

Probate Real Estate Sales



Guest Speaker:
Justin Fautsch
Vimvi - Founder
Realtor®

(310) 779-5868

vimvi.com

Initial Review of the Property

- Walk-through
- Market Analysis
- Any work to be done on the property?

Vimvi has a contractors license!

- Discussions with the personal representative

Probate Property Listing Agreement

Minimum of Forms Needed:

- Disclosure Regarding Real Estate Agency Relationship (Form AD)
- Residential Listing Agreement (Exclusive Authorization and Right to Sell) (RLA)
- Probate Listing Addendum and Advisory (form PLA)
- Representative Capacity Signature Disclosure forms (Form RCSD-S (seller))

Listing Terms with Full Authority

Listing terms:

- Not longer than 90 days
- No automatic renewal after the 90-day period expires
- The sale is subject to court confirmation or is conducted under the IAEA and notice of proposed action is given; if notice of proposed action is given, court confirmation will be required if there are objections;
- Disclosure requirements of the Civil Code from which probate sales are exempt but that appear in the listing agreement are crossed out;
- The commission will not exceed the amount the court will allow; and
- The sale is "as is" with no warranties except a warranty of title.

Listing Terms with Limited Authority

Listing terms:

- Same terms as Full IAEA Authority, however...
- With limited authority, the personal representative must seek court approval before entering into a listing agreement for an exclusive listing agreement to sell real estate for no more than 90 days

Broker Commission

The Broker is entitled to a commission when:

- The sale is confirmed or approved by the court (if required); and
- The sale is consummated (no procuring cause)

The Broker is NOT entitled to a commission if:

- The agent or broker, directly or indirectly, is the purchaser of the property; or
- The agent or broker has any interest in the purchaser of the property

Broker Commission

County	Maximum Commission Improved Real Estate	Maximum Commission Unimproved Real Estate
San Bernardino County	6%	10%
Riverside County	N/A	N/A
Orange County	6%	N/A
Los Angeles County	5%	10%

Listing the Property in the MLS

MLS Listing:

- Disclose that the property is being sold through the probate process
- “All offers are subject to court confirmation and overbidding”
- Please submit offers on Probate Purchase Agreement and Joint Escrow Instructions (Form PPA)

Full Authority Under IAEA

The personal representative decides:

- To sell at either public auction or private sale;
 - Most properties are sold at a private sale
- Doesn't have to get permission from the other heirs to sell; and
- The price and terms of sale

Limited Authority Under IAEA

The personal representative is restricted to sell the real property:

- Must get court approval to sell the real estate
- The sales price cannot be less than 90% of the appraised value

Forms to Use in Sale of the Property

Forms

- Probate Purchase Agreement and Joint Escrow Instructions (Form PPA)
- Probate Advisory for Probate, Conservatorship and Guardianship Properties (Form PA)
- Purchase Agreement Probate Addendum (Form PAPA, 6/19)
- Court Confirmation Addendum (Form CCA)

Required Disclosures for Probate Property

- Common Law Disclosures: the Seller must disclose known material facts that affect the value or desirability of the property
 - Someone Died in the House Within 3 Years (do not disclose how if the cause of death was AIDS)
- Hazard Zones
- Water heaters anchored, braced or strapped
- Lead-based paint disclosure (constructed prior to 1978)
- Carbon Monoxide Devices installed and disclosed
- Sex offender database disclosure
- Broker is still required to walk-through and disclose

Disclosures NOT Required

- Real Estate Transfer Disclosure Statement (Form TDS)
- Natural Hazard Disclosure Statement (Form NHD) (although the form is not required, the Seller is still obligated to disclose earthquake fault zones, seismic hazard zones, state fire responsibility areas, very high fire hazard severity zones, special flood hazard areas and flood hazard zones pursuant to the Public Resources Code, Government Code and United States Code)
- Mello-Roos district lien disclosure
- Providing either a Homeowner's or Commercial Property Owner's Guide to Earthquake Safety
- Operable smoke detectors to be in place and a written statement of compliance to the buyer

