

First Supplement to Memorandum 85-50

Subject: Study L-1028 - Probate Code (Independent Administration)

Jerome Sapiro, San Francisco lawyer, has written to the Commission requesting that the Commission "place on its calendar and consider the restoration of realty sales, exchanges and grants of options to Probate Court confirmation, control and supervision as a requirement, and that it make recommendation to the State Legislature to make such amendments . . . as may be necessary to accomplish this." His letter of December 6, 1984, is attached as Exhibit 1. This letter was distributed to the members of the Commission when received.

At its May meeting, the Commission will be considering a redraft of The Independent Administration of Estates Law. After the Commission has reviewed the redraft and is familiar with the options available, the staff suggests that the Commission consider the request of Mr. Sapiro.

The Commission already has determined that the personal representative should be given the option of requesting independent administration authority that excludes the authority to engage in real property transactions under the independent administration authority. Also, the grant of independent administration authority does not preclude the personal representative from using the court supervision procedures for real property transactions.

Also attached are a number of letters written in support of Mr. Sapiro's proposal.

Respectfully submitted,

John H. DeMouly
Executive Secretary

LAW OFFICES
JEROME SAPIRO
 100 BUSH STREET
 SAN FRANCISCO 94104
 (415) 362-7807

December 6, 1984

California Law Revision Commission
 4000 Middlefield Road, Rm. D-2
 Palo Alto, CA, 94306

Thru: John DeMouilly, Executive Secretary

Re: Request to Reconsider and to Restore
 Probate Sales, Exchanges & Grants of
 Options as to Real Property to Court
 Confirmation and Supervision
as a Requirement

Dear Mr. DeMouilly:

In the interests and for the protection of the public, our clients, estates and all persons interested therein, I request that the California Law Revision Commission place on its calendar and consider the restoration of realty sales, exchanges and grants of options to Probate Court confirmation, control and supervision as a requirement, and that it make recommendation to the State Legislature to make such amendments to Probate Code §§ 591.3, 591.4 and 591.5 as may be necessary to accomplish this.

It is also requested that copies of this letter be reproduced and made immediately available to all members of the Commission.

I would appreciate being advised of the date and place of any meeting and hearing of the Commission at which this will be considered, and would try to arrange my schedule so that I may be in attendance to answer any questions concerning same.

AB2270, insofar as it included provisions for allowing sales, exchanges and grants of options as to real property under the Independent Administration of Estates Act creates greater risks to estates and those interested therein, has an adverse effect on the potential business of realty brokers who participate in open Court competitive bidding, and can cause potential loss to all concerned, if approving and protective Court orders are not obtained.

There was inadequate exposure of this legislation, before its passage, to the public and those affected thereby.

The State Bar Estate Planning, Trust & Probate Law Section, of which I am a member, ran a belated survey of its membership with about 1313 questionnaires being returned. This was after the proposal had been considered and recommended by the Commission and after its introduction into the Assembly. In the Estate Planning, Trust & Probate News, Spring, 1984, Vol. 6, No. 1, pp. 24-25, the results were:

Real Property Sales

Approve

Disapprove

Ltr. to California Law Revision Commission
dated December 6, 1984, contd.

Require Court Order confirming sale (existing law)	694	426
Allow sale without Court confirmation under AIE Act (LRC proposal)	660	546

In other words, there were more votes of approval for retention of the existing law requiring Court confirmation, and there was greater opposition to the Commission's proposal.

The Senate Journal of June 14, 1984 contains a Report of the Senate Committee on the Judiciary on AB2270. You will note that Probate Code §§ 591.3, 591.4 & 591.5 are not even mentioned and discussed therein. Why, I do not know. Was it deliberate or was it part of the sandwiching effect of having such proposal in AB 2270 with six other proposals (to which there was little opposition)? In either event it seems improper. The particular issue was never met directly or alone, being included with other totally unrelated proposals.

