

First Supplement to Memorandum 83-62

Subject: Study L-655 - Probate Referees

The staff sent out a request to interested persons and organizations for comment on whether it might be desirable to provide an alternative procedure for the sale of real property when the sale is to be made under the supervision of the court. The staff will give further consideration to this matter during the course of the probate study.

In response to our request, we received three letters that are relevant to the need for probate referees.

The Probate Clerk of San Joaquin County states:

In San Joaquin County, the Court/law required Inventory & Appraisal from our locally appointed Probate Referees is notorious for matching, to the penny, the amount bid on a return of sale petition. I have seen more than one property eventually sold in an overbid situation at more than four times the original bid.

Luther J. Avery, a San Francisco lawyer, states:

The probate referee has an arbitrary power to fix the appraised value of assets in the estate and there is no procedure for review by the court of the appraisal by a probate referee. The arbitrary power to fix appraised value without court review is a problem because the referee's fee is fixed by the valuation without any restraint. Also, the value fixed by the referee is persuasive on the federal estate tax valuation and as a result, while the present system has no method of challenging valuation, the valuation establishes a floor for federal estate tax valuation. A procedure is needed for avoiding use of a probate referee where the referee is not desired by the estate by making the referee elective.

Judge Robert R. Willard, Superior Court, Ventura, states:

My third general comment is that appraisals by probate referees are not a very good indication of fair market value. Referees in Ventura County historically have been attorneys engaged in general practice. They tend to appraise within a range requested by the personal representative or his attorney. If a sale is arranged it is customary to secure a reappraisal, if necessary, to legitimize the sales price.

Respectfully submitted,

John H. DeMouilly
Executive Secretary