

L-1028

5/8/85

Fourth Supplement to Memorandum 85-50

Subject: Study L-1028 - Probate Code (Independent Administration --
communications concerning real property sales)

Attached to this supplement are additional letters we have received concerning inclusion of real property sales under independent administration. The letters may be summarized as follows:

Exhibit 1. (Executive Committee of Los Angeles County Probate and Trust Law Section) (independent administration proper)

Exhibit 2. Judge J. Michael Brown (require court supervision of all real property sales) (with attached letter from Executive Secretary to Judge Brown)

Exhibit 3. Milton L. Huber (reinstate court supervision) (with attached letter from Executive Secretary to Mr. Huber)

You should read these letters with care. Neither Judge Brown or Mr. Huber provided comments concerning the letter attached to the Second Supplement to Memorandum 85-50.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Probate and Trust Law Section

Mailing address:
P.O. Box 55020
Los Angeles, California 90055

May 2, 1985



John H. DeMouilly, Esquire
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: Sale of Real Property Under
Independent Administration

Dear John:

The Executive Committee of the Los Angeles County Probate and Trust Law Section supports the recently enacted changes in the Probate Code permitting sales, exchanges and the granting of options to purchase real property by estate representatives under powers granted under the Independent Administration of Estates Act. The new provisions provide flexibility in the administration of estates while retaining adequate safeguards to minimize abuse. We do not support the proposal of Jerome Sapiro and others to return to the required procedures in effect prior to 1985.

Sincerely,

LOS ANGELES COUNTY
PROBATE AND TRUST
LAW EXECUTIVE COMMITTEE

By:

Richard L. Stack
Richard L. Stack
Chairman
California Law
Revision Commission
Monitoring Committee

RLS:dw

cc: Robert Bannon, Esquire
Theodore Cranston, Esquire
James Quillinan, Esquire
Charles A. Collier, Jr., Esquire



CHAMBERS OF SUPERIOR COURT, DEPT. NO. 3
COUNTY OF HUMBOLDT

825 5TH STREET

COURTHOUSE

EUREKA, CALIFORNIA 95501

PHONE (707) 445-7629

April 18, 1985

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

Re: Reinstitution - Confirmation Estate Sales

Dear Commission Members:

As the Probate Judge for the County of Humboldt, I am writing you concerning the above subject because of my deep concern that unless court confirmation is required, estate beneficiaries and conservatees will not receive, in certain instances, a fair price for real property sold by the personal representative or conservator. The confirmation proceeding, although time consuming and to a certain extent costly, does greatly benefit estates and conservatorships as it assures that the highest price will be received.

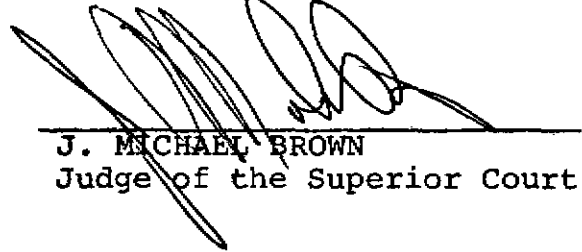
I have discussed court supervision of such sales with various counsel in Humboldt County that do a substantial amount of Probate work. They all agree that occasionally (which is far too often) that an unscrupulous personal representative or conservator could take advantage of their powers to the detriment of the very people they are to be acting for. At the present time, our Local Court Probate Rules are being amended, as a stopgap measure, so as to require that all sales be returned to the Court for overbidding and confirmation. I have noted with interest that San Diego County so provides in their Local Court Rules, at least for conservatorships.

California Law Revision Commission
April 17, 1985
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It is my understanding that you will be taking up this matter on your agenda of May 16 and 17, 1985. I ask that you recommend at that time the restoration of court supervision for the reasons above set forth.

If you desire any further information that you believe I could provide, I would be happy to do so.

Very truly yours,



J. MICHAEL BROWN
Judge of the Superior Court

JMB/ac

cc: Jerome Sapiro
Milt Huber

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2

PALO ALTO, CALIFORNIA 94303

(415) 494-1335



April 24, 1985

Hon. J. Michael Brown
Judge of the Superior Court
County of Humboldt
825 5th Street
Courthouse
Eureka, Ca 95501

Re: Confirmation of Estate Sales

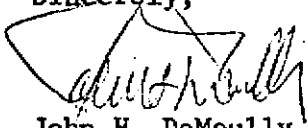
Dear Judge Brown:

You wrote on April 18 to the Law Revision Commission to urge that court confirmation be required for every real property sale. Your letter will be presented to the Commission.