Most important is the effect of this legislation on the public, our clients and estates:

1. It opens the door to the unscrupulous and possible shenanigans in probate sales;
2. It allows avoidance of competitive bidding in open Court, thereby preventing a better price opportunity and also hurting the potential business of brokers who participate therein;
3. It takes away Court protection; - those findings of due procedures having been taken, of fair and reasonable price, and of reasonable exposure to the market are protective to all;
4. It has no coordinating provision for increase of bond before close of escrow and passage of title in those cases where bond is not waived;
5. It allows passage of title to the bona fide purchaser whether advice of intended procedures are followed and whether objections are made;
6. It does not assure full and fair exposure to the market;
and
7. The fees and costs of objecting or seeking restraint are cast upon the beneficiaries of the estate, thereby tending to discourage such procedures.

I do not exaggerate when I say it opens the door to the unscrupulous. We must recognize that we do have our bad apples among attorneys, administrators and executors. When the office of Probate

Ltr. to California Law Revision Commission
dated December 6, 1984, contd.

Commissioner was first initiated in San Francisco, I recall the late Hon. Timothy I. Fitzpatrick announcing in open Court that it had resulted in the discovery of some 17-19 embezzlements by attorneys, executors and administrators in the first two years. He announced this to demonstrate that Court examination and control was of value to estates and all persons interested therein.

More recently, in the Sacramento Recorder of June 27, 1984, in an article by Julie Hoogland, the Hon. Jack W. Swink, former supervising Judge of the Probate Department of Los Angeles County, was quoted:

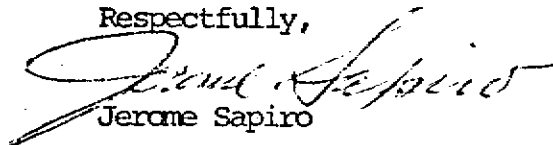
"Without Court supervision chaos can erupt.
You're just taking away some long-used way
to get attorneys to get their work done", and,
I add, to get it done properly.

The article goes on to state that Judge Swink believes Court administration is a necessary safeguard to protect heirs and beneficiaries from incorrect or even illicit management by administrators or attorneys.

My experience shows that we do have substantial increased bidding in probate sales, - a good part of which may be lost to estates and their beneficiaries. Coming before the Court we have many instances of the Court protecting attorneys and estate representatives against their own errors.

If given a chance to address this issue alone, - not sandwiched in with other matters, a very strong case can be made for restoration of Court confirmation as a requirement.

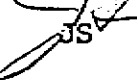
Respectfully,


Jerome Sapiro

JS:mes

Ens. 2

P.S. To assist the Commission in its consideration, I am enclosing copy of the results of the State Bar Section survey referred to (or extract therefrom), and copy of those amendments which I believe are necessary to properly correct this situation. The amendments would include the striking of subdivisions (1) & (2) of Probate Code § 591.3 and the renumbering of subdivisions (3)-(11), and the striking of one sentence of § 591.4.



Probate Administration Survey

Your Views

	Agree	Disagree
4) REAL PROPERTY SALES		
a) Require court order confirming sale (existing law)	694	426
b) Allow sale without court confirmation under independent administration (LRC proposal)	660	546

Estate Planning, Trust & Probate News, Spring, 1984, Vol. 6, No. 1, pp. 24-25.

EUGENE P. MCAULIFFE

LAW OFFICES

BAYVIEW TOWERS, SUITE 504

2601 MISSION STREET

SAN FRANCISCO, CALIFORNIA 94110

PHONE (415) 821-6940

December 14, 1984

California Law Revision Commission
4000 Middlefield Rd.
Palo Alto, CA 94303

RE: revision of the Probate Code

Commissioners:

I would respectfully request that you reconsider the amendment to the Probate Code, eliminating the need for court confirmation of the sale of real property. In my view, confirmation provides added and necessary exposure of the sale, to the benefit of the estate and for the protection of the beneficiaries.

Sincerely,



EUGENE P. MCAULIFFE

EPM: mt

cc: Jerome Sapiro

STUTSMAN, MYERS & OVERSTREET

ATTORNEYS AT LAW

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GREGORY L. MYERS
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FRESNO, CALIFORNIA 93727

AREA CODE 209
TELEPHONE 454-0574

December 26, 1984

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: Restoration of court confir-
mation hearing and competitive
bidding regarding all probate
real property sales

Gentlemen:

It is my understanding that at your meeting
scheduled for January 17-19, 1985, the above matter
may be before you for discussion.

