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12/7/88

Memorandum 89-16

Subject: Study L-1061 - Commission Where Broker is Purchaser

At the last meeting, the Commission disapproved the rule of Estate of Levinthal, 105 Cal. App. 3d 691, 164 Cal. Rptr. 628 (1980), that a broker in an estate sale is entitled to a commission when the purchaser is an entity in which the broker has an insubstantial interest. Instead, the Commission decided to broaden the rule of Estate of Toy, 72 Cal. App. 3d 392, 140 Cal. Rptr. 183 (1977), that a broker may not receive a commission when there is complete identity between broker and purchaser, to apply to the case where the broker has an interest in the purchasing entity, whether or not there is complete identity between broker and purchaser and whether or not the broker's interest is substantial.

The Commission asked the staff to draft statutory language to accomplish this. The staff draft is attached as Exhibit 1.

Respectfully submitted,

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Staff Counsel

Exhibit 1

Probate Code § 10160.5 (added). No commission where broker is purchaser

SEC. \_\_\_\_\_. Section 10160.5 is added to the Probate Code, to read:

10160.5. The estate is not liable to a broker under a contract for the sale of real property or for any fee, commission, or other compensation or expenses in connection with sale of the property in either of the following cases:

(a) Where the broker, directly or indirectly, is the purchaser of the property.

(b) Where the broker representing the purchaser to whom the sale is confirmed has any interest, whether substantial or insubstantial, in the purchaser.

Comment. Section 10160.5 is added to change the rule in *Estate of Levinthal*, 105 Cal. App. 3d 691, 164 Cal. Rptr. 628 (1980), that a broker in an estate sale is entitled to a commission even though the purchaser is an entity in which the broker has an interest. Section 10160.5 is consistent with *Estate of Toy*, 72 Cal. App. 3d 392, 140 Cal. Rptr. 183 (1977), that a broker may not receive a commission when there is complete identity between broker and purchaser, and broadens that rule to apply in the *Levinthal* situation where there is not complete identity between broker and purchaser but the broker does have an interest in the purchasing entity, whether or not that interest is substantial. Thus, for example, the broker would not be entitled to a commission if the purchaser is a corporation in which the broker owns stock.