

TO FIX-AND-SELL OR NOT TO FIX-AND-SELL...That is the Question



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TODAY'S DISCUSSION - Assessing The Risk

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- We will review the financial and legal analysis of issues to be considered when deciding if your Client should renovate a property in preparation of a sale.
- We will discuss the circumstances which led Private Professional Fiduciaries, David & Susan Katra, to surrender their licenses.
- We will “do the math” to determine factors to consider in projecting a potential gain/profit in a renovation.
- We will discuss HOW the improvements may change your Client’s Duty-to-Disclose as an Exempt Seller?
- We will review when your Client is “Off the Hook” to the Buyers.

Today's Discussion

3

COULD YOUR
CLIENT



SHOULD YOUR
CLIENT



HOW TO



To Fix-and-Sell or Not To Fix-and-Sell

...that is the question!

4



The Simple Equation...What Could Go Wrong?

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Market Value (DOD, Appointment)	\$500,000
Plus: Cost of Improvements	+\$100,000
TOTAL: Prior Market Value & Improvements	\$600,000
Increased Market Value w/Improvements	\$700,000
MINUS: Prior Market Value & Improvements	-\$600,000
GAIN/PROFIT	\$100,000

Help your Client Avoid the Temptation to Be Prince Charming Riding In To Save The Estate

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COULD YOUR CLIENT?

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What Type of Estate?... Ready for Sale? Investing? Speculating?

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When does work other than painting, etc. turn from “readying a property for sale” to “flipping” or investing????

- Conservatorship
- Probate
- Trust



Cardinal Rule...READ YOUR DOCUMENTS

Powers and Duties Differ Depending on Documents

Powers and Duties Differ Depending on Role

10

A personal representative is not a trustee, and a personal representative's powers and duties differ from those of a trustee. A representative's duty is to preserve the estate's assets and to close the estate and distribute the assets as soon as is practicable. *Estate of Beach* (1975) 15 C3d 623, 641.

In contrast, a trustee must invest and diversify trust assets and is subject to the prudent investor rule under the Uniform Prudent Investor Act (Prob C §§16045–16054).

PERSONAL REPRESENTATIVE

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Duty to Preserve

The personal representative's primary duty is to take all reasonably necessary steps for the management, protection, and preservation of the estate in his or her possession. [Prob C §9650\(b\)](#).

The duty is to preserve the estate until distribution, **not to expand or increase the value of estate assets**, except as provided in [Prob C §9652](#) (duty to keep all cash invested in insured interest-bearing accounts, except the amount reasonably necessary for orderly estate administration, or as otherwise provided in the will).

Personal Representative may be surcharged for unreasonable delay in distributing estate but is not liable for damages for failure to invest. [Estate of Kampen \(2011\) 201 CA4th 971](#)

DECEDENT'S ESTATE

PC §10533-Investment Powers

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- (1) Deposit money belonging to the estate in an insured account in a financial institution in this state.
- (2) Invest money of the estate in any one or more of the following:
 - (A) Direct obligations of the United States, or of the State of California, maturing not later than one year from the date of making the investment.
 - (B) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.
 - (C) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.
 - (D) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.
- (3) Invest money of the estate in any manner provided by the will.
 - (b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

DECEDENT'S ESTATE - Preserve & Distribute

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CONSERVATORSHIP ESTATE - PC §2591(h)

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(h) The power to alter, improve, raze, replace, and rebuild property of the estate.

*Requires Court granting specific independent powers under Probate Code. These powers would be found in your Letters and Order.



Court Approval - Conservatorships

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- Duty to “maintain” Conservatee’s home or rental does NOT require Court Approval (PC §2457)
- Improvements or Alterations require Court Approval (PC §2591). Care should be taken not only to acquire the “power,” but to approve and proposed improvement, including costs, etc.
- With rare exceptions the Court requires sales to be confirmed by the Court with overbid. Conservator is provided protection from claims that property should have been “improved” prior to sale.

TRUST ESTATE - PC§16000

Duty to Administer Trust According to Its Terms

16

“On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, **except** to the extent the trust instrument provides otherwise, according to this division.”

What is your duty: 1) duty to distribute (similar to Personal Representative; or 2) duty to manage...Trustor still living...managing for beneficiaries for years.

TRUST ESTATE - PC §16080

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“Except as provided in Section 16081, a discretionary power conferred upon a trustee is not left to the trustee’s arbitrary discretion, but shall be exercised reasonably.”