I urge that you favorably consider this require-
ment since in my opinion it is a definite protective
mechanism for the protection of beneficiaries of an
estate. Also, by having judicial confirmation the
attorneys, administrators and executors of the various
estates have judicial protection for their actions.

Thanking you for giving this matter your favor-
able consideration, I am

Sincerely yours,


Gerald W. Stutsman

GWS:js

HOME AND
INCOME PROPERTIES

**KMOOSER &
Kavanagh**
REALTORS



LOANS
LEASING

PROPERTY
MANAGEMENT

520A CLEMENT ST. near 6th AVE,
SAN FRANCISCO, CALIFORNIA 94118

Phone 752 - 4922

BRIAN J. KAVANAGH

Broker

December 27, 1984

California Law Revision Commission
400 Middlefield Rd. Rm D-2
Palo Alto, Ca 94306

Re: Probate Real Estate Sales
Attn: Mr. John DeMouly
Executive Secretary

Gentleman:

I was astonished when I learned that under the new provisions the Probate Code would permit the sales of real estate to be consummated without Court Confirmation. Throwing out Court Confirmations is equivalent to a poker player throwing away four aces.

I have been very active in probate sales of real estate for about twenty five years. My estimate is that of the sales confirmed in the San Francisco Probate Court about 25% have been overbid during that period.* If this is true it is obvious that the system under the confirmation process works very well in protecting the interests of the heirs of the various estates. Indeed one of my waggish colleagues has said, "If you want the best price for your property, then die." That might be going to extremes, however it does make the point. Selling in probate is fail-safe, under the confirmation process, providing there is an adequate notification procedure as in San Francisco.

Perhaps there is a failure in some jurisdictions to adequately promulgate the schedule of real estate to be confirmed. I do not think the procedure of posting a notice on a bulletin board in the Court House along with many other types of notices is adequate. A market should have information to work well. Even in those jurisdictions which do not have the information system that they should there is still some benefit to confirmation. In order to improve the system a list of the real estate sales to be confirmed should be published at least a week in advance of said confirmation. A list of the weeks sales is much better than individual notices because the person searching for the information by going through the individual notices is never sure that he has found everything, in addition it is a very time consuming search. A list indicating the address of the property, the date of confirmation, the price, and the attorney would be most beneficial. This should be a simple task for the posting clerk to perform.

I urge the reinstatement of the requirement to confirm all sales of real estate and suggest a new notification requirement as described above.

Sincerely,

Brian J. Kavanagh
Brian J. Kavanagh

HOME AND
INCOME PROPERTIES

LOANS
LEASING

PROPERTY
MANAGEMENT

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Kavanagh**
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Phone 752 - 4922

BRIAN J. KAVANAGH

Broker

* As reported in a local publication called The Blue Sheet in the period from Nov. 19 to Dec. 19, 1984 there were 53 real estate confirmations in San Francisco. There were 12 overbids, ie, 22.6%. I think that over the past year it has been a little higher even than that.

HOMES

INCOME PROPERTY

EXCHANGES

NICK V. ANNOTTI
LICENSED REAL ESTATE BROKER

ASSOCIATED WITH
ED LINGSCH, REALTOR
3232 MISSION STREET
SAN FRANCISCO, CA 94110

PHONE 648-1516



GENERAL INSURANCE
REAL ESTATE - LOANS



ED. LINGSCH - *Realtor*

BUS. 648-1516
RES. 697-3719

3232 MISSION STREET
SAN FRANCISCO 94110

Nick V. Annotti

Edward F. Lingsch

Superior Court of California

San Francisco

December 28, 1984



JOHN A. ERTOLA, JUDGE

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Dear Gentilepersons:

Re: Court Confirmation and Competitive
Bidding for all Probate and
Conservatorship Sales, Long-term
Leases, Exchanges and Grants
of Options

This letter is being written in order to express
my views on the matter set forth above.

Before I became a judge I practiced a fair amount
of probate work for sixteen years. This practical
professional experience together with my service as
the head of the Probate Department in this court
for three years with continuing service from time
to time is the background and experience upon which
I set forth the following reasoning, opinion
and position.

