

First Supplement to Memorandum 91-33

Subject: Study L-812 - Preliminary Distribution Without Court
Supervision Under Independent Administration of Estates
(Letter from Los Angeles County Bar Association)

Attached to this Supplement as Exhibit 1 is a letter from Carol Reichstetter for the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association. The letter appears to support the version of proposed Section 10520 of the Probate Code set out on page 1 of the basic memorandum, in preference to the version in the staff draft of a *Tentative Recommendation* attached to the basic memo.

The letter suggests making clear in the statute that a personal representative who makes preliminary distribution of an automobile under the new section will not incur vicarious liability as owner for negligent operation of the automobile by a distributee or someone else. We could do this by adding a subdivision (b) to the draft section on page 1 of the basic memo, to read:

(b) A personal representative who makes distribution of an automobile is not liable as owner of the automobile for negligent operation by another person.

The Comment would note that subdivision (b) codifies the rule of *Fountain v. Bank of America*, 109 Cal. App. 2d 90, 95, 240 P.2d 414 (1952).

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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CA LAW REV. COMM'N

MAY 10 1991

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May 8, 1991

Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Study L-812 (Independent Administration
of Estates Act - Preliminary Distribution
Without Court Supervision)

Dear Mr. Sterling:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association has reviewed Memorandum 91-33, incorporating the State Bar's revisions into the Staff's proposed changes to Probate Code Section 10520.

We support the circulation of the Tentative Recommendation for comment. In regard to the preliminary distribution of automobiles, it would be helpful to codify the holding in Fountain v. Bank of America that a personal representative is not an "owner" as defined in the Vehicle Code

Thank you for your consideration of these comments. I expect to attend the June meeting and will be glad to answer any questions that may arise.

Very truly yours,



Carol A. Reichstetter

cc: Members of the Executive Committee

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