TRUST ESTATE - PC §16081(a)

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(a) Subject to the additional requirements of subdivisions (b), (c), and (d), if a trust instrument confers “absolute,” “sole,” or “uncontrolled” discretion on a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.

Trustee - Uniform Prudent Investor Act

PC §16045-§16054

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This article, together with subdivision (a) of Section 16002 and Section 16003, constitutes the prudent investor rule and may be cited as the Uniform Prudent Investor Act.

16046.

(a) Except as provided in subdivision (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(b) The settlor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

Trustee - Uniform Prudent Investor Act

PC §16045-§16054

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16047.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that are appropriate to consider in **investing** and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

- (1) General economic conditions.
- (2) The possible effect of inflation or deflation.
- (3) The expected tax consequences of investment decisions or strategies.
- (4) The role that each investment or course of action plays within the overall trust portfolio.
- (5) The expected total return from income and the appreciation of capital.
- (6) Other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries.
- (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

Trustee - Uniform Prudent Investor Act

PC §16045-§16054

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(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of this chapter.

16048.

In making and implementing investment decisions, the trustee has a **duty to diversify** the investments of the trust unless, under the circumstances, it is prudent not to do so.

16049.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

16050.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, overall investment strategy, purposes, and other circumstances of the trust.

Trust - Uniform Prudent Investor Act

PC §16045-§16054

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16053

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: “investments permissible by law for investment of trust funds,” “legal investments,” “authorized investments,” “using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital,” “prudent man rule,” “prudent trustee rule,” “prudent person rule,” and “prudent investor rule.”

16054

This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

Prudence - Black's Law Dictionary

23

Carefulness, precaution, attentiveness, and good judgment as applied to action or conduct. That degree of care required by the exigencies or circumstances under which it is to be exercised. *Crouk v. Railway Co.*, 3 S. D. 93, 52 N. W. 420. This term, in the language of the law, is commonly associated with “care” and “diligence” and contrasted with “negligence.” See those titles. *Prudenter agit qui prsecepto legis obtemperat.* 5 Coke, 49. He acts prudently who obeys the command of the law.

SHOULD YOUR CLIENT?

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Take Care Not To...

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Katra Accusation Case No. PF-2012-23

26

- Susan & David Katra, License #114 & #115
- Katras were serving as Co-Conservators
- Katras took on renovations of conservatorship real property

1 FACTUAL SUMMARY

2 10. On or about May 26, 2010, Respondents David and Susan Katra were appointed to
3 be temporary conservators for P.S.¹ Respondents² were appointed as general conservators for
4 P.S. on or about July 27, 2010. Respondents served as conservators for P.S. until on or about
5 November 30, 2011, at which time they were replaced by a new conservator. Respondents failed
6 to act appropriately as conservators for P.S. The circumstances are as follows:

7 Construction/Remodel Issues:

8 11. During the term of their appointment, Respondents undertook to renovate a house
9 owned by P.S. The house (hereinafter "the Blom property") was located on Blom Drive in San
10 Jose, California. The Katras committed the following acts of misconduct with regard to the Blom
11 property:

- 12 a. Rather than hire a licensed contractor to undertake this large and complex
13 renovation, Respondent David Katra acted as a general contractor on the job. David Katra
14 was not and is not a licensed contractor, and he lacked the knowledge and skill to act as a
15 general contractor. His actions in acting as a general contractor constituted unlawful
16 unlicensed contracting pursuant to Code section 7028(a).
- 17 b. Respondents engaged unlicensed contractors to work on the Blom property.
- 18 c. Respondents failed to obtain and maintain workers' compensation coverage for the
19 unlicensed individuals that Respondents hired to work on the project.
- 20 d. Respondents failed to obtain necessary permits for the renovations to the Blom
21 property. When questioned by the Probate Court Investigator about permits, David Katra
22 stated, untruthfully, that permits were not required for the renovation.
- 23 e. Much of the work performed in the renovation of the Blom property was of poor
24 quality and failed to comport with trade standards for workmanship. The successor
25 conservator was required to correct these defects, thereby incurring additional costs and

26 ¹ P.S.'s name is withheld in order to maintain P.S.'s privacy.

27 ² All acts alleged to have been committed by either of the respondents shall be considered
28 to have been committed or allowed by both of them.

1 delaying the disposition of the property.

2 Tucson Property:

3 12. During the term of their appointment, Respondents were responsible for another of
4 P.S.'s properties, located on Tucson Avenue in San Jose, California. Respondents failed to
5 exercise proper control over, and failed to accurately report their actions regarding, the Tucson
6 property, as follows:

7 a. Respondents failed to adequately enter and inspect the property in order to
8 ascertain whether the property was compliant with safety regulations.

