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11/4/88

Memorandum 88-80

Study L-3021 - Delivery of Decedent's Personal Property

Attached as Exhibit 1 is a letter from James Scannell, Public Administrator for the City and County of San Francisco. Apparently it is the usual practice for public administrators, coroners, hospitals, and the California Highway Patrol to release decedent's personal effects to his or her family shortly after death. Mr. Scannell is concerned that recent legislation requiring a 40-day delay in small estates for use of the affidavit procedure to collect decedent's personal property (Prob. Code § 13100) may interfere with this practice. Mr. Scannell suggests language to deal with this problem.

The staff has drawn on Mr. Scannell's suggestions in drafting proposed new Section 330, attached as Exhibit 2.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

City and County of San Francisco**Public Administrator
Public Guardian**

EX-101 COMM'N

SEP 28 1988

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Immediate Action Code:

Bureau: _____

File No.: _____

Direct Dial: 554-1164

Attn: J. R. Scannell

PA/PG/PG:
James R. ScannellCounsel:
Lou AronianAsst. PA:
John J. NerneyAsst. PG:
Michele McCabe

September 27, 1988

Mr. Nathaniel Sterling
Asst. Executive Secretary
CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Section 13100 - Section 7602

Dear Nat:

Enclosed is a proposed amendment to Section 7602, which will hopefully correct a problem that has been exacerbated by the rewording of Section 13100.

A strict interpretation of Section 13100 would seem to require anyone holding property to require an affidavit or declaration, a certified copy of the death certificate and wait 40 days following the death.

This would seem to prohibit coroners, hospitals, highway patrolmen from releasing property to family members or their representatives.

Residences sealed by public administrators for the protection of the estate could not be released to proper persons without waiting forty (40) days.

I do not believe that was the intention in re-writing Section 13100.

Please call me if you have a question. Please feel free to edit.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. R. Scannell", written over a circular stamp that contains the name "JAMES R. SCANNELL" and the title "Public Administrator".

JAMES R. SCANNELL
Public Administrator

JRS:nfl
Encl.

cc: JoAnne Ringstrom, PA/PG/PC Legis. Comm.
Helen Ruth Dowden, Legis. Advocate

25 Van Ness Avenue, Suite 200, San Francisco, CA 94102
Public Guardian - Suite 110- Enter on Oak Street
Principal Number 415/554-1150

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Section 7602 Probate Code

If a public administrator has taken possession or control of any property of a decedent under Section 7601 and

(d) If any person who has priority over the public administrator under Section 8460 Probate Code presents themselves or is (located/contacted) prior to letters being issued, the public administrator may turn over control or possession of property that is subject to loss, injury, waste or misappropriation.

A public administrator may also release keys to the premises where the deceased resided or to any premises that may reasonably contain a will or instructions for the disposition of the remains.

(e) The public administrator may require an affidavit or declaration attesting to the affiant's right to act under Section 422(a).

The public administrator may rely in good faith on the statements in the affidavit or declaration and has no duty to inquire into the truth of any statement in the affidavit or declaration.

(f) A public administrator who releases property under this section shall not be liable for any loss to the estate for any actions of said affiant as a result of the release of said property.

(g) The public administrator shall maintain a complete record of the items of property, from whom they were received and to whom they were delivered and a copy of the affidavit when (appropriate/applicable) for three years from the date the property was released.

(h) Any government official, law enforcement agency, or official of an institution where the death occurred or who holds personal property of the deceased may release items of personal property normally used or needed in the burial rites.

(i) Any government official, law enforcement agency, or official of an institution where the death occurred, or who holds personal property of the deceased, may release keys to the premises where the deceased resided or to any premises that may reasonably contain a will or instructions for the disposition of the remains. The agency releasing such property may require an affidavit attesting to the fact that the affiant is the proper person or is authorized by the proper person to act under Section 422(a) Probate Code.

(j) Any public administrator, public official, or person holding or controlling property under Section 7601 may, at their discretion, require an affidavit or declaration under Section 13101 for the release of any property not covered by Section 7601(d).

(k) Any person requesting the release of property under this section may be required to provide proof of identity as outlined in Section 13104(d).

Exhibit 2

Probate Code § 330 (added). Delivery of decedent's tangible personal property

SEC. _____. Part 10 (commencing with Section 330) is added to the Probate Code, to read:

PART 10. DELIVERY OF DECEDENT'S
TANGIBLE PERSONAL PROPERTY

330. (a) Except as provided in subdivision (b), a public administrator, government official, law enforcement agency, or the hospital or institution in which a decedent died, may, without the need to wait 40 days after death, deliver the tangible personal property of the decedent in its possession, including keys to the decedent's residence, to the decedent's surviving spouse, relative, or conservator or guardian of the estate acting in that capacity at the time of death.

(b) A person shall not deliver property pursuant to this section if the person knows or has reason to believe that there is a dispute over the right to possession of the property.

(c) A person that delivers property pursuant to this section shall require reasonable proof of the status and identity of the person to whom the property is delivered, and may rely on any document described in subdivision (d) of Section 13104 as proof of identity.

(d) A person that delivers property pursuant to this section shall, for a period of three years from the date of delivery of the property, keep a record of the property delivered and the status and identity of the person to whom the property was delivered.

(e) Delivery of property pursuant to this section does not determine ownership of the property or confer any greater rights in the property than the recipient would otherwise have, and does not preclude later proceedings for administration of the decedent's estate. If proceedings for the administration of the decedent's estate are commenced, the person holding the property shall deliver it to the personal representative on request by the personal representative.

(f) A person that delivers property pursuant to this section is not liable for loss of or damage to the property caused by the person to whom the property is delivered.

Comment. Section 330 is added to make clear that the specified officials and agencies need not wait 40 days from the death of the decedent to deliver decedent's personal effects and other tangible personal property to decedent's spouse, relatives, conservator, or guardian. Cf. Section 13100 (40-day delay for use of affidavit procedure). If the official or agency relies on a document described in subdivision (d) of Section 13104 as reasonable proof of identity, the official or agency is not liable for so relying.