The requirement of court supervision of estates is
simply good, strong consumer protection law. My
experience dictates that executors, trustees, and
administrators, as well as heirs, beneficiaries and
other persons interested in an estate are all human
and are subject to the same selfish pressures that
all individuals in our society feel from time to
time. They may innocently misuse funds in an estate
they control, and I have seen many cases of simple
embezzlement and theft.

Further, I have seen many instances of wrongful
private arrangements between brokers and personal

California Law Revision Commission
December 28, 1984
Page 2

representatives to the detriment of the estate. Supervision and competitive bidding in open court can only protect and benefit the estate. For example, it will protect heirs and beneficiaries by being a checkpoint at which time bonds previously required will be increased to cover the increase in liquid assets in the estate.

The court scrutinizes the exposure that property receives in the marketplace even when confirming a sale without other bidders. However, vigorous overbidding in court is common and is obviously the fairest way to conduct fiduciary sales. Any change in this tried, tested and foolproof system can only lead to a situation where beneficiaries must try to undo mistakes and outright wrongs committed in the process of converting estate assets to cash for distribution.

The Commission must know, I am sure, that there is no need for new matters to keep the courts busy. Congestion of our trial calendars is widely documented. But the probate court in supervising and confirming sales, and other transactions, provides an outstanding and necessary service to all citizens with regard to handling the affairs of others.

Very truly yours,



John A. Ertola

JAE:brt

Superior Court of California**San Francisco**

RAYMOND J. ARATA, JR., JUDGE

January 14, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: Reinstitution-Confirmation Estate Sales
Probate Code Sections 591.3, et al.

Dear Commission Members:

I am writing to you on the above subject primarily because of my concern for the unfortunate consequences which I consider inevitable due to lack of required court confirmation of estate property sales.

I have read a copy of attorney Jerome Sapiro's December 6, 1984 letter to you and concur with his concerns. My opinions come from ten years as a Judge, six years of which were in the Municipal Court in San Francisco, the latter four years in the Superior Court and as Presiding Judge of the Probate Division for the last year and one-half.

My concern lies mainly in three areas, the first being the opportunity given to unscrupulous people to take advantage of beneficiaries of an estate. For the vast majority of people involved in probate matters, the Code changes pose no inherent problem. However, it is basic human nature for unscrupulous people to operate under the same rules and we know for sure they will take advantage of the lack of court confirmation of property sales. The main thing we do not know is how often. Our presence and scrutiny are essential to the integrity of the probate system.

Second, simply giving advice of proposed action to the beneficiaries and heirs will not help. In my experience, most members of the public would not understand what is meant by a request to operate under the Independent Administration of Estates Act and would not take the time or spend the money to consult with a lawyer to find out. Even though the notice may

specifically tell them of a sale and the sale price and its terms, there is no provision in the Code that I am aware of that requires them to be given a copy of the appraisal or any explanation of the necessity of sale for them to evaluate.

I have personally received telephone calls from people throughout the state and the country asking about matters for which they received notice. If it was not a simple thing to answer, I would routinely advise their consulting a lawyer. They often would respond that they had already tried and found that no lawyer was interested, or it was impractical, or it was simply beyond their means. In short, the notice required by law provides little, if any, real help to people involved.

Finally, I see this legislation as seriously eroding a Judge's ability to carry out their responsibility to the public in monitoring probate of decedent's estates and to protect the beneficiaries and heirs.

I hope that you seriously consider Mr. Sapiro's letter and proposals, which I endorse. I parenthetically add, the additional cost of court confirmation is insignificant. The required overbid in Court on confirmation contained in Probate Code Section 785 far exceeds any reasonable cost for such procedure and consequently there is always substantial benefit to the estate when sales are overbid at time of confirmation.

Thank you for your serious consideration.

Very truly yours,



RAYMOND J. ARATA, JR.

RJA:nf

P. S. To illustrate -- today I confirmed, after bidding in open Court, the sale of estate real property at \$245,000. This property was reappraised for \$165,000 and the bid returned to Court was \$165,000. Notice to beneficiaries and heirs, even if fully disclosed, would have been (and is) meaningless. There is no substitute for court confirmation!

