

Memorandum 89-105

Subject: Study L-3022 - Access to Safe Deposit Box (Comments on TR)

We have received 17 letters commenting on the Commission's *Tentative Recommendation Relating to Access to Decedent's Safe Deposit Box*. Fourteen letters support the TR, one (Ronald Vandenberg) is noncommittal, and two (Dorothy Rolling, Frank Swirles) oppose it. These are attached as Exhibits 1 to 17. The staff recommends including two of the suggestions in the revised draft. All the suggestions are discussed below.

SUGGESTIONS INCLUDED IN REVISED DRAFT

William Johnstone would make clear that Section 331 applies only to a box in the name of decedent alone, or, if rented with others, where all are deceased. This is consistent with Section 7603, which allows public administrators access to a box rented in the sole name of the decedent.

Wilbur Coats would make clear that Section 331 permits removal of burial instructions only if they are not an integral part of the will.

Peter Muhs would authorize the financial institution to permit the person given access to inventory the contents of the safe deposit box.

The staff recommends that these three suggestions be included in the revised draft:

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

331. (a) ~~If a decedent has a safe deposit box in a financial institution, a~~ This section applies only to a safe deposit box in a financial institution rented by the decedent in his or her 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 and without the need to wait 40 days after death, obtain access to the safe deposit box solely 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 may 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.

~~(b)~~ (c) When the person seeking access has satisfied the requirements of subdivision ~~(a)~~ (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 any original will of the decedent found in the safe deposit box.
- (4) Deliver the will to the clerk of the superior court and mail a copy of the will to the person named in the will as executor or beneficiary as provided in Section 8200.
- (5) On payment of a reasonable fee by the person given access, provide the person with a photocopy of any will of the decedent found in the safe deposit box.
- (6) Permit the person given access to remove any instructions for disposition of the decedent's remains if the instructions are not an integral part of the decedent's will.

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

~~(d)~~ (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 solely to obtain a copy of the decedent's will and to remove instructions for disposition of the decedent's remains. 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. See also Sections 52 ("letters" defined), 88 ("will" includes a codicil).

Interrelation of Sections 331 and 8200

Section 8200 requires the custodian of a will to deliver the original to the clerk of the superior court of the county in which the decedent's estate may be administered, and to mail a copy to the person named in the will as executor if that person's whereabouts is known, or if not, to a person named in the will as a beneficiary. Section 331 incorporates Section 8200 by requiring the financial institution to deliver the will to the clerk of the superior court and mail a copy of the will to the person named in the will as executor or beneficiary "as provided in Section 8200."

Mr. Kellogg and Mr. Palermo had trouble understanding how Sections 331 and 8200 interrelate. The staff would make this clear in the Comment by adding the following:

Paragraph (4) of subdivision (b) requires the financial institution to deliver the will to the clerk of the superior court and mail a copy of the will 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).

A related question (not addressed in this proposal) is whether Section 8200 is satisfactory. Peter Muhs thinks the requirement in Section 8200 that every will be delivered to the county clerk causes unnecessary administrative burdens. Mr. Vandenberg asks how the custodian is supposed to "deliver" the will. Does it mean hand delivery, or is certified mail sufficient? Section 8200 merely continued former Section 320. When Section 320 was enacted in 1931, it merely continued former Code of Civil Procedure Section 1298. So the delivery requirement is over a century old.

Mr. Vandenberg's other drafting comments should be satisfactorily addressed in the material to be added to the Comment to Section 331, set out above.

SUGGESTIONS NOT INCLUDED IN REVISED DRAFT

Safe Deposit Boxes Other Than in Financial Institutions

Irving Kellogg says Section 331 might be expanded to apply to companies that rent safe deposit boxes but are not financial institutions. He once knew of one, but does not know whether any exist now. The staff solicits comment on whether there are any in existence now, and, if so, whether the draft should be expanded to apply to them.

Certified Copy of Will

Florence Luther wants the copy of the will that is mailed to the executor or beneficiary to be certified. She says the original may be misfiled by the clerk and be unavailable for probate. But the

certification authorized by Evidence Code Section 1531 applies only to a writing in custody of a public entity. Evid. Code § 1530. A financial institution is not a public entity, so its certification would not improve the will's evidentiary value. Moreover, if a will is lost, its contents may still be proven in probate. Prob. Code § 8223.

