

First Supplement to Memorandum 89-94

Subject: Study L-619 - Survival Requirement for Beneficiary of Statutory Will

We have received the following comment from the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section on this recommendation:

Study Team #1 expressed its concern that this would be one step in expanding the "survival by 120 hours" concept from intestacy to testacy. The Executive Committee as a whole opposes the 120 hour limitation for all written wills.

The staff recommends that the Commission deal with the concern that the 120 hour rule might in the future be proposed to be expanded to all written wills. We propose that the following be added to footnote 4 of the Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will:

The Commission does not recommend that the 120-hour limitation be made applicable to all written wills. When a will is drafted for a testator, the person drafting the will can include or omit a survival requirement for beneficiaries of the will, according to the direction of the testator. A 120-hour survival requirement is recommended for a statutory will because the substance of that will is fixed by statute.

With this revision, the staff recommends approval of the recommendation for printing and submission to the Legislature.

Respectfully submitted,

John H. DeMouilly
Executive Secretary