9 b. Respondent allowed P.S.'s son to collect \$1,800.00 per month in rents from the
10 tenants at the Tucson property. Over a 14-month period, each month P.S.'s son collected
11 the rent, paid the mortgage out of the proceeds, and kept the remainder for himself. In
12 their reports and other documents filed with the Court, Respondents failed to disclose the
13 existence of this rental income and failed to disclose the fact that the money was not going
14 into P.S.'s estate.

15 c. In their reports and other documents filed with the Court, Respondents falsely
16 represented that they paid the mortgage for the Tucson property over a 14-month period.

17 False Statements:

18 13. On or about September, 2011 and October, 2011, Respondents submitted petitions
19 to the Court for approval of fees. The petitions contained false statements, as set forth
20 hereinabove. In addition, the petitions contained false assertions that David Katra had engaged in
21 meetings with contractors.

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23 ///

24 FIRST CAUSE FOR DISCIPLINE

25 (Gross Negligence/Incompetence/Willful Violation of Duty)

26 14. Respondents are subject to disciplinary action pursuant to Code section 6580(a)
27 and 6584(d) in that Respondents acted with gross negligence, incompetence and/or in willful
28 violation of duty, as set forth above in paragraphs 10-13.

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SECOND CAUSE FOR DISCIPLINE

(Fraud, Dishonesty)

15. Respondents are subject to disciplinary action pursuant to Code section 6580(a) and 6584(d) in that Respondents committed acts of fraud and/or dishonesty, as set forth above in paragraphs 10-13.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Professional Standards)

16. Respondents are subject to disciplinary action pursuant to Code section 6580(a) and 6584, subsections (d) and (h), and pursuant to California Code of Regulations, title 16, section 4470 and 4482, in that Respondents failed to comply with professional standards substantially related to the duties of a professional fiduciary, as set forth above in paragraphs 10-13.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

17. Respondents are subject to disciplinary action pursuant to Code section 6580(a) and 6584(d) in that Respondents committed acts of unprofessional conduct, as set forth above in paragraphs 10-13.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Professional Fiduciaries Bureau issue a decision:

- 1. Revoking or suspending Professional Fiduciary License Number PF 115, issued to David J. Katra;
- 2. Revoking or suspending Professional Fiduciary License Number PF 114, issued to Susan Elaine Katra;
- 3. Ordering Respondents to pay the Professional Fiduciaries Bureau the reasonable costs of the investigation and enforcement of this case; and,

Katra was NOT Considered an Owner/Builder

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California Business & Professions Code §7044 – Owner/Builders do NOT need to hire General Contractors

What is an Owner-Builder? (Contractors State License Board)

- An owner-builder is what the term indicates: a person owns the property and acts as their own general contractor on the job, and either does the work themselves or has employees (or subcontractors) working on the project.
- The work site must be their principal place or residence that they have occupied for 12 months prior to completion of the work.

(The code exempts an “Owner/Builder” from §7028(a). What are the implications if a Conservator is NOT an “Owner.”)

Additional Accusations

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- **Engaged unlicensed contractors**
 - Check online: <https://www.cslb.ca.gov/OnlineServices/CheckLicenseII/CheckLicense.aspx>
- **Failed to obtain & maintain worker's compensation. Check CSLB website for:**
 - License Classification (general, electrical, plumbing, etc).
 - Contractor's Bond
 - Worker's CompensationAsk for General Liability.
- **Failed to obtain necessary permits**
- **Renovations poor quality and workmanship**

Additional Accusations - Failure to Obtain Permits (not to mention proper insurance!)

32



Reroofing

Does your Client need a permit?



Water Heater

Does your Client need a permit?



Smoke Detector

Does your Client need a permit?

Additional Accusations - Poor Workmanship

33



- Do you know what you don't know and what you can't see?
 - Did the project require Title 24 Calculations (Energy Efficiency Standards)?
 - Did the island have the minimum electrical?
 - Did the hood have the appropriate ventilation/wiring
 - Is the lighting up to mandatory standards?
 - Is the insulation the proper type?
 - Are the new electrical loads overloading your old electrical panel?
 - Are the outlets near the sink GFCI?

By Taking on the Renovation Has your Client Compromised Their Exempt Seller Status?

