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Introduction

The primary purpose of this legal memorandum is to provide real estate licensees with a general working knowledge of the process involved in real property sales that are subject to the California Probate Code (CPC). The topics will include a broker's duties and rights to a commission under the CPC, as well as the steps involved when an administrator or executor is acting pursuant to the Independent Administration of Estates Act (IAEA), California Probate Code Sections 10400 *et seq.*

I. Probate Proceedings In General

Q 1. Can you give me a general description of how a sale of real property in probate works?

A Estate administration provides for the orderly distribution of real and personal property owned by a decedent. More specifically, any property which the decedent owned or in which the decedent had an interest at the time of death is collected into the estate and distributed to those entitled to it after all debts and expenses have been paid. The process of administering a decedent's estate is referred to as "probate," and is generally supervised by the probate court. A personal representative is the person or entity charged with the responsibility of administering a decedent's estate (Cal. Prob. Code § 58(a)). A personal representative is either:

- An executor (executrix) who is named in a will; or
- An administrator (administratrix) who is appointed by the court when there is no will, when the will does not name an executor or when the named executor is unable or unwilling to serve.

The personal representative is charged with the fiduciary responsibility of gathering the assets and paying the debts of the decedent in such a way that the beneficiaries or heirs of the decedent receive the maximum inheritance. The personal representative usually will hire an estate attorney to handle the legal aspects of the probate. Most business dealings are through the estate attorney.

Q 2. *When may the personal representative sell estate property?*

A Estate property may be sold by the personal representative when:

- The sale is necessary to pay debts, devises (gifts to persons named in the will), a family allowance, expenses of estate administration, or taxes;
- The sale is to the advantage of the estate and in the best interests of the interested persons;
- The property must be sold according to the terms of the will; or
- Authority is given in the will to sell the property.

(Cal. Prob. Code § 10000.)A decedent's will may designate the manner in which estate real property is to be sold or identify the particular property to be sold. Absent a court order based upon the best interests of the interested parties to the contrary, the personal representative shall comply with the decedent's instructions. If the will is silent on these matters or there is no will, the personal representative may select the method of sale and the particular property to be sold. Estate real property may be sold by private sale, public auction, or a different method specified in the will of the decedent (Cal. Prob. Code §§ 10000.3, 10303). A private sale is one in which bids or offers are independently solicited, while a sale by public auction invites concurrent competitive bidding.

Q 3. *Must the personal representative list the estate real property with a real estate broker?*

A The personal representative may legally market and sell real property without the services of a broker, as if he/she were the owner of the property. The personal representative is considered the “seller” in the transaction. However, the personal representative may list the property with a real estate broker. The process of listing, marketing and selling probate real property is much the same as any sales transaction with some exceptions discussed below. Unless the personal representative has full authority under the IAEA, a sale is subject to confirmation by the court.

Q 4. *Are there any restrictions on the sales price of estate real property?*

A Yes. The sales price of a private sale of estate real property subject to court confirmation must be at least 90 percent of its appraised value set within one year prior to the sale (Cal. Prob. Code § 10309). All terms of a sale, including the minimum required deposit, are generally subject to court approval and local rules of court which vary from county to county. Generally, offers with contingencies of any sort (e.g., financing, sale of home) are not approved by the court. Sales of real property by the personal representative with full authority under the IAEA do not have the same restrictions and may contain all of the same contingencies and provisions as non-probate sales of real property (Cal. Prob. Code § 10503).

Q 5. *Are prospective purchasers required to submit a deposit of 10% of the purchase price when submitting a purchase offer on a probate property or at the confirmation hearing?*

A California law does not require a 10% deposit. Some personal representatives may request such a deposit which reflects the preference of those persons and the traditional practice in many areas. When listing a property an agent may wish to discuss with the personal representative the pros and cons of asking for a lower deposit amount which could possibly result in more and/or higher offers.

Q 6. *What is a "Notice of Sale" and is it required prior to selling estate real property?*

A A Notice of Sale must be published prior to the sale of estate real property unless the will directs the real property to be sold or gives authority to the personal representative to sell the real property or the personal representative has full authority under the IAEA. The Notice of Sale provides the public with required information concerning the sale and will typically be handled by the attorney for the estate. The contents of the Notice of Sale can be found in Probate Code Section 10304.

A Notice of Sale of real property must be published at least three times over a period of not less than 10 days before the sale, with the third publication at least five days after the first (Cal. Prob. Code § 10300; Cal. Gov't Code § 6063a). All publications must be in a newspaper published at least weekly in the county in which all or some of the property is situated.