Ability of Financial Institution Employees to Comply With Statute

Ms. Rolling, Mr. Swirles, Mr. Vandenberg, and Cheryl Templeton doubt the ability of employees of financial institutions properly to supervise the opening of the safe deposit box, to take custody of the will, and to deliver the will to the court clerk. We have not heard from the California Bankers Association. Their views will be important.

Affidavit of Identity

Section 331 requires the financial institution to keep a record of the identity of the person seeking access. Mr. Kellogg would require a signed affidavit of identity. Does the Commission want to do this?

Delivery of Will to Executor

Mr. Johnstone wants to reverse where the original and copy of the will go: He says the original should go to the person given access to the box if that person is named in the will as executor; the court clerk should get the copy. Cheryl Templeton also thinks the executor should get the original. But we cannot do this without changing the general rule in Section 8200 (original to court, copy to executor).

Drilling the Box When No Key Available

Mr. Muhs would permit a person entitled to access to decedent's safe deposit box to pay the expense and have the box drilled open if no key is available. The staff has no problem with this suggestion if the person's identity is established. Does the Commission want to authorize this?

Authority of Personal Representative to Enter Box

Mr. Vandenberg asks whether the statute should make clear that, once letters are issued, the personal representative may gain access to decedent's safe deposit box. The staff thinks this is already clear under Section 9650, which gives the personal representative the right "to take possession or control of, all the estate of the decedent to be administered in the decedent's estate." Financial institutions apparently routinely allow the personal representative to have access to the box. The staff is not aware that there are any problems in this area.

Obtaining Photocopy of Face Sheet of Life Insurance Policy

Rawlins Coffman has had problems identifying decedents' life insurance policies. He would require the financial institution to furnish a photocopy of the face sheet of decedent's life insurance policies in the box. The staff is dubious: It is not clear why this must be done immediately after death, rather than waiting until letters are issued when the personal representative will have full powers.

Other Items in the Safe Deposit Box

Cheryl Templeton would require the financial institution to provide the key-holder with a copy of any trust instrument, trust amendment, revocation, and codicil, and perhaps a copy of every item in the box. In proposed Section 331, "will" includes a codicil. Section 88. The section does not require production or copying of other documents because its purpose is to permit access to documents needed immediately after death. The need for burial instructions is obvious. The will is needed to determine who is entitled to be executor. Beyond that, there does not seem to be any urgency.

Limiting Persons Who May Get Access

Section 331 permits any person with a key to the box to gain entry under supervision of the financial institution. The Commission's thought was that when the will goes to the court clerk it is a public record, so there is no confidentiality to protect, and the supervision and taking of custody by the financial institution eliminates the risk of allowing general access. Ms. Rolling would limit access to decedent's family members, the estate attorney, and the executor named in the will.

As a compromise, we could limit access to (1) decedent's surviving spouse, issue, parent, sibling, or an attorney for any of them; (2) an executor named in the will or that person's attorney; and (3) a person authorized by the depositor in a writing lodged with the financial institution before the depositor's death. (The public administrator has access under Section 7603.) Does the Commission want to do this?

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Study L-3022
SEP 21 1989

CHARLES W. LUTHER
FLORENCE J. LUTHER

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September 20, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Tentative Recommendation Relating to
Access to Decedent's Safe Deposit Box

Dear Sir or Madam:

With respect to the tentative recommendation, Probate Code §331, to be added to the California Probate Code, I would like to recommend that in subparagraph (b) item (4) requiring the financial institution to deliver the Will to the Clerk of the Superior Court and mail a "copy" of the Will to the person named in the Will as Executor, I would recommend that "copy" be changed to read "certified copy".

My reason for the recommendation is that we have known of at least one instance where an original Will was delivered to the Clerk of the Superior Court and for some inexplicable reason the Will was misfiled or not available and a certified copy not available when the person named as Executor attempted to commence the probate proceedings and could not produce a certified copy of the original Will.

I believe the fees for certification could be paid by the person given access to the box, to be reimbursed at a later date. In that manner, the person named as Executor or beneficiary in the Will would have a "certified copy" and that could be presented to the Court at the time a Petition For Probate of Will is filed.

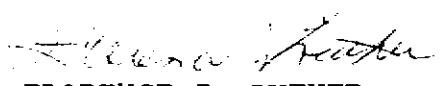
I trust this suggestion will be given some consideration.

Thank you for continuing to forward to me the tentative recommendations of the Commission.

