

Memorandum 84-57

Subject: Study L-800 - Probate Law and Procedure (Estate Sales of Real Property)

This Memorandum considers whether the California procedures for estate sales of real property, including the provisions for court confirmation of sale and the opportunity for overbidding at the confirmation hearing, should be revised, and concludes that present procedures are satisfactory.

California Law

If the estate is being administered under court supervision and not under the Independent Administration of Estates Act, and the executor or administrator wants to sell real property in the estate, notice of sale must ordinarily be published (Prob. Code § 780--posting sufficient if property worth \$1,000 or less, id., neither publication nor posting required if the will directs or authorizes the sale, id. § 757), the property must have been appraised within the preceding year (id. § 784), there must be an offer of at least 90% of the appraised value (id.), the court must confirm the sale (id. § 755), and there must be an opportunity for overbidding at the confirmation hearing (id. § 785).

If the estate is being administered under the Independent Administration of Estates Act, Commission-sponsored legislation (AB 2270) which has been sent to the floor in the second house would expand the Independent Administration of Estates Act to include real property sales; but, if there is an objection to the proposed sale, the sale could be made only under court supervision as outlined above (id. § 591.2).

Uniform Probate Code

Under the Uniform Probate Code, whether the proceeding is informal or formal (supervised), the personal representative may ordinarily sell real property without notice, hearing, or order of court. See UPC §§ 3-711, 3-715. The court may restrict the personal representative's power by requiring court approval or confirmation of real property sales. UPC §§ 3-501, 3-504; 1 Uniform Probate Code Practice Manual 263 (2d ed. 1977). Or, any interested person may petition for an order restraining

the personal representative from taking any action that would unreasonably jeopardize the interest of the applicant or some other interested person. UPC § 3-607.

Responses to Commission Questionnaire

Last summer, the Commission mailed out a questionnaire asking whether the procedure for estate sales of real property should be revised, and particularly whether there should be an optional procedure for a petition before sale for a court order authorizing sale at or above a price fixed in the court's order. Under this proposal, the order would be effective for a limited period, and if the property were sold at or above the specified price during that period, the sale would be final and no court confirmation would be required. A majority of those responding to the questionnaire opposed the proposal, and strongly favored retaining the existing post-sale confirmation with opportunity for overbidding.

Staff Recommendation

The staff recommends that we keep existing provisions for publication or posting of notice, appraisal, minimum offer, court confirmation, and overbidding. We make this recommendation on the assumption that Assembly Bill 2270, which extends the independent administration provisions to cover real property sales, will be enacted. If the personal representative decides to make a sale under court supervision or is required to do so because there is an objection to the proposed sale under independent administration authority or because the personal representative has not been granted independent administration authority, the staff believes that the existing court supervised real property sales procedure is satisfactory. If the Commission agrees, the staff will draft provisions to continue the substance of existing law, subject to technical revisions and drafting improvements.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel