

First Supplement to Memorandum 85-47

Subject: Study L-1031 - Probate Code (Passage of Property to Surviving Spouse Without Administration)

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar has reviewed Memorandum 85-47. The Executive Committee makes the following comment concerning this memorandum:

1. Memorandum 85-47: Passage of Property to Surviving Spouse without Administration. The Executive Committee has reviewed and agrees with the staff recommendation dispensing with the need to obtain court approval of the lawyer's fee. Many other transfers of property at death are done without court supervision of attorney's fees such as severance of joint tenancies, collection of life insurance policies and the like. It would seem appropriate in the 650 type proceeding to allow the attorney and client to set a fee independent of court confirmation. It is also the opinion of many practicing lawyers that it is not required of them to have the court review the fee currently. A court review would only be of assistance in collecting the fee if collection is an issue. The new sections dealing with collection by affidavit of compensation owed to a deceased spouse (new section 9550 et seq.) are a good addition to the code to allow a surviving spouse reasonable access to accrued compensation without great time delay or expense.

The letter from the Executive Committee (which includes a discussion of this and other matters) is attached to the First Supplement to Memorandum 85-48.

Respectfully submitted,

John H. DeMouly
Executive Secretary