

Memorandum 82-57

Subject: Study L-608 - Probate Law (Notice of Will)

At the March meeting the Commission directed the staff to prepare a draft statute permitting the voluntary registration of the existence and location of a will for inclusion in the proposed legislation on wills and intestate succession. A staff draft of such a statute is attached to this memorandum as Exhibit 1.

We envision this registration procedure as independent of the registry established under the International Wills Act. See Prob. Code § 60.8, relevant portion of which is set forth in Exhibit 2. The staff draft differs from the registry system under the International Wills Act in several respects. The staff draft provides more detail. It provides for a \$5 fee whereas Probate Code Section 60.8 provides no fee. The staff draft requires information concerning the location of the will (since that is the main purpose of the registration system) whereas Section 60.8 provides that such information may be received. For purposes of comparison, a copy of the British Columbia statute discussed at the last meeting is also set out in Exhibit 2.

Respectfully submitted,

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Staff Counsel

EXHIBIT 1

STAFF DRAFT

REGISTRATION OF NOTICE OF WILL

(Proposed Probate Code §§ 293.010-293.060)

CHAPTER 10. REGISTRATION OF NOTICE OF WILL

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§ 293.010. Filing notice of will

293.010. (a) A person who has made a will may file in the office of the Secretary of State a notice of will. The notice of will shall contain the following information:

- (1) The name of the testator.
 - (2) The testator's address.
 - (3) The testator's social security or other individual-identifying number established by law, if any.
 - (4) The testator's date and place of birth.
 - (5) A statement that the testator has made a will and the date of the will.
 - (6) The place where the will is kept.
- (b) The notice may include any of the following:
- (1) The name and address of the testator's attorney.
 - (2) The name and address of a person who has custody of the will or a copy of the will.
- (c) If the testator's name is changed or if the place where the will is kept is changed, the testator may file a new notice of will containing the correct information. Such notice of will may also refer to the earlier notice of will.
- (d) The failure to file or the filing of a notice under this section does not affect the validity of the will.

Comment. Section 293.010 is a new provision that provides a voluntary procedure for filing a notice of the existence and location of a will. It is anticipated that this procedure will result in the location of wills that otherwise would not have been found. Although the registration is voluntary, it should be noted that a search of the records is required. See Sections 293.040, 293.050. This section does not require or permit the filing of the will itself.

The registration procedure provided by this chapter is separate from that provided under the International Wills Act. See Section 295.100 (registry system for international wills information).

§ 293.020. Filing notice of revocation

293.020. (a) A person who has filed a notice of will pursuant to Section 293.010 and who has revoked the will referred to in the notice may file in the office of the Secretary of State a notice of revocation of will. The notice of revocation of will shall contain the following information:

- (1) The name of the person who is revoking the will.
- (2) The person's address.
- (3) The person's social security or other individual-identifying number established by law, if any.
- (4) The person's date and place of birth.
- (5) A statement that the will referred to in a notice of will filed by the person pursuant to Section 293.010 has been revoked.

(b) A notice of revocation of will filed pursuant to this section is informational and does not in any manner determine whether the will has actually been revoked.

Comment. Section 293.020 is new. This section is intended to provide information as to the revocation of a will; subdivision (b) makes clear that filing of a notice under this section has no bearing on whether a will has actually been revoked.

§ 293.030. Filing and indexing of notices; fee

293.030. Upon presentation of a notice of will or notice of revocation of will for filing and tender of the filing fee to the office of the Secretary of State, the notice shall be filed and indexed. The fee for filing and indexing a notice of will or notice of revocation of will is five dollars (\$5).

Comment. Section 293.030 is new. This section is patterned on similar provisions applicable to financing statements filed under the Commercial Code. See Com. Code § 9403.

§ 293.040. Release of information

293.040. (a) Information filed pursuant to this chapter shall be kept in confidence until the death of the testator.