CHRISTOPHER R. HARAN

LAW OFFICES

BAYVIEW TOWERS, SUITE 504

2601 MISSION STREET

SAN FRANCISCO, CA 94110

PHONE (415) 821-6940

January 5, 1985

California Law Revision Committee
4000 Middle Field Road
Palo Alto, Ca. 94303

RE: REVISION OF PROBATE CODE

Dear Members of Law Revision Committee:

I am writing this letter to you concerning the recent amendment of the California Probate Code which eliminated the necessity of court confirmation of the sale of real property in an estate.

It is my strong belief as a practicing attorney that it would be in the best interests of all probate estates to retain the requirement of court confirmation of real property sales. Not only have confirmation hearings exposed properties to possible over bidding in court, and thereby increasing the assets of estates, but they also put proposed sales under court scrutiny where potential problems can be identified and remedied before sales become final. It is my firm conviction that the legal profession does its best service for the public by preventing problems from occurring rather than resolving them once they have arisen. The real property confirmation hearings was one of those beneficial "preventative" procedures. Its elimination is a set back for our legal system. I respectfully request that you consider its restoration to the Probate Code.

Thank you for your attention to this matter.

Sincerely,


CHRISTOPHER R. HARAN, ESQ.

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

9 February, 1985

Gentlemen:

It has come to my attention that certain legislation is pending to radically change certain regulatory controls governing the operation of institutional fiduciaries in matters of probates and testamentary trusts in the State of California.

I wish to express my strongest opposition to the enactment of this legislation.

One reads almost daily of the pillage of trust accounts by banks and individual trustees in this State; as well as elsewhere: I direct your attention to 'That Close' associate of a recent candidate for the Vice-Presidency of the United States. Experience at first hand by myself and members of my family can attest to the validity of requiring court supervision and review of probates and testamentary trusts.

To enact legislation to remove court review and jurisdiction of trustee performance is tantamount to elevating an already 'notorious' industry to new heights of licentiousness.

Yours very truly,


A. T. Cassell, Jr.

A. T. Cassell, Jr.
P. O. Box 8
Mill Valley, CA 94942

February 15, 1985

A. T. Cassell, Jr.
P.O. Box 8
Mill Valley, CA 94942

Dear Mr. Cassell:

You wrote to the Law Revision Commission indicating that it had come to your attention that certain legislation is pending "to radically change certain regulatory controls governing the operation of institutional fiduciaries in matters of probates and testamentary trusts in the State of California." You indicated you are opposed to such legislation.

The Commission is not aware of any such legislation. Has such legislation been introduced in Sacramento or is someone planning to introduce such legislation? Can you give us more information on the pending legislation and its source?

The Commission is interested in this area of the law because we are now drafting a new Probate Code. The Commission is prohibited by law from opposing pending legislation, but we will be reviewing all aspects of probate and trust law in our study.

If you would give us more specific information concerning the pending legislation that you mention in your letter, the Commission can review the pending legislation in the course of its study of the Probate Code.

Sincerely,

John H. DeMouilly
Executive Secretary

JHD/vvm

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

2 March, 1985

Atten: Mr. John H. DeMouilly, Ex. Sec.

Ref: Your 15 February, 1985

Gentlemen:

To reply to your above referenced: May I forward the following based upon information I believe to be correct:

1. The legislation in question is designated AB 2270
2. AB 2270 may have been already passed into Law.
3. The source of AB 2270 is most probably the interest group in the State of California having the most to gain from manipulation to existing Probate procedure; ie. prior to the instigation of AB 2270.
4. Under #3 above: The source is most likely the Banking industry, and their allied or affiliated Trust Divisions.

Yours Very Truly,


A. T. Cassell, Jr.

LAW OFFICES OF

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ROBERT C. ELKUS

March 6, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Reinstitution-Confirmation Estate Sales
Probate Code Sections 591.3, et al.

Dear Commission Members:

I have read a copy of attorney Jerome Sapiro's December 6, 1984 letter to you and as do others, I share his concerns.