34

Under California law (*Civil Code* §1102.2) certain Sellers of one-to-four unit residential properties are exempt from providing the Buyer with a Transfer Disclosure Statement (TDS). Exempt Sellers include:

- (d) Sales or transfers by a fiduciary in the course of the administration of a trust, guardianship, conservatorship, or decedent's estate. This exemption shall not apply to a sale if the trustee is a natural person who is a trustee of a revocable trust and he or she is a former owner of the property or was an occupant in possession of the property within the preceding year.

Exempt Sellers have to provide an Exempt Seller Disclosure (see ESD attached). Question 4.J. on the ESD requires Exempt Seller to disclose "Material facts or defects affecting the Property not otherwise disclosed to Buyer."

A word of caution from the Contractors State License Board

35

Anyone who talks your Client into being your own general contractor, or “owner/builder,” will be doing them no favor.

“Owner/builder” describes a situation in which the homeowner becomes the general contractor. As an owner/builder, your Client (not the person they hire) assumes responsibility for the overall job.

Your Client’s responsibilities may include such things as state and federal taxes, workers’ compensation insurance, and other legal liabilities. Your Client may be required to hire various subcontractors for the project, scheduling work and supervising the job. If a worker is injured while working on the property, your Client could be asked to pay for injuries and rehabilitation through the homeowner’s insurance policy.

By signing a building permit application as an owner/builder, your Client assume full responsibility for all phases of your project and its integrity. Hiring an unlicensed “consultant” to manage the project does not save the estate money in the long run. By hiring a licensed experienced contractor, it is the contractor’s responsibility to hire licensed knowledgeable tradespersons. The general contractor becomes responsible for all phases of construction.

Unless your Client is very experienced in construction, it is best to leave these matters to a licensed contractor.

Owner-Builder Declaration - (Seaside Example)

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Seaside remodel, Owner must **declare UNDER PENALTY OF PERJURY** (2000 plus word declaration)

- They have tested the materials that will be disturbed,
- **Contact** the Monterey Bay Unified Air Pollution Control District to determine if Federal Asbestos NESHAP, is required
- **Contact** MBARD, Monterey Bay Air Resources District
- **Attach the written notification** to MBUAPC re: the NESHAP regulation
- **OR** declare property is not subject to Federal Asbestos regulations
- **Hold harmless and Indemnify** the City Officials, Officers, Directors, employees, agents and volunteers (Covered Parties), against any and all loss, liability, expense, claims, cost, proceedings, suits, demands, of every kind and nature, directly or indirectly, including without limitation for injury or death, to anyone or for any real or personal property damage, resulting from or related to any usage, operation, or activity related to this permit. And on, and on, and on ...
- Use their own employees, Pay workers comp, Other requirements like proper insurance
- This is BEFORE a building permit is issued. A demolition Permit is issued first...

Is an owner-builder required to have a license?

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- An owner-builder is exempt from licensure, but there are limitations.
- A license is not required if:
 - The owner-builder does the work himself or herself or through his or her own employees with wages as their sole compensation and the structure(s) is/are not intended for sale.
 - The owner-builder contracts with properly licensed subcontractor(s). (This exemption applies to the construction of a single-family residential structure and limits the number of structures intended or offered for sale to four or fewer in a calendar year.)
 - The owner-builder contracts with a General Building ("B") contractor. (The number of structures is then unlimited.)

I am Not Like Katra...I Will Hire a General Contractor

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Market Value (DOD, Appointment)	\$500,000
Plus: Cost of Improvements	\$100,000
TOTAL: Prior Market Value & Improvements	\$600,000
Increased Market Value w/Improvements	\$700,000
MINUS: Prior Market Value & Improvements	\$-600,000
GAIN/PROFIT	\$100,000

Projected Gains - \$

39



GAIN \$335,835

Proven Fix & Sell Strategy

1% Trustee Fee = \$3,358 for Client's work & effort



GAIN \$102,735

Proven Fix & Sell Strategy

1% Trustee Fee = \$1,027 for Client's work & effort



GAIN \$72,475

Proven Fix & Sell Strategy

1% Trustee Fee = \$750 for Client's work & effort

If charging hourly you should deduct your Client's time and your time in Fix & Sell Strategy from Gain/Profit (visiting job site, reviewing contracts, NOPA's, paying and reviewing contractor's invoices).

Analyze the Risk

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Simple Equation

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“Other Realtors’ ‘As Is’ Price”	\$1,350,000	\$440,000
Plus: Cost of Improvements	+\$114,165	\$87,265
TOTAL: Prior Market Value & Improvements	\$1,464,165	\$527,265
Sales Price	\$1,800,000	\$630,000
	-\$1,464,165	-\$527,265
Profit/Gain	\$335,835	\$102,735

Still a Simple Equation??????

