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Memorandum 89-70

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

At the last meeting, the Commission considered a proposal from Kenneth Klug to require financial institutions to permit decedent's family members with a key and a death certificate to have access to decedent's safe deposit box to get a copy of decedent's will and to remove instructions for disposition of decedent's remains. The Commission thought legislation is needed for this purpose.

The Commission wanted to require the financial institution to forward the original will to the county clerk and to provide a copy to the family member. The Commission wanted to authorize the family member to remove instructions for disposition of decedent's remains. A staff draft of a tentative recommendation to do this is attached.

Respectfully submitted,

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Staff Counsel

Staff Draft

TENTATIVE RECOMMENDATION

relating to

ACCESS TO DECEDENT'S SAFE DEPOSIT BOX

When a person dies, the person's will and instructions for disposition of his or her remains may be in a safe deposit box in a financial institution. Instructions for disposition of remains are needed immediately so this may be done in accordance with decedent's wishes. The will is needed before letters are issued so it may be determined who is entitled to appointment as executor.

Most financial institutions permit the attorney and a member of the surviving family to get access to decedent's safe deposit box to remove a will or instructions for disposition of remains, if the person seeking access has a key and produces a death certificate.¹ However, this practice is not invariably followed: Sometimes financial institutions will not permit access to a safe deposit box until after letters are issued.²

The Commission recommends legislation to assure that close family members of the decedent can gain immediate access to decedent's safe deposit box to obtain a copy of decedent's will or to remove instructions

1. See Gould, *First Steps in Handling a Decedent's Estate*, in 1 California Decedent Estate Practice § 2.25 (Cal Cont. Ed. Bar, Feb. 1989). See also Kellogg, *Managing an Estate Planning Practice*, Client Communication and Automatic Drafting § 6.4, at 213 (Cal. Cont. Ed. Bar, 3d ed. 1978) (executor, surviving spouse, or close relative may ask bank to open safe deposit box to remove will). Former Section 14344 of the Revenue and Taxation Code prohibited removal from a safe deposit box of anything other than a will or burial instructions without consent of the California Controller. Section 14344 was repealed in 1980 as part of a bill to conform California law to federal law. See 1980 Cal. Stat. ch. 634; *Review of Selected 1980 California Legislation*, 12 Pac. L.J. 235, 569-77 (1981).

2. Letter from Kenneth M. Klug to John H. DeMouilly, Executive Secretary of California Law Revision Commission (March 15, 1989).

for disposition of decedent's remains.³ The financial institution should be required to deliver the original will to the clerk of the superior court in the county where the decedent's estate may be administered,⁴ and to provide a copy of decedent's will to the family member upon payment by the person of a reasonable fee.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to add Section 331 to the Probate Code, relating to decedents' estates.

The people of the State of California do enact as follows:

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

331. (a) A financial institution shall permit decedent's surviving spouse, issue, parent, brother, or sister to have access to decedent's safe deposit box to obtain a copy of decedent's will as provided in this section, and to remove instructions for disposition of decedent's remains, if the person seeking access has a key to the safe deposit box and furnishes an affidavit or declaration under penalty of perjury with a certified copy of the decedent's death certificate attached and stating all of the following:

- (1) The decedent's name.
- (2) The date and place of the decedent's death.
- (3) The relationship to the decedent of the person seeking access.

3. This is consistent with Probate Code Section 330, which authorizes a public administrator, government official, law enforcement agency, hospital or institution in which a decedent died, or decedent's employer, to deliver decedent's personal property to decedent's surviving spouse, relative, conservator, or guardian, without the need to wait 40 days after death.

4. This is consistent with Probate Code Section 8200, pursuant to which the custodian of a will shall, within 30 days after learning of the testator's death, deliver the will to the clerk of the superior court in the county where the testator's estate may be administered.

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

(b) The financial institution 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.

(c) The financial institution shall do both of the following:

(1) Deliver the decedent's will to the clerk of the superior court of the county in which the estate of the decedent may be administered. No fee shall be charged for compliance with this paragraph.

(2) Mail a copy of the will to the person named in the will as executor, if the person's whereabouts is known to the financial institution, or if not, to a person named in the will as a beneficiary, if the person's whereabouts is known to the financial institution.

(d) On payment of a reasonable fee by the person given access, the financial institution shall provide the person with a photocopy of any will of the decedent contained in the safe deposit box.

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

Comment. Section 331 is new, and permits near relatives of the decedent who have a key to gain immediate access to decedent's safe deposit box to obtain a copy of decedent's will and to remove instructions for disposition of decedent's remains. Cf. Sections 13100-13116 (40-day delay for use of affidavit procedure). If the person seeking access does not have a key to the safe deposit box, the person must obtain letters from the court to gain access to the box.

Section 331 is consistent with former Section 14344 of the Revenue and Taxation Code (repealed by 1980 Cal. Stat. ch. 634). See also Sections 40 ("financial institution" defined), 52 ("letters" defined), 88 ("will" includes a codicil).