You indicated you are willing to provide further information. It would be useful to the Commission if you would give your reaction to the letter attached to Second Supplement to Memorandum 85-50 (copy enclosed).

You indicate that your local court rules are being amended to require that all real property sales be returned to the court for overbidding and confirmation. That would appear to be contrary to the new state statute in a case where the sale is made pursuant to independent administration authority. And there is no assurance that the new state statute will be changed to require confirmation of real property sales in all cases. The change to permit use of independent administration for real property sales was made at the urging of the Estate Planning, Trust and Probate Law Section of the State Bar, and was supported by the Estate Planning and Trust Law Sections of various local bar associations, by the California Realtors Association, by the American Association of Retired Persons, and others. The sale of real property of a conservatorship estate is governed by other statutory provisions and the court would have authority to require that those sales be returned to the court for overbidding and confirmation.

Sincerely,



John H. DeMouilly
Executive Secretary

Encl.

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April 22, 1985

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

Re: Restoration of Court Supervision -
Sales, Exchanges and Options,
Estate Real Property

Dear Commission Members:

It has been called to our attention that your Commission has scheduled the referenced matter for reconsideration at your mid-May meeting.

We respectfully urge you to recommend the reinstatement of court supervision.

Our experience has clearly demonstrated that the current requirement of merely giving advice of proposed action does not function as protection for the estate or the beneficiaries thereof. The uninformed public just do not understand just what steps must be taken to protect themselves to assure full value and regularity in an estate sale or are reluctant to engage counsel to inquire on their behalf.

Aside from negligent or dilatory attention in seeing that full value is obtained in these matters and aside from rendering it easier to indulge in unscrupulous involvement under current law, experience has clearly established that overbidding with competitive bidding in open court has consistently and substantially benefitted the estate and those interested therein, and historically, the benefits far exceed the additional costs.

We respectfully submit that the public who engage our services and pay the bills are entitled to the added protection afforded by independent and knowledgeable court scrutiny. What type of practitioner would oppose this additional assurance of

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ATTORNEYS AT LAW

California Law Revision Commission

April 22, 1985

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the integrity of his work product?

Very truly yours,

HUBER & GOODWIN,

By Milton L. Huber
Milton L. Huber

MLH: erj

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
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April 24, 1985

0074a

Milton L. Huber
Huber & Goodwin
Attorneys at Law
Post Office Box 23
Eureka, CA 95501

RE: Court supervision of real property sales

Dear Mr. Huber:

You wrote to urge the Law Revision Commission to recommend the reinstatement of court supervision of real property sales. Under existing law, the personal representative who has been granted independent administration authority has the choice either to sell the property at a public auction or private sale or to submit the sale to the court for overbidding and court confirmation.

As I understand your letter, you propose that the personal representative not have the choice of selling the property under independent administration authority. In this connection, it would be useful to the Commission if you would give your reaction to the letter attached to the Second Supplement to Memorandum 85-50 (copy enclosed). Your response to the letter attached to this Supplement will be provided to the Commission at the May meeting when this matter is considered, and I assure you that the Commission will give careful consideration to your response.

You ask what support there was for extending independent administration authority to cover real property transactions beside the California Law Revision Commission. The support included the Estate Planning, Trust and Probate Law Section of the State Bar, the Estate Planning and Trust Sections of various local bar associations, the California Realtors Association, the American Association of Retired Persons, and other organizations and individual practitioners.

If your local bar association has a probate law section, we would be pleased to provide the section with copies of our tentative proposals in connection with the new Probate Code we are now drafting. If you would like to receive publications of the Law Revision Commission, please complete and return the enclosed form.

Milton L. Huber
April 24, 1985
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On behalf of the Commission, I want to express our appreciation for your taking the time to write us to give us your views concerning this matter. I am looking forward to receiving your reaction to the letter attached to the enclosed supplement.

Sincerely,

John H. DeMouilly
Executive Secretary

Encl.