Certain sales are exempt from this requirement, most importantly, sales by a personal representative with full authority under the IAEA (Cal. Prob. Code § 10503—the property may be sold with or without notice).

Q 7. *What is meant by court confirmation of the sale of real property?*

A The personal representative is required to report the sale and petition the court for confirmation of the sale within 30 days of accepting an offer (Cal. Prob. Code § 10308). Should the personal representative fail to perform these acts in this time period, the purchaser may do so on his or her own behalf (Cal. Prob. Code § 10308(b)). All estate real property sales must be confirmed by the court except for sales of property by a personal representative with full authority under the IAEA.

At the confirmation hearing, the original sale may be subject to being overbid by another purchaser (Cal. Prob. Code § 10313). The court will confirm the sale to either the original bidder or to an overbidder and normally approve payment of the brokerage commissions. Title will pass to the successful buyer only after the terms of sale have been met, the court has confirmed the sale and the personal representative has executed a conveyance to that buyer (Cal. Prob. Code § 10314).

II. Listing Contracts

Q 8. *May the personal representative enter into a contract with a licensed real estate broker to sell estate real property?*

A Yes. The personal representative may enter in to an exclusive right to sell contract with a broker for an original period of not more than 90 days plus one or more extensions each limited to the same periods (Cal. Prob. Code § 10150(c)). This real estate broker may cooperate with other brokers and may advertise the property on the MLS (Cal. Prob. Code § 10150(a)). Prior court approval must be obtained for each extension unless the personal representative is acting under IAEA. However, even here, if the personal representative has obtained only "limited" power rather than "full" power to administer the estate, court supervision of the sale of real property is required (Cal. Prob. Code § 10501(b)).

Q 9. *May a listing broker obtain an extension of the listing contract if the estate real property does not sell within the original listing ninety day period?*

A Yes. However, any extension of the listing given requires prior court approval unless the personal representative is acting under IAEA. Each extension shall not exceed 90 days (Cal. Prob. Code § 10150(a)). Under IAEA authority, the personal representative may give discretionary 90 day extensions to the original period as long as the total time is less than 270 days. Once 270 days are exceeded, the IAEA personal representative must give a Notice of Proposed Action of such further extension (Cal. Prob. Code § 10538(c)). (See Section VII below for more information about the IAEA.)

Q 10. *Is there a required form that must be used for listing estate real property?*

A No. For sales under the IAEA any exclusive authorization and right to sell form is acceptable such as California Association of REALTORS® (C.A.R.) standard form listing contracts: RLA, RLAA and RLAN.

However, in the event court confirmation is required, C.A.R. Standard Form PL is appropriate, but it may also be used for probate sales under the IAEA.

III. Agency, TDS and Other Disclosure Laws

Q 11. *Is compliance with the agency disclosure laws required in the sale of estate real property?*

A Yes. If the estate real property consists of one to four residential units (including mobilehomes) and is to be the subject of a sale, exchange, land contract, or lease exceeding one year, compliance with the agency disclosure laws is required. (Cal. Civ. Code § 2079.13(j).)

Q 12. *Must the personal representative transferring estate real property complete a Real Estate Transfer Disclosure Statement (TDS) or provide other disclosures?*

A Sellers of estate real property (and mobilehomes) are exempt from the requirement of providing prospective buyers with a transfer disclosure statement (Cal. Civ. Code § 1102.2(b)). This does not, however, relieve the seller from disclosing any known material facts regarding the value or desirability of the property.

Furthermore, probate sales must still comply with other disclosure laws. For a complete list of required disclosures for probate residential one-to-four sales transactions, please refer to the following online chart: [Sales Disclosure Chart for REALTORS®](#).

Q 13. *Is a licensee required to conduct a visual inspection of residential estate real property that is offered for transfer?*

A Yes. A licensee involved in the transfer of residential one-to-four unit estate real property interests (including mobilehomes) is required to conduct a reasonably competent and diligent visual inspection of all accessible areas of the property and to disclose to prospective buyers all facts materially affecting the value or desirability of the property that the inspection reveals (Cal. Civ. Code § 2079(a)). Although not required by the statute, the disclosure should be made in writing.

IV. Real Estate Commissions

Q 14. *How is the listing broker's commission established?*

A The listing agreement usually specifies the amount of commission as a percentage of the sales price. The court will determine, in its discretion, what is a reasonable commission (Cal. Prob. Code §§ 10150(b), 10161(a)). However, the court may not approve an amount in excess of the maximum percentage established by local court rules. This amount can be determined by contacting the clerk of the probate court of the county in which the estate is being administered.

Local court rules do vary. For example: Los Angeles County Superior Court Rule 10.93 limits commission to 5% except in the case of vacant land; Orange County Superior Court Rule 606.06 limits commission to 6% unless justified by exceptional circumstances.

If a sale is confirmed by the court and subsequently closes, the listing broker has earned the commission specified in the listing contract, not to exceed the maximum percentage allowed by local court rules. The commission, also, may not exceed the amount provided for in the listing contract (Cal. Prob. Code § 10161(c)).

For Example : If the maximum under local rules is five percent and the broker's listing contract specifies four percent, the broker is limited to a four percent commission. Conversely, if the commission in the listing contract is six percent and the maximum under local rules is five percent, the listing broker's fee is limited to five percent.

Q 15. *When does an estate become liable for a commission to the listing broker?*

A The estate becomes liable for the listing broker's commission only after all three of the following have occurred:

- An actual sale is made;
- The sale is confirmed by the court unless the sale is conducted under IAEA; and
- The "sale is consummated."

(Cal. Prob. Code § 10160.)

Hence, brokers are never entitled to a commission in a probate sale until the estate receives the purchase price, the deed is transferred to the buyer and a mortgage or deed of trust is taken for payments due in the future (Cal. Prob. Code § 10160 (Law Revision Comm'n Comment)).

Q 16. *Can different brokers involved in the sale of estate real property determine how the commission will be divided between them?*

A Yes. The court must honor an agreement between brokers concerning the division of a commission (Cal. Prob. Code § 10168). However, the court has discretion to limit the total amount of commission paid by the estate.

Q 17. *Does such a commission split agreement between brokers have to be in writing?*

A No. Oral agreements between brokers concerning commission splits can be enforceable. However, mere verbal terms are often disputed and difficult to prove. A separate, written commission agreement between the brokers is highly recommended to avoid any misunderstanding.

Q 18. *Is an offer of compensation in the Multiple Listing Service (MLS) an enforceable "agreement" between brokers to split commissions?*

A Yes. An offer of compensation in a MLS normally creates an enforceable commission agreement between brokers, but only if the cooperating broker is a member of the same MLS (or an MLS with reciprocal privileges) and accepted the offer of compensation relying on the MLS listing. The listing broker may specify in the MLS that the offer of compensation goes only to the successful cooperating office. According to the California Model MLS Rules:

For estate sale or probate listings, the compensation offered through the service under these rules and this section shall be considered an agreement as referred to in California Probate Code Section 10165 and will therefore supersede any commission splits provided by statute when there is no agreement. This section contemplates that estate sale, probate and bankruptcy judges have broad discretion and therefore are not intended as a guarantee of a specific result as to commissions in every probate or bankruptcy sale.

The listing office may also specify the amount of compensation going to the first cooperating office (unconfirmed cooperating broker compensation-"ucb") if the accepted offer is overbid at the court confirmation hearing. (Cal. Model MLS Rule § 7.15.1.).

Q 19. *Can the court, at the confirmation hearing, alter a commission agreement between cooperating brokers?*

A If cooperating brokers have entered into a commission agreement, the law mandates that the court honor it (Cal. Prob. Code § 10168). If all brokers agree in court to the terms of a prior oral or written agreement to split a commission, there should be no reason for the court to alter it. An exception however could arise if commission agreement between the brokers exceeds local court rules limiting the commission amount as paid by the estate.

Q 20. *Is there a comprehensive summary of rules concerning how much commission a broker earns on the sale of estate real property?*

A Yes. The C.A.R. legal article titled [California Probate Code Commission Schedule](#) is a chart that specifies the amount of commission a broker is entitled to whether the property is exclusively or not exclusively listed, and when confirmed to the original bidder, or confirmed to an overbidder. The chart also specifies a broker's amount of commission in the event of a successful bid or overbid as obtained by the estate's personal representative.

Q 21. Can a real estate licensee receive a commission when buying estate real property as a principal?

A The Probate Code specifically provides that the estate is not liable for any commission where the listing broker or agent is directly or indirectly the purchaser of the estate property. In addition, the estate is not liable for commission when the selling broker or agent has "any interest in the purchaser" (e.g., financial interest in the purchaser) or is the purchaser. (Cal. Prob. Code § 10160.5). (See *Estate of Toy v. Coldwell Banker* (1977).)

Q 22. What is the broker's recourse when the court fails to award the broker a commission at the confirmation hearing?

A If the broker's commission is not ordered on the court record at the confirmation hearing, the broker may request it in writing and the court may modify the order to award a commission. If a licensee is present in court at the time of the hearing and fails to ask for a commission, or is not present in court and could have been, the court may choose not to modify the order. (Cal. Prob. Code §§10313(b); 10310(c).)

Q 23. What happens if the broker's commission is confirmed by the court but remains unpaid?

A If the estate fails to pay the broker a commission awarded by the court after the escrow has closed, the broker becomes a creditor of the estate. The broker may then institute proceedings to require payment. The court may at any time order an accounting by the personal representative of estate monies received and expended, including data on claims filed or presented to the estate.

It should be noted, however, that the commission is not earned until the sale is fully consummated. Thus, if the buyer defaults, no commission is payable and the broker is not entitled to file a claim against the estate.

Q 24. What happens if there is a dispute between brokers over the agreement to split commission?

A Generally the probate court will not interpret an agreement between cooperating brokers regarding the split of commission. If upon request the court does not specifically split the commission, the cooperating brokers should resolve their dispute through the Board/Association arbitration system like any other commission dispute.

V. Submission of Offers

Q 25. How should an offer be submitted on estate real property?

A Offers or bids on estate real property must be in writing. (See, for example, C.A.R. Standard Form PPA, Probate Purchase Agreement and Joint Escrow

Instructions.) Many other purchase contracts are not specifically tailored to probate sales, but may be used. However, the contract should indicate that:

- The title to be conveyed is whatever the estate holds;
- The sale is subject to court confirmation;
- If applicable, the property is sold "as is"; and
- The total commission will be in an amount set by the court and will be paid only from the sale proceeds, whatever sum may be allowed by the court.

Q 26. To whom should an offer be submitted?

A The offer received by the listing licensee should be submitted to the personal representative or anyone else listed in the Notice of Sale as the appropriate recipient. Many times the personal representative will designate the estate attorney as recipient of offers for initial review. (Cal. Prob. Code § 10307.)

Q 27. Who has the power to accept an offer concerning estate real property?

A The personal representative of the estate has the power to accept an offer. However, any acceptance is subject to court confirmation, unless the sale is made under the Independent Administration of Estates Act by a personal representation having full authority to administer the sale.

Q 28. When may offers be submitted on the sale of probate estate real property?

A Offers may be submitted at anytime. An offer received by the listing broker at any time before a sale closes must be presented to the personal representative, unless the personal representative has expressly instructed the broker not to present it, or unless the offer is patently frivolous. Whether the offer is patently frivolous depends on the facts and circumstances at the time of the offer. The licensee's safest course of action is to submit all offers of this type to the personal representative for his/her own determination.

Q 29. Will credit offers (subject to a loan) or other contingent offers on estate real property be confirmed by the court?

A Acceptance of a contingent offer is quite rare in probate sales. Acceptance of a credit offer is subject to court approval (Cal. Prob. Code § 10315). In addition, the court may also permit seller financing (by the estate) (Cal. Prob. Code § 10315). An offer with any contingency may be accepted by the personal representative, subject to court confirmation, which will usually require a demonstration of evidence that the property cannot be sold without the contingency. The personal representative may also consider accepting an offer with a contingency provided the prospective purchaser removes the contingency before the offer is submitted to court. Under IAEA full authority, no rules specifically prohibit a contingent sales contract.

Q 30. *Is there a minimum price for which estate real property must be sold?*

A Generally, yes. Without full authority under IAEA, the minimum offer price for a private sale of real property must be at least 90 percent of the appraised value of the property (Cal. Prob. Code § 10309(a)(3)). The appraisal must have been made within one year prior to the date of the confirmation hearing (Cal. Prob. Code § 10309(a)(2)).

Q 31. *Is there a minimum deposit required on the sale of estate real property?*

A Generally, yes. Except under IAEA full authority, all terms of a sale including the minimum required deposit are subject to court approval and local rules of court which vary from county to county. Many courts require a 10 percent deposit at the confirmation hearing in the form of cash, cashier's check, or a certified check.

Q 32. *How soon must the accepted offer be returned to the court for confirmation?*

A The personal representative is required to file a report of the sale and petition the court for confirmation of sale within 30 days after acceptance of the offer unless acting under IAEA full authority (Cal. Prob. Code § 10308). If the representative refuses or fails to do so within the 30 day period, the buyer may proceed to file the report and petition the court for confirmation of the sale. The buyer, of course, should consult a personal attorney if the buyer feels it is necessary to petition the court. (Cal. Prob. Code § 10308).

