

Memorandum 90-118

Subject: Study L-3022 - Access to Decedent's Safe Deposit Box

When Senate Bill 1775 was in the Assembly Judiciary Committee, the California Bankers Association objected to the provision relating to access to decedent's safe deposit box. The provision was deleted from the bill. The Bankers suggested various revisions which were presented in the staff memo (90-106) at the last meeting, some of which were acceptable to staff. The Commission asked the staff to redraft the provision and bring it back at the September meeting where the Bankers can participate.

A staff redraft is attached to this memorandum as Exhibit 1. The redraft contains the following Bankers' suggestions that were acceptable to staff:

(1) The methods for proof of death are limited to a certified copy of the death certificate or a written statement of death from the coroner, treating physician, or hospital or institution where decedent died.

(2) Provisions are added to protect a financial institution from liability for relying on proof of death or of the identity of the person seeking access. The Commission had some problems with this at the last meeting, but similar provisions are now found elsewhere in the Probate Code. See, e.g., Sections 5401 (financial institution need not inquire as to source of funds deposited in multiple-party account), 13106 (holder of decedent's property "has no duty to inquire into the truth of any statement" in affidavit).

(3) The person given access to the safe deposit box may obtain a photocopy of instructions for disposition of decedent's remains, rather than the original document.

The redraft still contains the provisions requiring the financial institution to take custody of all wills in the safe deposit box, to deliver them to the proper superior court clerk, to mail a copy to the named executor, or if that person's whereabouts is unknown, to a beneficiary named in the will, and, for a reasonable fee, to provide a photocopy to the person given access. The Bankers objected to having

this duty imposed on them. They say clerical personnel cannot make legal judgments.

As an alternative to requiring banks to take custody of wills and deliver them to the proper place, the previous staff memo (90-106) suggested the possibility of creating a central repository in Sacramento for such wills. This scheme might also solve the problem of what a retiring attorney does with estate planning documents in his or her possession. The memo also identified problems with creating a central repository for wills: A search of the repository might be required in every probate, a requirement that the State Bar has strongly opposed in the past. Some way to finance the system would have to be developed. Does the Commission wish to give further consideration to a central filing system for wills? Is the cost such a system would impose on probate estates outweighed by the benefit to be achieved?

Another alternative is to require the person given access to take custody of the will, deliver it to the proper court clerk, and make the required distribution of copies, and to require the financial institution merely to keep on file a certified photocopy of the will. This would address the objection of the Bankers that clerical personnel cannot make legal judgments, and yet would prevent the person given access from fraudulently destroying the will. The staff prefers the attached draft. There is probably a smaller risk of fraud if the bank takes custody of the wills, rather than the person given access. This does not seem to be an onerous burden to put on bank clerical personnel. However, if the Commission wants to find a compromise solution, we could revise subdivision (c) of Section 331 as follows, add a new subdivision (d), and reletter present subdivisions (d) and (e) as subdivisions (e) and (f):

(c) When the person seeking access has satisfied the requirements of subdivision (b), the financial institution shall do all of the following:

(1) Keep a record of the identity of the person.

(2) Permit the person to open the safe deposit box under the supervision of an officer or employee of the financial institution, and to make an inventory of its contents.

~~(3) Take custody of all wills of the decedent found in the safe deposit box.~~

~~(4) Deliver the wills to the clerk of the superior court and mail or deliver a copy to the person named in the will as executor or beneficiary as provided in Section 8200.~~

~~(5) If the person given access is not entitled to a copy under paragraph (4), on payment of a reasonable fee by the person, provide the person with a photocopy of any will of the decedent found in the safe deposit box.~~

~~(6) Provide the person given access with a photocopy of any instructions found in the safe deposit box for the disposition of the decedent's remains.~~

(3) Make photocopies of all wills and instructions for the disposition of the decedent's remains found in the safe deposit box, and keep the photocopies on file for a period of five years. The financial institution may charge the person given access with a reasonable fee for photocopying.

(4) After photocopying, permit the person given access to keep the wills and instructions for the disposition of the decedent's remains.

(d) The person given access shall deliver all wills found in the safe deposit box to the clerk of the superior court and mail or deliver a copy to the person named in the will as executor or beneficiary as provided in Section 8200.

Respectfully submitted,

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Probate Code § 331 (added). Access to decedent's safe deposit box

331. (a) This section applies only to a safe deposit box in a financial institution rented by the decedent in the decedent's sole name, or rented by the decedent and others where all are deceased.

(b) A person who has a key to the safe deposit box may, before letters have been issued, obtain access to the safe deposit box only for the purposes specified in this section by providing the financial institution with both of the following:

(1) Proof of the decedent's death. Proof shall be provided by a certified copy of the decedent's death certificate or by a written statement of death from the coroner, treating physician, or hospital or institution where decedent died.

(2) Reasonable proof of the identity of the person seeking access. Reasonable proof of identity is provided for the purpose of this paragraph if the requirements of Section 13104 are satisfied.

(3) The financial institution has no duty to inquire into the truth of any statement, declaration, certificate, affidavit, or document offered as proof of the decedent's death or proof of identity of the person seeking access.

(c) When the person seeking access has satisfied the requirements of subdivision (b), the financial institution shall do all of the following:

(1) Keep a record of the identity of the person.

(2) Permit the person to open the safe deposit box under the supervision of an officer or employee of the financial institution, and to make an inventory of its contents.

(3) Take custody of all wills of the decedent found in the safe deposit box.

(4) Deliver the wills to the clerk of the superior court and mail or deliver a copy to the person named in the will as executor or beneficiary as provided in Section 8200.

(5) If the person given access is not entitled to a copy under paragraph (4), on payment of a reasonable fee by the person, provide the person with a photocopy of any will of the decedent found in the safe deposit box.

(6) Provide the person given access with a photocopy of any instructions found in the safe deposit box for the disposition of the decedent's remains.

(d) Except as provided in subdivision (c), the person given access shall not remove any of the contents of the decedent's safe deposit box.

(e) Nothing in this section prevents collection of a decedent's property pursuant to Division 8 (commencing with Section 13000).

Comment. Section 331 is new, and permits a person who has a key to a decedent's safe deposit box to gain immediate access in order to obtain a copy of the decedent's wills, remove instructions for disposition of the decedent's remains, and inventory the contents of the box. If no other directions have been given by the decedent, the right to control the disposition of the decedent's remains devolves, in order, on the surviving spouse, children, parents, other kindred, and the public administrator. Health & Safety Code § 7100.

If the person seeking access does not have a key to the safe deposit box and is not the public administrator, the person must obtain letters from the court to gain access to the box. Concerning the authority of the public administrator, see Section 7603.

Paragraph (4) of subdivision (b) requires the financial institution to deliver the wills to the clerk of the superior court and mail or deliver a copy to the person named in the will as executor or beneficiary "as provided in Section 8200." Section 8200 requires the custodian to deliver the will to the clerk of the superior court in the county in which the estate of the decedent may be administered, and to mail a copy of the will to the person named in the will as executor, if the person's whereabouts is known to the custodian, or if not, to a person named in the will as a beneficiary, if the person's whereabouts is known to the custodian. For the county in which the estate of the decedent may be administered, see Sections 7051 (for California domiciliary, county of domicile), 7052 (nondomiciliary). See also Sections 40 ("financial institution" defined), 52 ("letters" defined), 88 ("will" includes a codicil).