

Memorandum 90-14

Subject: Study L-1061 - Agreement to Split Brokers' Commissions in Probate Sales

The sections in the Probate Code governing brokers' commissions provide, in certain situations, for splitting a commission evenly between cooperating brokers or as provided in any agreement between them. See Prob. Code §§ 10162.7(b), 10164(c), 10165(c)(3). H. Edward Heron, Vice President of Merrill Lynch Realty Real Estate Division, Santa Barbara, has written to express his concern that the specific rules may not cover all the cases where cooperating brokers may have agreed to divide the compensation otherwise payable to them under the statutory rules. He suggests adoption of a general rule that the statutory rules are subject to any contractual agreement between brokers on how to split the commissions approved by the court. The staff agrees with Mr. Heron, and proposes to add the following provision in Assembly Bill 759 (new Probate Code):

§ 10168 (added). Division of compensation by cooperating agents and brokers

10168. This article does not supersede any agreement cooperating agents or brokers may have among themselves to divide the compensation payable under this article.

Comment. Section 10168 new. This section provides a general rule consistent with the special rules concerning division of compensation between cooperating agents and brokers in Sections 10162.7(b), 10164(c), 10165(c)(3).

Respectfully submitted,

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