Approximately two years ago this office was conducting an estate sale in the Alameda County. After two years on the market, with the aid of one of the best brokers in the particular area in which the building was located, and with the aid of multiple listing, we were finally able to obtain a bid of \$190,000.00. Without reviewing the file I cannot be certain but my memory is that this was less than the amount of the appraisal.

At the confirmation there were five bidders. The first bidder dropped out at \$210,000.00; the second bidder at \$220,000.00; the third at \$235,000.00; and the property was finally sold for \$265,000.00, thereby enriching the estate in the sum of \$75,000.00, or an increase in the sale price of almost 40%.

The additional cost of confirmation is insignificant and the threat of an overbid has frequently enabled me to strike a better bargain for presentation to the Court. If there is an overbid at the time of confirmation the benefit far exceeds the cost for such procedure - which is not burdensome in any event.

I hope that you seriously consider Mr. Sapiro's letter and his proposals, which I endorse.

California Law Review Commission
March 6, 1985
Page Two

Thank you for your time and attention.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert C. Elkus", with a long horizontal flourish extending to the right.

For The Law Offices of
Robert C. Elkus
A Professional Corporation

RCE/jbs
copy: Jerome Sapiro, Esq.

LOUIS JANIN
(1910-1972)
MELVIN H. MORGAN
EUGENE J. BRENNER
RICHARD J. GRILLO
HERMAN P. SCAMPINI, JR.
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TELEPHONE
[415] 981-0670

March 12, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Court Confirmation of Real Estate Sales

Ladies and Gentlemen:

I write you as one who has practiced probate law for 31 years. When I first started practice, one had to make an appearance on a Petition to Sell Listed Securities. One also had to prove a Will by testimony on the stand of the witnesses. If that were a different attorney than the probate attorney, the end result might be the taking of the time of two attorneys for a full morning if the case was near the end of the calendar. (In Judge Quinn's court in Alameda County, I have even had the matter go over to the afternoon).

I am all for simplification of probate. However, I believe that removing probate sales of real property under the Independent Administration of Estates Act is a big mistake. Overbids in open court were the rule rather than the exception in 1978, 1979, and 1980. While they have diminished, they are starting to come back (I had one house appraised at \$38,000 which sold for \$91,500).

The present procedure, if followed, practically eliminates the chance for an overbid. In addition, most Bay Area Counties have a limit on the broker's commission for more expensive real estate (usually over \$100,000), to the benefit of the estate.

So far, I've said nothing about the possibility of collusion among or between the personal representative, the broker and the buyer. It exists, believe me.

I personally follow the practice of confirming the bid voluntarily, and unless the date of death is before the enactment of Section 591.3, not charging a fee for extraordinary service. I think not many attorneys will follow my precautionary practice.

March 12, 1985
Page 2

In short, I think that Section 591.3 of the Probate Code ought to be amended, so that court confirmation of probate sales of real property are required.

Sincerely,

JANIN, MORGAN & BRENNER

By 
EUGENE J. BRENNER

EJB:jc

DONALD B. MCGAW
JUNE L. BARNUM

LAW OFFICES OF
McCaw & Barnum
RUSS BUILDING - SUITE 905
235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE
[415] YUKON 1-0267

March 13, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Reinstitution-Confirmation Probate
and Conservatorship Sales,
Long-Term Leases, Exchanges, and
Grants of Options

Dear Commission Members:

As a practitioner who devotes a substantial amount of time to probate and conservatorship matters, I have shared the concern of many regarding the abandonment of court supervision of real property transactions. What was intended as a benefit to the consumer by permitting greater independent action in the area of real property transactions in probate and conservatorship matters, can, in my opinion, only work a hardship and detriment on the consumer in the long view. It leaves the consumer exposed to business practices which range from the overly casual to the unscrupulous without the protective mechanism of the court supervision. The shrewd or sophisticated executor or conservator will be able to cope; however, the unsophisticated or naive family member serving in that capacity will be easily taken advantage of.

I have had an opportunity to read the letters of Jerome Sapiro dated December 6, 1984, Judge John Ertola dated December 28, 1984, and Judge Raymond Arata dated January 14, 1985 and concur with the statements made in all of those letters.

It is my sincere hope that as the commission reviews this area of the probate revision, it will bend every effort toward the restoration of court supervision.