VI. Overbids

Q 33. *Is an original bid subject to an overbid at the confirmation hearing?*

A Yes unless the sale is under full authority of IAEA. Another prospective purchaser may attend the confirmation hearing and submit to the court a higher written offer, called an "overbid," to purchase the real property (Cal. Prob. Code § 10311).

Q 34. *Is there a minimum amount required for an overbid?*

A Yes. The initial overbid must exceed the original bid according to the following formula:

- The amount of the original bid, plus
- At least 10 percent of the first \$10,000.00 of the original bid; plus
- At least 5 percent of the amount of the original bid in excess of \$10,000.00.

If the original bid returned to the court for confirmation is for \$100,000.00, then the initial overbid must be for at least \$105,500.00 (10 percent of the first \$10,000.00 = \$1,000.00; plus five percent of the remaining balance of that bid of \$90,000 = \$4,500.00; \$1,000.00 + \$4,500.00 = \$5,500.00 which must be added to the original bid

of \$100,000. The resulting minimum overbid requires is \$105,500. (\$100,000 + \$5,500).

The minimum amount of increase required after the first overbid will be set by the court at the time of the confirmation hearing. The court will accept bids in much the same manner as an auction until the highest bid available has been made at the confirmation hearing.

If one prospective buyer bids a lesser cash amount and another prospective buyer bids a higher credit amount, the court cannot consider the higher offer unless the personal representative informs the court in person (or by counsel prior to confirmation of the sale) that the higher offer is acceptable (Cal. Prob. Code § 10311(d)).

VII. Independent Administration Of Estates Act (IAEA)

Q 35. *What is the Independent Administration of Estates Act?*

A The Independent Administration of Estates Act (IAEA) is a series of laws allowing the personal representative to administer most aspects of the decedent's estate without court supervision. The authority to administer the estate under the IAEA can be given by the decedent's will or by the court upon petition by the personal representative. It is generally done when the probate proceeding is initiated but can be done at any time during the proceedings. (California Probate Code §§ 10400 *et seq.*)

An estate cannot be administered under the IAEA if the decedent's will prohibits it (Cal. Prob. Code § 10450) or if an interested party provides court-approved good cause why it should not be administered under the IAEA (Cal. Prob. Code § 10454(d)). Also, an objecting interested person with good cause may convince the court to grant restrictions to the powers of the personal representative acting under IAEA. If the restriction is granted, the authority of the personal representative becomes "limited" rather than "full." (Cal. Prob. Code § 10454(e).)

Q 36. *Can the personal representative's authority under the IAEA be limited?*

A Yes. The court can grant the personal representative full or limited authority under the IAEA (Cal. Probate Code § 10454(a)). If the personal representative has limited authority, court supervision is required for the sale, exchange or granting of an option to purchase estate real property (Cal. Prob. Code § 10501(b)). If the personal representative has full authority, court supervision for the sale, exchange or granting of an option is only required if the personal representative or estate's attorney is the principal buying, exchanging with or optioning the estate property, or, if objections are made to the Notice of Proposed Action (Cal. Prob. Code § 10501(a)).

Q 37. *What is the difference between "limited" authority and "full" authority of a personal representative acting under the IAEA rules?*

A If the court grants only limited authority to the personal representative, he/she has the power to do all acts allowed under the IAEA rules except the power to: (1) sell real property, (2) exchange real property, (3) grant an option to purchase real property; or (4) borrow money with a loan secured by an encumbrance on real property (Cal. Prob. Code § 10501(b)). With limited authority, court supervision is required.

On the other hand, full authority granted under IAEA rules allows the personal representative to sell real property, exchange real property, grant an option to purchase real property, or borrow money with a loan secured by real property at his or her discretion (Cal. Prob. Code §§ 10511, 10514, 10515, 10517). However, neither authority may be granted if the decedent's will prohibits IAEA authority.

Q 38. Are the price and terms prescribed by law when estate real property is being sold under the IAEA?

A No. Under full authority to administer decedent's estate, a sale of estate real property may be made at the price and on the terms determined by the personal representative. The sale is not subject to court supervision or the overbid process. The law requiring the price of estate real property to be at least 90 percent of the appraised value does not apply to sales under the IAEA. However, the personal representative still has a fiduciary duty to the beneficiaries/heirs of the decedent to maximize the estate's assets. Additionally, the sale can be for cash or on credit. (Cal. Prob. Code § 10503.)