42

Profit/Gain	\$335,835	\$102,735
55 Trustee Hours @ \$200	-\$11,000	-\$11,000
20 Attorney Hours @ \$400	-\$8,000	-\$8,000
Add'l Real Estate Commission	-\$16,792	-\$5,137
Insurance (discussed later)	-\$5,037	-\$1,541
Sub-Total	\$295,006	\$77,057
State & Fed Capital Gains Tax @ 33=%	-\$97,352	-\$25,429
Profit/Gain	\$197,054	\$51,528

Beware of Pandora's Box

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Duty to Disclose Known Facts

44



MOLD

Pull out the cabinets to install new ones and uncover mold.



ASBESTOS / LEAD

Upgrade kitchen with new GFI, HOOD, HVAC and discover asbestos in the attic which must not be disturbed.

Specific federal and state mandates for abatement, remediation and encapsulation.



ELECTRICAL

Upgrade bathroom and install new outlets, in doing so it is discovered that an upgrade is needed to update the system.

Oops...I Did Not See That Coming!!! Construction Overruns

45

Profit/Gain	\$335,835	\$102,735
55 Trustee Hours @ \$200	-\$11,000	-\$11,000
20 Attorney Hours @ \$400	-\$8,000	-\$8,000
Add'l Real Estate Commission	-\$16,792	-\$5,137
Insurance (discussed later)	-\$5,037	-\$1,541
15% Construction Overruns**	-\$17,125	-13,090
Sub-Total	\$277,881	\$63,867
State & Fed Capital Gains Tax @ 33=%	-\$91,701	-\$21,076
Profit/Gain	\$186,180	\$42,791

A Sale at 90% of List Price

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“Other Realtors’ ‘As Is’ Price”	\$1,350,000	\$440,000
Plus: Cost of Improvements	+\$114,165	\$87,265
TOTAL: Prior Market Value & Improvements	\$1,464,165	\$527,265
Sales Price	\$1,620,000	\$567,000
	-\$1,464,165	-\$527,265
Profit/Gain	\$155,835	\$39,735

Oops...I Did Not See That Coming!!!! Construction Overruns @ 90% of List Price

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Profit/Gain	\$155,835	\$39,735
55 Trustee Hours @ \$200	-\$11,000	-\$11,000
20 Attorney Hours @ \$400	-\$8,000	-\$8,000
Add'l Real Estate Commission	-\$13,500	-\$3,150
Insurance (discussed later)	-\$5,037	-\$1,541
15% Construction Overruns**	-\$17,125	-13,090
Sub-Total	\$101,173	\$2,954
State & Fed Capital Gains Tax @ 33=%	-\$33,387	-\$975
Profit/Gain	\$67,786	\$1,979

What the Beneficiaries Might Argue

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- The Market Value at DOD or Date of Appointment was \$1,700,000
- You charged additional fees to improve the property to line his/her pockets
- You stalled the beneficiaries' distribution, causing them harm
- Your Contractor charged too much, they could have had the work done for less.

NOTE: It is difficult to establish Market Value when the property was not placed on the market at DOD or Date of Appointment

HOW TO

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HOW TO

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- Establish Market Price (pre & post renovation)
- Obtain bids from multiple Contractors
- Vet the Contractors
- Address Insurance for renovation

Establish The Most Probable Price

51

In order to demonstrate a profit,
you must be able to prove the initial Market Value prior to improvements.

Probate Code Does NOT Define Market Value

52

In order to establish a profit, your Client must be able to prove Market Value PRIOR to undertaking the renovations.

Market value...is the highest price estimated in terms of money which the land would bring if exposed for sale in the open market, with a reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted for which it was adapted and for which it is capable.

(Sacramento Southern Railroad v. Heilbron (1909) 156 Cal. 408)

Civil Code §1263.320

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(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Select Contractors

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Vet Contractors

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- Engage licensed contractors
 - Check online:
<https://www.cslb.ca.gov/OnlineServices/CheckLicense/CheckLicense.aspx>
- Get the right contractor for the right job:
 - License Classification (general, electrical, plumbing, etc).
 - Contractor's Bond
 - Worker's Compensation
 - General Liability.