Respectfully yours,


June L. Barnum

JLB:pt

HALL, HENRY, OLIVER & McREAVY

LYMAN HENRY
STEPHEN McREAVY
JAMES L. TIPTON
JOHN M. ROBERTS
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CHAFFEE E. HALL (1888-1969)
WM. L. OLIVER (1906-1975)

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TELEX: 340102

March 18, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Restoration of Court Supervision and Control
(Including in-Court Competitive Bidding) in
all Probate Realty Sales, Exchanges & Grants
of Option (Proposed Amendments to Probate
Code §§ 591.2, 591.3 and 591.4)

Dear Sirs:

I am writing to express my support for the restoration of Court confirmation of real property sales as a required procedure in probate matters. I concur in the reasons for such restoration as expressed in the letters to the Commission of Judge Arata of January 14, 1985 and Judge Ertola of December 28, 1984. Competitive bidding in open court is the best method of protecting estate beneficiaries.

Very truly yours,



R. Bradford Huss

RBH:fl1

LAW OFFICES OF
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TELEX: 278941

DAVID B. FLINN

March 22, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Reinstitution-Confirmation Estate Sales
Probate Code Sections 591.3, et seq.

Gentlemen:

As a San Francisco probate lawyer, I join in urging the Commission to support reinstatement of the requirement of court confirmation of real property sales in probate, at least in those instances where the local probate court so provides by rule. San Francisco is one of those areas where many, many estates have obtained considerable benefit from increased bidding at confirmation sales. I might suggest that, in the least, it would be appropriate to provide that the Superior Court of each county shall determine whether or not confirmation shall be required where independent administration powers have been awarded.

Sincerely,



David B. Flinn

DBF:js

cc: Jerome Sapiro, Esq.
100 Bush Street
San Francisco, CA 94104

Philip Adams
ATTORNEY AT LAW
1005 MILLS BUILDING
220 MONTGOMERY STREET
San Francisco, California 94104
(415) GARFIELD 1-1296

March 27, 1985

California Law Revision Commission
4000 Middlefield Road, Rm. D-2
Palo Alto, CA 94306

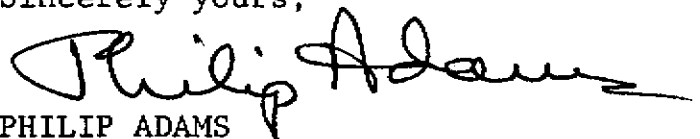
RE: Reinstitution-Confirmation Estate Sales
Probate Code Sections 591.3, et al.

Dear Commission Members:

I have recently seen a copy of Judge Raymond Arata's letter of January 14, 1985 to you which totally expresses my views on the desirability of reinstating the confirmation of estate sales. It is my understanding that this matter is Item 2 of your agenda for your May meeting at the State Capitol.

I fully support Judge Arata's views. I have been fairly active in probate matters throughout my practice, and feel that it is most important that we restore this protection to the probate practice.

Sincerely yours,


PHILIP ADAMS

PA sk

LAW OFFICES

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TELEX 276319RRPB

March 29, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: Court Confirmation and Competitive Bidding for all
Probate and Conservatorship Sales, Long-term
Leases, Exchanges and Grants of Options

Dear Commission Members:

I recently received a transmittal letter from Jerome Sapiro, Esq. containing copies of correspondence directed to the Commission regarding the reinstatement of competitive bidding on probate sales. Based on my experience in court, I support the reinstatement of competitive bidding.

I handled an estate in Alameda County two years ago in which the eldest son was given the option to acquire the family residence at a price equal to the average of three written appraisals. The appraisals came in at \$165,000. Because the eldest son was unable to afford to acquire the home, we listed the property for sale with a licensed real estate broker.