Disclosures Best Practices

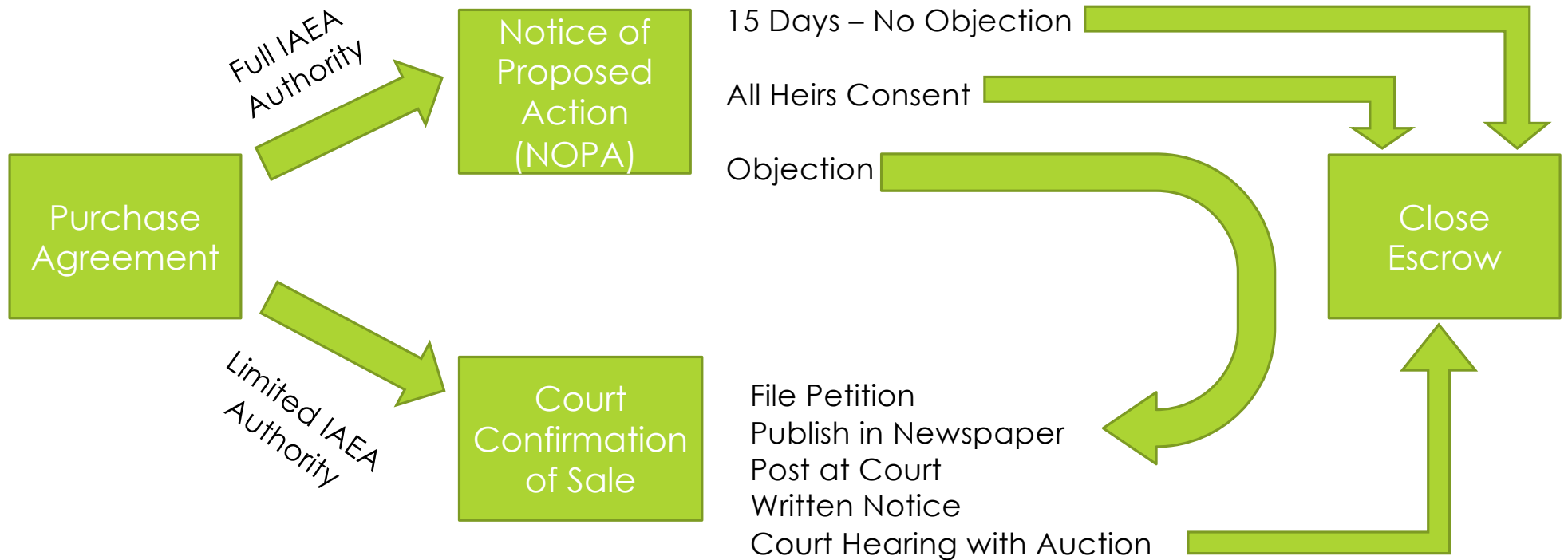
Even though there are some statutory disclosures that are not required, that does not excuse a personal representative of an estate from:

Disclosure of any material facts that would affect either the:

- desirability (whether someone would want to buy it) or
- value of the property (what someone would pay for the property)

When in doubt, disclose

Notice of Proposed Action (NOPA)



Notice of Proposed Action

- Attorney prepares NOPA
 - 15 Day Waiting Period
 - Can be shortened if everyone consents
- Letter to Escrow
 - Certified copy of Letters
 - Probate Order (sometimes certified, sometimes not)
 - Federal estate tax return not required
 - 15 days has expired, or everyone consents to the sale

Court Confirmation of Sale

- Court confirmation of sale
- Publish in Newspaper
- Post in Court
- Property must be appraised within 1 year of the sale
- Cannot sell for less than 90% of appraised value (unless there is a good reason)
- Buyer must put down 10% deposit (unless there is a good reason)
- Auction in Court

Court Hearing on Confirmation of Sale

Auction in Open Court

- Before the hearing, bidders must qualify with the personal representative's attorney
 - Identity of the bidder
 - Verify cashier's check of at least 10% of purchase price
 - Verify maximum amount qualified to bid
 - Generally, cash bids only (no financing contingency)
 - Successful bid must be in writing
- If no bid is made, the court confirms the sale to the original buyer and fixes the broker's commission

Auction Overbids

First Overbid Amount (105% + \$500)

10% of the first \$10,000

+ 5% of the balance

Reasonable increments thereafter (\$5,000 or \$10,000 increments)

EXAMPLE:

\$200,000 purchase price

10% of the first \$10,000 = \$1,000

5% of the balance = \$9,500

FIRST OVERBID \$10,500

Personal Representative Buys the Property

Court Approval Required (Probate Code §§ 9880, et seq.):

1. Written consent to the purchase by each known heir or devisee whose interest in the estate would be affected by the purchase, and
2. The purchase is shown to be to the advantage of the estate.

OR

The will authorizes for the personal representative to purchase the property

Any Questions?



Guest Speaker:
Justin Fautsch
Vimvi - Founder
Realtor®

(310)779-5868
vimvi.com