

CALIFORNIA AGENT PLAYBOOK

The Probate Referee and the **90% Rule**

One referee is assigned to every California probate estate. In a limited authority case, their number decides whether the judge can confirm your sale. Here is how it gets set, and how to influence it before it is filed.

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What a referee is, and why their number binds you

California appears to be the only state that uses probate referees. They were inheritance tax appraisers until 1982, when the state inheritance tax was abolished and the office was renamed. They are appointed by the State Controller, not hired by the estate.

116

Referees statewide. At least one per county under Prob. Code 400. Orange has 8, LA around 30.

0.1%

Statutory commission on value appraised (8961). Floor \$75, ceiling \$10,000 (8963). An \$800K house pays \$800.

95%

Share of cases arriving at Gibbs' office with no mention of the property's date of death condition.

The valuation is a snapshot, not a current opinion

Every non-cash asset is valued **as of the date of death**. Not today. In a flat or softening market that snapshot can sit above present value, and the gap eats your cushion before an offer exists.

The inspection is a drive by

The referee is required to visit the property and keep photos and notes on file, because the State Controller audits a random sample before reappointment. They do not go inside. The interior is assumed to match the exterior. Your job is to remove that assumption.

Two mechanics worth knowing. Referees use comps six months back or further, and unlike a lending appraiser they may use comps dated *after* the valuation date. And "appraisal" is loose here: many referees are not appraisers, since the qualification routes also include attorney or CPA.

THE TIMING CONSTRAINT

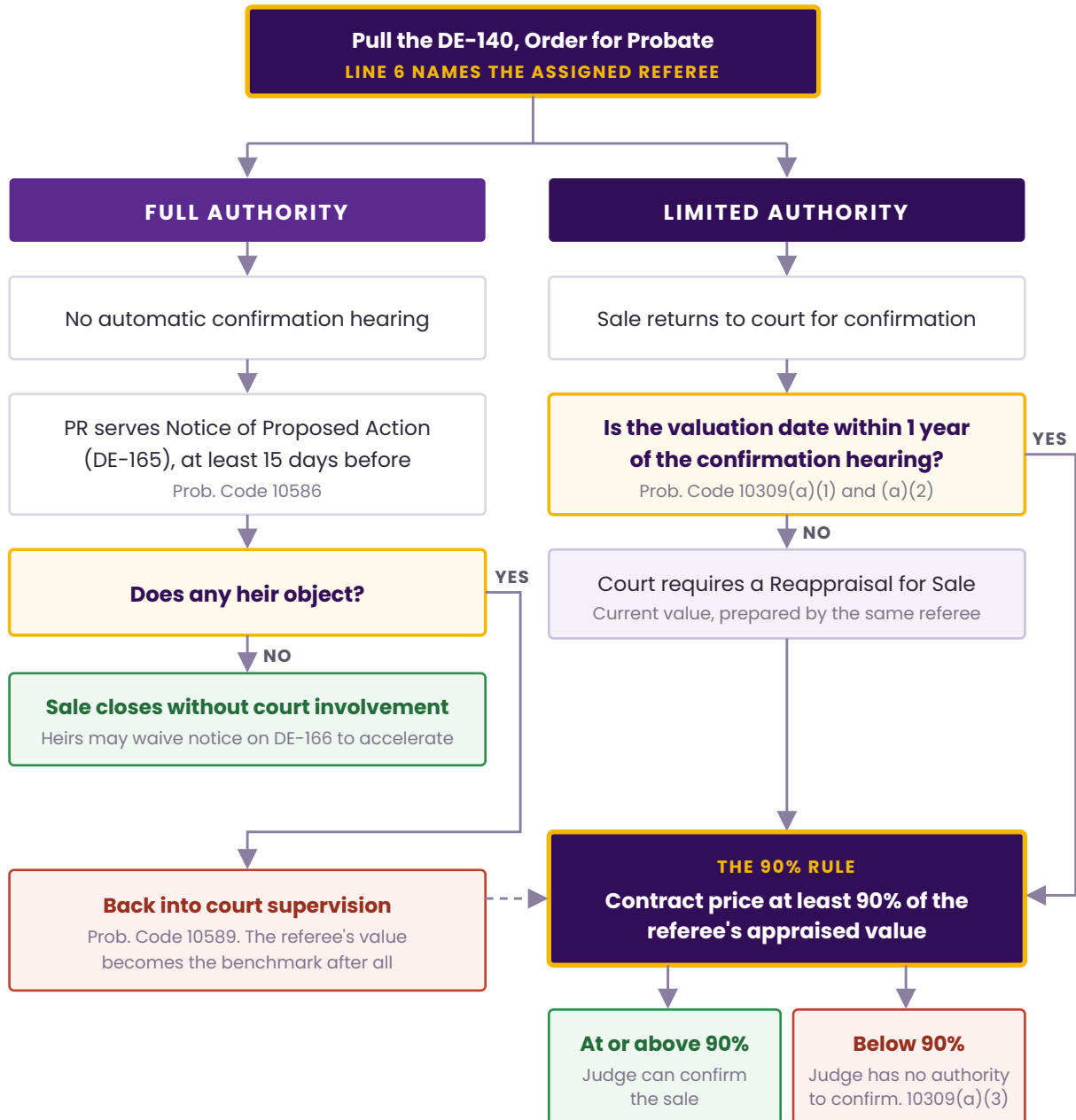
The PR has **4 months** from issuance of letters to file the Inventory and Appraisal (Prob. Code 8800). The referee has **60 days** from receiving the inventory to return it (8940), and those 60 days sit inside the PR's 4 months. In practice the inventory has to reach the referee within about 2 months. **If you meet the PR at month five, the number is already filed.**