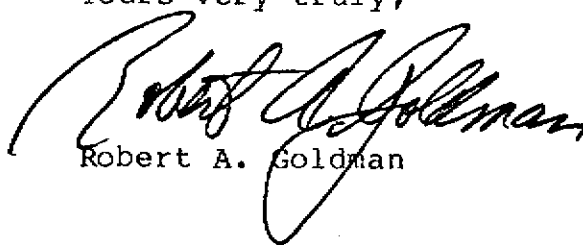
The property was located near a fault line; reports from engineers regarding the flow of water near the home, the soil condition, and the foundation, made the property seem undesirable. Nevertheless, after topping several trees in the front of the lot at the broker's suggestion, the property had a view of San Francisco from the Berkeley Hills. Furthermore, its secluded location made it attractive for persons with a great deal of money who had little concern about the cost to restore the foundation. We obtained an offer on the property for \$250,000. We continued to show the property right up to the date set for confirming the sale.

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At the hearing, when the judge asked if there were any persons interested in bidding on the property, four couples stood up. Our "fixer-upper" suddenly became the target of eager bidders. I watched in utter amazement as the sale price jumped five and ten thousand dollars per bid. The final bid came in at \$312,000, almost DOUBLE the appraised value.

I relate this story to every client who has ever complained about the court supervision of a probate sale. I am convinced that there's nothing like an auction to stimulate activity and generate top dollar for real estate!

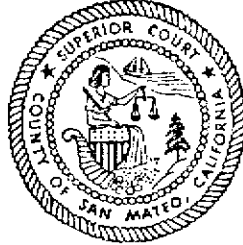
Yours very truly,



Robert A. Goldman

RG:jvj

cc: The Honorable Raymond J. Arata, Jr.
The Honorable John A. Ertola
Judges of the Superior Court of California
Jerome Sapiro, Esq.



Harlan K. Veal
Judge

In Chambers
Hall of Justice
Redwood City, California 94063

March 29, 1985

California Law Revision Commission
4000 Middlefield Road - Room D-2
Palo Alto, CA 94306

Re: Reinstitution - Confirmation Estate Sales
Probate Code Section 591.3 et seq.

Dear Commission Members:

Since January 1st I have been the Assistant Presiding Judge of the San Mateo County Superior Court. Part of my duties include sitting as the Probate Court Judge.

As such, I have become deeply concerned over the impact of the recently enacted amendments to Probate Code Sections 591.3 and 591.4 insofar as they permit sales of real property handled under the Independent Administration of Estates Act without the need for court confirmation. I believe the statute should be immediately amended to restore the requirement of court confirmation of such sales.

Court confirmation frequently produces overbids, sometimes of a very substantial nature. Since January 1st there have been at least two overbids in excess of \$100,000 each. Without these sales having come before the court for confirmation, the estate and the heirs would have been "cheated" of very large amounts of money.

Since the executor (and the attorney for the estate) owe a fiduciary duty to the estate and its beneficiaries to get the best possible price on any sale, the lack of petitioning for confirmation might well expose the attorney and the personal representative for malpractice and for breach of their fiduciary duties. The "advice of proposed action" required to be given to the heirs under the I.A.E.A. is usually woefully insufficient to put them on notice of ways whereby they might protect themselves and get a higher price for the property.

There is the additional problem inherent in the lack of confirmation in that there is no efficient way to insure that the commissions to be paid the realtors will be in accord with the court's schedule of such fees and commissions. Most courts in the state

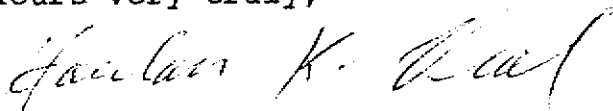
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have a schedule which is substantially different than the standard 6% which realtors almost always demand. Certainly that is true in San Mateo County.

Our judges have met in this regard and have determined that the commissions are still subject to our local rule. We have accordingly advised as many of the attorneys/realtors as we can that even if they do not come in for confirmation of a sale, if it becomes apparent to the court at the time of any Accounting, Petition for Distribution, etc., that more than our local rules permit has been charged in the way of a commission, the executor, the realtors and/or the attorney can expect to be surcharged for the excess amount.

The duty of the courts in great measure is to protect the public. The duty of the personal representative and the attorneys for same is to protect the estate and the beneficiaries of the estate. Sections 591.3 and 591.4 as they presently stand make it almost impossible for any of these responsibilities to be carried out. Their amendment or repeal is urgently needed.

Yours very truly,



Harlan K. Veal

HKV/mms

cc: Jerome Sapiro, Esq.