based on a statutory formula based on the value of their property (without subtracting the reverse mortgage obligation from the value). An experienced and creative elder law attorney could attempt to negotiate with your mom’s lender to have your statutory administration fee paid directly from the sale of your mom’s residence. This fee, which could be sizable, could be split between you and your siblings. By taking this approach, you could ensure your siblings receive a share of the inheritance and that you would be able to have the financial resources for a fresh start. I wish you the best of luck.