Where their number gets used

The court uses it to value what it supervises. Heirs use it for non pro rata distribution. The IRS recognizes it for the step up in basis under IRC 1014. Statutory attorney and PR fees are calculated off it. And in a limited authority case it sets the floor under your sale price, which is the next page.

Full authority or limited authority

The only real difference between the two is the degree of authority over real property. Start at the top with the DE-140 in front of you.



The 90% test runs on the contract price, not the list price. The referee values as of the date of death in every case.

Four steps, and almost nobody does them

These come straight from Michael Gibbs. They cost you an afternoon and they protect the whole transaction.

1

Establish the condition as of the date of death

Pull the date of death first. If nothing has been done to the house since, the job is easy, because current condition is date of death condition. Photograph it, with particular attention to deferred maintenance: roof, electrical, plumbing, foundation. Anything that reads as a line item rather than a preference.

2

Raise value with the attorney or pro per PR before the I&A is filed

Short conversation. The property is in poor condition, the referee values as of the date of death, and if that value comes in high the 90% rule becomes a problem later. Attorneys are not always clear on what referees do, so this is often new to them too.

3

Send an information package and ask that it be forwarded to the referee

Photos, a written condition description, and your read on the local market. Route it through the attorney rather than around them. This is the single step that closes the 95 percent gap.

4

Offer to speak with the referee

Gibbs, speaking for himself: he likes talking with agents, the input is valuable, and the date of death value usually sits within a range rather than on a single point. If he has had a discussion with the attorney and is aware of a potential 90% issue, he is comfortable coming in at the low end of that range, as long as the value is defensible.

WHY THIS WINS YOU THE LISTING

Referee jurisdiction stops at the county line, and an out-of-state PR is not flying in to photograph a water heater. Telling the PR you will document condition, coordinate with their attorney, and work with the state-appointed referee to establish a defensible value is a competence signal almost no competing agent is making. It also justifies interior access before anyone else has it.

The four forms, and the two lists

Everything in this playbook runs through four Judicial Council forms. All of them are public and all of them are free to pull.

FORM	WHAT IT IS, AND WHY YOU CARE
DE-140	Order for Probate. One page. Tells you full or limited authority, and line 6 names the appointed referee. Pull this first.
DE-160 / 161	Inventory and Appraisal. Attachment 1 is cash, Attachment 2 is everything the referee values.
DE-165	Notice of Proposed Action. Full authority sales run on this. Heirs get at least 15 days to object (10586).
DE-166	Waiver of Notice of Proposed Action. Signed by heirs to accelerate a sale when timing is tight.