(b) After the death of the testator, upon the request of a person who presents a death certificate or other satisfactory evidence of the testator's death, the Secretary of State shall issue a certificate reporting the information on file about the testator's will. If no information on the testator's will is on file, the Secretary of State's certificate shall state that fact. The fee for a certificate under this section is five dollars (\$5).

Comment. Subdivision (a) of Section 293.040 is similar to a portion of Section 295.100 in the International Wills Act. Subdivision (b) is drawn in part from Section 295.100 of the International Wills Act. A certificate from the Secretary of State is necessary in every case, as provided in Section 293.050.

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§ 293.050. Filing of certificate in probate and other proceedings

293.050. A certificate of the Secretary of State issued pursuant to Section 293.040 shall be filed with the court at the time of filing the petition for probate of the will, for letters of administration, to have the estate set aside, or to determine or confirm community property, or in any other proceeding in which the existence of a will is relevant.

Comment. Section 293.050 makes clear that a petitioner in any proceeding concerning the disposition of property upon death must file a Secretary of State's certificate relating to whether there is notice of a will on file.

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§ 293.060. Regulations

293.060. The Secretary of State may prescribe the form of the notices and other papers under this chapter.

Comment. Section 293.060 is similar to authority provided elsewhere. See, e.g., Code Civ. Proc. § [488.405 (notice of attachment prescribed by Secretary of State)].

EXHIBIT 2

1. International Wills Act Registry

[Probate Code § 60.8 in relevant part]

The Secretary of State shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or other individual identifying number established by law, if any, address, date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The Secretary of State at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.

2. British Columbia Wills Notice Registration

[from Wills Act, B.C. Rev. Stat. 1979]

PART 2**Filing of notice of will with Director of Vital Statistics**

33. Where a person has executed a will, a notice may be filed with the Director of Vital Statistics in the form prescribed by regulation.

Filing of notice of revocation

34. Where notice has been filed under section 33 and the will mentioned in it has been revoked, a notice of revocation in the form prescribed by regulation may be filed with the Director of Vital Statistics.

Change of place where will is situated

35. Where a will is no longer situated at the place mentioned in the notice, notice of the change in the form prescribed by regulation may be filed with the Director of Vital Statistics.

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36. The Director of Vital Statistics shall cause every notice filed with him under this Act to be numbered consecutively and to be filed in numerical order, and shall keep an index book showing in alphabetical order the name of each testator notice of whose will is filed under this Act, together with the number under which the notice is filed.

Search of index book

37. (1) A solicitor of the Supreme Court of British Columbia may, on written application in the form prescribed by regulation, ascertain from the Director of Vital Statistics whether or not a notice has been filed under this Act.

(2) Any person other than a solicitor of the Supreme Court of British Columbia may, on written application accompanied either by a certificate of the death of the person named in the application or by a statutory declaration proving to the satisfaction of the Director of Vital Statistics that the person named in the application has died, ascertain from the director if the person has filed a notice under this Act.

(3) The Director of Vital Statistics shall issue to an applicant under subsection (1) or (2) a certificate in duplicate showing the contents of all notices filed and relevant to the application and shall permit the applicant, or the agent of the applicant, to inspect the notices.

(4) Except as provided in this section, the Director of Vital Statistics shall not furnish to any person information regarding notices filed under this Act or information showing whether or not a notice has been filed.

Validity of will or revocation not affected

38. The failure to file or the filing of a notice under this Act shall not affect the validity of a will or of the revocation of a will.

Fee for search

39. The fee for the making of a search under section 37 is \$1.

Regulations

40. The Lieutenant Governor in Council may make regulations regarding
- (a) the keeping, custody, disposal, destruction and indexing of notices filed under this Part that have been superseded or that refer to wills that have been probated;
 - (b) the use to be made of and the procedure to be followed with respect to the original and duplicate certificate issued under section 37;
 - (c) the carrying into effect of this Part according to its true intent, or the supplying of deficiencies in it; and
 - (d) prescribing forms for use under this Act.