



Puzzled by Probate? A Two-Part Special

PART II - Commission Considerations

*Christal Park Keegan, NVR Legal Information Line Attorney
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Welcome back to Part II, the finale of the *Two-Part Probate Series*. The goal in Part II is to provide information on commissions in the probate arena so our members can manage fees for services competently.

#1 - When establishing commission rates in the listing agreement, the most important thing agents must know is that the **commission amount is fixed and allowed by the court**. The law has established ceilings to commission rates in real property sold through probate: cap of 10% for unimproved property and 7% for improved property (NRS 148.110(3)).

#2 - It's important agents and their clients understand that at the public hearing component of the probate process, other persons may bid against an existing purchase agreement. What does that mean? It means **the court may confirm a higher bid and set aside the original purchase contract**. This particularly has come as a surprise to buyer's agents calling into the Legal Information Line. Let's take a side trip here to discuss:

If the listing agent, on behalf of the rightful personal representative, enters into a purchase agreement with a buyer (let's call this buyer's agent the 'agent who procured the offer'),

***but** during the bidding process is outbid by another buyer for whom the court confirms the sale with (let's call this buyer's agent the 'agent who procured the purchaser'),*

***then** the commission will be split between the two buyers' agents (50% to the agent who procured the offer and 50% to the agent who procured the purchaser), unless otherwise directed by the court. NRS 148.120.*



#3 - It's important to **provide notice to buyer's agents that the offer and commissions are subject to court confirmation.** A cursory search on the internet for examples of agent remarks on various real estate marketing platforms demonstrates some agents are already doing this!

“Offers subject to court approval and possible overbid at the court hearing.”

Check out the Nevada Real Estate Division's Law and Reference Guide, specifically refer to Chapter III. Nevada Law on Brokerage Agreements, D. Specialized Brokerage Agreements, 3. Brokerage Agreements in Probate and Guardianship, for even more information: [lawguide2014.pdf \(nv.gov\)](#)

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