Do

- ✓ Pull the DE-140 before you price anything
- ✓ Find the date of death and work backwards from it
- ✓ Photograph deferred maintenance, dated and described
- ✓ Route everything through the PR's attorney
- ✓ Offer the gate code and access when the referee has to reach a gated or condo property
- ✓ Flag a stale date of death value early and ask about a reappraisal for sale
- ✓ Remember the 90% test runs on the contract price, not the list price

Do not

- ✗ Assume full authority means the referee's number is irrelevant
- ✗ Contact the referee behind the attorney's back
- ✗ Treat the referee's figure as a finished interior appraisal
- ✗ Let an heir's Zestimate set expectations on a probate file
- ✗ Price a limited authority deal without checking the cushion first
- ✗ Wait until the confirmation hearing to discover a valuation date older than one year

What to say, word for word

Four conversations carry this. None of them takes more than a minute.

TO THE PERSONAL REPRESENTATIVE, FIRST CALL

"Before anything gets listed, there is one piece of the court process worth getting ahead of. A probate referee is assigned to every California estate, and they value the house as of the date your father passed, from the curb, without going inside. If the condition is not documented by someone, the value can come in high and that can hold up the sale later. I can walk the property, document what needs work, and put a package together for your attorney to send over. It saves you a trip and it protects the price."

TO THE PR'S ATTORNEY

"I have interior photos and a condition summary as of the date of death on this one. The house needs a roof and the plumbing is original, none of which is visible from the street. Would you forward this to the referee before the I&A goes in, so the value reflects it? On a limited authority case I would rather deal with it now than run into the 90% rule at confirmation."

WHEN THE DATE OF DEATH IS MORE THAN A YEAR BACK, LIMITED AUTHORITY

"The valuation date on this is outside the one year window in Probate Code 10309, so the court will want a reappraisal for sale from the same referee. Is that already in motion? If not it is worth requesting now, because the current value is what the 90% test will run against."

TO THE REFEREE, ONCE THE ATTORNEY HAS MADE THE INTRODUCTION

"Thank you for taking the call. I have been inside the property and I have photographs of the date of death condition, which I sent through to counsel. The roof and the plumbing are the two items that do not show from the street. I also work this submarket daily, so if it is useful I can give you what I am seeing on comparable condition and days on market. Whatever value you land on, I would rather you have the information than not."

Find the referee on your case

Every one of these is public and free. Two of them are searchable by county.

Order for Probate, form DE-140, line 6. Names the appointed referee. Court records are public, so this works on pro per cases with no attorney in the loop.

State Controller's Office, Probate Referee Contact Information. Select a county from the dropdown for the referees appointed there.

sco.ca.gov/scocontactus/probaterefereecontact.aspx

California Probate Referees Association, Probate Referee Directory. Searchable by county or last name, with contact and address details for every member appointed to that county.

probaterereferees.org · [directory at probaterereferees.net/page-1488209?tab=2](https://probaterereferees.net/page-1488209?tab=2)

Guide to Using Probate Referees. The Association's step-by-step procedures guide for preparing an Inventory and Appraisal, with completed examples.

probaterereferees.net/page-1488252

ProbateData. Full or limited authority is already on the record for Los Angeles, Orange, San Diego, Riverside and San Bernardino, so you can see it before you dial.

probatedata.com

Pre-listing checklist

☐ Date of death confirmed

☐ DE-140 pulled, authority type noted: full or limited

☐ Referee named from line 6, contact details located

☐ Valuation date checked against the one year window

☐ Interior walked and photographed

☐ Deferred maintenance listed, with rough costs where you have them

☐ Condition package sent to the attorney with a forwarding request

☐ Offer to speak with the referee made in writing

☐ Contract price checked against 90% of the referee value before signature

☐ Reappraisal for sale requested if the valuation date is running stale

Prepared by ProbateData from the September 23, 2026 live class with Michael Gibbs and his pre-class outline. Statutory references: Prob. Code 400, 403, 8800, 8940, 8961, 8963, 10309, 10586, 10589. This is educational material for real estate professionals, not legal advice, and it does not replace the personal representative's own counsel. Statements attributed to Michael Gibbs reflect his own practice as one referee and are not a statewide policy of the probate referee system or the State Controller's Office.