Obtain Bids from the Same Scope of Work

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Monitor Contractors/Contracts

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- Reduce potential of Change Orders
- Have Client Visit the jobsite
- Ensure necessary permits are obtained
- Pay upon lien releases and presentation of permits

Insurance

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Different Insurance for Different Risks

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- Have Client add themselves/estate to Contractor's General Liability as "additional insured"
- Purchase Owner's Control Insurance Policy (protects against construction costs up to contract amount)
- Purchase Errors & Omissions Insurance (may protect against additional construction defect damages)

Owner Control Insurance Policy (OCIP)

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OCIP policy is a type of Builder's Risk insurance class. The Owner Controlled Insurance Program (OCIP) is an insurance policy held by a property owner (title/deed) during the construction or renovation of a property, which is used to cover property losses from the construction project(s) and liability coverage can be built into the policy. Any fiduciary entities involved can be endorsed as additional insured/interest.

Depending on how the OCIP policy is written, 'claim' or 'occurrence.' Most OCIPs are written under claim, which covers incidents that occur and are reported within the policy's time frame unless a 'tail' extension is purchased as added endorsement on the OCIP, which our Agency carrier offers to 10 years extended products-completed operations Hazard Endorsement.

Overall, the estimated cost of comprehensive **OCIP insurance** is around 1-2% of the total cost of renovation/construction, 2-year term.

Trustee E&O Insurance

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Trustee E&O insurance, aka Professional Liability may cover. The average cost of **Trustee E&O insurance** is based on the total asset value and type, which is around 0.5-1% per 1-year term policy.

When Is Your Client Off the Hook?

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Liability to Buyers

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CONSTRUCTION DEFECT CAUSES OF ACTIONS

- Breach of Contract
- Negligence
- Strict Liability
- Fraud
- Breach of Implied Warranty
- Nuisance

Statutes of Limitation & Statutes of Repose

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Drywall Companies Continue To Remediate Homes Affected By Defective Product
NEW ORLEANS — News in the Chinese drywall litigation provided a progress update on Aug. 22 regarding a program to remediate homes in Alabama, Mississippi, Louisiana and Florida affected by defective drywall. SEE PAGE 4.

South Carolina Panel Cuts Punitive Damages To Property Owners For Flood Damage
COLUMBIA, S.C. — The South Carolina Court of Appeals on Aug. 17 reduced punitive damages awarded to the plaintiffs in a flooding damage action resulting from a construction project, finding the award to be excessive. SEE PAGE 5.

Missouri High Court Reverses Ruling On Destruction Of Water Damage Evidence
ST. LOUIS, Mo. — The Missouri Supreme Court on Aug. 3 overturned a summary judgment for the defendant in an action involving a water-damaged property, concluding that the trial court erred by ruling that spoliation of evidence excused from the plaintiff's attempt to make repairs to his home. SEE PAGE 6.

Louisiana Appeals Panel: Water Damage To New Home Covered Under Warranty
BATON ROUGE, La. — The First Circuit Louisiana Court of Appeal on Aug. 10 upheld a \$97,014 award to homeowners who claim that defects in their newly built home resulted in serious water damage to the property, disagreeing with the trial court's ruling that the home was excluded from the warranty. SEE PAGE 7.

Texas Appeals Panel Overturns Dismissal Of Construction Defects Case
DALLAS — A Texas appeals panel on Aug. 16 reversed a construction defects case involving a pair of building subcontractors, concluding that the trial court erred by ordering the plaintiff to remove the defective slab(s) before it could appear in court. SEE PAGE 8.

Alabama Appeals Court: Subcontractor Is Owed Money For Pouring Concrete Floor
MONTGOMERY —

BREACH OF CONTRACT

- 2 years on oral contract
- 4 years on written contract

PATENT DEFECTS

- 4 years from substantial completion
- CCP §337.1

LATENT DEFECTS

- 10 years from substantial completion
- CCP §337.15

Estate has likely been distributed by the time a lawsuit has been filed. Your Client will likely need to pay out-of-pocket for any reward/cost of defense. This potential liability can exceed **10 years** after the completed renovation and sale.

FIDUCIARY MAY BE LIABLE OVER 10 YEARS AFTER SALE OF THE RESIDENCE!

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Give Careful Consideration to Options

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PROS

- Net gain to the estate if things go as projected
- Happy beneficiaries

CONS

- Exposure if vendors uninsured
- Potential loss to the estate if there are construction extras, lower sales price realized, increased fees
- Takes longer than anticipated
- Contractor took 'short cuts'
- Mechanics Liens
- Unhappy beneficiaries
- Liability long after distribution of estate

Companies that Provide Services

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REVIVE



CURBIO



COULD vs. SHOULD

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Thank You Very Much For Your Time!

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