Q 39. Is the personal representative required to inform anyone of a possible sale of estate real property when it is being sold under the IAEA?

A Yes, the personal representative must give a "Notice of Proposed Action" when selling estate real property without court supervision (Cal. Prob. Code §§ 10510, 10511). The personal representative must inform the following persons and entities with an interest which may be affected by the proposed sale, unless they have waived in writing such notice or have provided written consent to the sale:

- Each person named in a will;
- Each known heir entitled by law to property of a decedent dying without a will;
- Other interested persons requesting notice, such as creditors or beneficiaries of a trust; and
- The Attorney General, if any portion of the property is to go to the State.

(Cal. Prob. Code § 10581.)

Q 40. How does the personal representative notify the above-named parties and what information must be included in the Notice of Proposed Action?

A The personal representative notifies the required parties, mentioned in the previous question, of the pending sale with a form called the "Notice of Proposed Action." This form describes the terms upon which the personal representative proposes to take

action on behalf of the estate, such as selling estate real property. The Notice of Proposed Action must include all of the following information:

- The name and mailing address of the personal representative;
- The name and telephone number of the person to contact for additional information;
- A reasonably specific description of the action to be taken, including a description of the property and the material terms of the sale, exchange or granting of an option to purchase property, including the price and amount or method of calculating any brokerage commissions; and
- The date on or after which the proposed action will occur.

(Cal. Prob. Code § 10585.)

Q 41. *How should the Notice of Proposed Action be given?*

A The Notice of Proposed Action must be mailed or personally delivered to all persons entitled to receive it at least 15 days before the date the proposed action is to take place. If mailed, the notice must be addressed to the interested person's last known address and sent first class mail. The personal representative or the estate's attorney will typically handle preparation and delivery of the Notice of Proposed Action to all appropriate parties. (Cal. Prob. Code § 10586.)

Q 42. *How can a recipient of the Notice of Proposed Action object to the sale?*

A Anyone entitled to receive the Notice of Proposed Action can object to it by delivering or mailing a written objection to the personal representative at the address in the notice. (Cal. Prob. Code § 10587(b)).

Alternatively, the objecting party may request from the probate court an order restraining the personal representative from taking the proposed action without court supervision. Here the court has broad powers in response to the objection of an interested party. The court must grant such a request even without the obligation of giving notice to the personal representative and without cause being shown for the order. Once a restraining order has been issued or the personal representative has received notice of written objections to the Notice of Proposed Action, court supervision is required in order to take any action pertaining to that property. (Cal. Prob. Code § 10589.)

Q 43. *Must the personal representative administer the estate under the IAEA if the representative has been granted the authority to do so by the court?*

A No. Even though the court has granted the personal representative the authority to administer the estate under the IAEA, the representative is not required to sell the property in this manner. The determining factor of whether a representative exercises the authority to sell the property under the IAEA is what is best for the estate, taking into consideration many factors including:

- The process of sale under the IAEA is usually quicker than a court supervised sale;
- There is no requirement of overbidding or court confirmation of the sale under IAEA;
- The personal representative can agree to any terms and contingencies deemed necessary to close the sale;
- The general economic and market forces; and that
- Overbidding in court often times increases the purchase price of the property and the proceeds to the estate;
- Which manner of sale likely produces maximum estate assets.

Q 44. How does a sale conducted under the IAEA affect a licensee's rights and duties?

A The personal representative has the power to grant an exclusive right to sell property for an original period not to exceed 90 days. Any extensions are also limited to a 90 day time period. (Cal.Prob. Code § 10538(a).)

However, when the combination of the original listing period and all extensions exceed 270 days, the personal representative shall provide a Notice of Proposed Action to all interested parties to the will. Further, a licensee is still required to comply with the agency disclosure laws and conduct a visual inspection of all accessible areas of the property and disclose what the inspection reveals. Additionally, under the IAEA, a broker and a personal representative can contract as to the amount due the broker as a commission without court approval. (Cal.Prob. Code § 10538(c).)

Q 45. Where can I obtain additional information?

A This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org.

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

CALIFORNIA ASSOCIATION OF REALTORS®
 Member Legal Services
 525 South Virgil Avenue
 Los Angeles, CA 90020

The information contained herein is believed accurate as of October 3, 2013. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Revised by Sanjay Wagle, Esq.

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