Very truly yours,

LUTHER & LUTHER
A Professional Corporation

By


FLORENCE J. LUTHER

-1-

FJL:jj.1

Study L-3022
SEP 21 1989

RECEIVED

SANTA CLARA UNIVERSITY

SCHOOL OF LAW

Sept. 19, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
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To whom it may concern:

I write to make comments on three tentative recommendations which you have sent to me:

ACCESS TO DECEDENT'S SAFE DEPOSIT BOX

It is unfortunate that something like this is needed since Codes have a habit of becoming cluttered. However, the experience mentioned by Mr. Klug in note 2 is similar to my experience with a bank in closing out a small estate, even with an applicable statute. So it is needed and carefully meets the need.

NOTICE TO CREDITORS IN ESTATE ADMINISTRATION

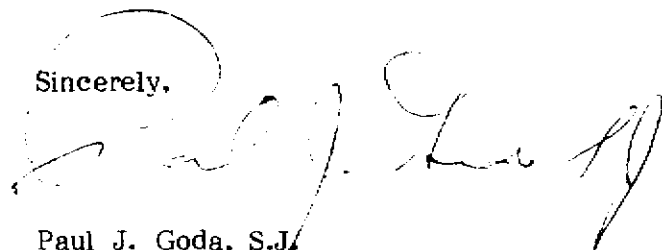
It seems to me that the 1 year statute of limitations that you recommend is reasonable. Although as you point out in note 10, "such an absolute one-year statute of limitations creates the potential for the decedent's beneficiaries to wait for one year after death..." On the other hand, a short, 4 month statute of limitations created the potential for a quick in and out to see if creditors would show up. I know of lawyers who recommended that methodology to see if the estate should be opened up.

The compromise of PrC 9103 on pp. 9 and 10 seem to meet the needs of both the estate and the creditor.

MISCELLANEOUS PROBATE CODE REVISIONS

There is no way that I will read these in detail. A quick overview did not disclose any problems to me.

Sincerely,



Paul J. Goda, S.J.

-2-

Law Office
Irving Kellogg

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September 19, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Re: ACCESS TO DEDECENT'S SAFE DEPOSIT BOX

Dear Commission:

These are my comments on new Section 331.

1. In Sec 331 (a), first sentence, you refer to a safe deposit box in a financial institution, and therefore, as I understand the subdivision (a) you are restricting this to only a safe deposit box in a financial institution.

However, there are, I recall, certain non-financial institution entities whose business is to maintain safe deposit boxes in certain places. There was, at one time, such an entity operating on 8th Street in Los Angeles between Broadway and Hill Street, in the building occupied by Coast Federal when it was located there. The entity was not a financial institution.

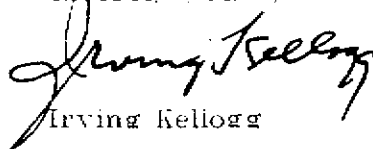
Query: Are there any private companies still operating that kind of business in California? If so, they should be included in coverage by this Section.

2. Subdivision (b) (1) requires the financial institution to keep a record of the identity of the person (who appears to gain access to the box).

I believe you should be more specific in what kind of record so as to get uniformity. I think the term: "a record of the identity" is not sufficiently specific. I suggest something like a signed affidavit of identity or perhaps a signed affidavit and a fingerprint (which may raise the hackles of the civil libertarianists who might complain that it was an invasion of privacy.)

3. The requirement under (b) (4) about mailing a copy of the will to a "beneficiary" will, I fear, lead to confusion and controversy. Which beneficiary? Why not all beneficiaries? Or the residuary beneficiary? Or just all named executors?

Sincerely yours,


Irving Kellogg

-3-

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CA LAW REV. COMM'N

SEP 25 1989

RECEIVED

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation relating to
Access to Decedent's Safe Deposit Box

Dear Commissioners:

I am in accord with this tentative recommendation.

On occasion in the past, we have had problems identifying life insurance policies that have been placed in the decedent's safe deposit box. It would help if we could xerox the face sheet of such policies at the same time we seek delivery of a copy of the will.

Very truly yours,


RAWLINS COFFMAN

RC/cld

SEP 26 1989

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September 21, 1989

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California Law Revision Commission
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Gentlemen:

I support your proposed legislation with the following suggestions:

1. In new §331(a), I would suggest that you make clear that the safe deposit box of the decedent is in the decedent's name alone or, if joint, the decedent is the surviving owner. It does not appear appropriate to permit the proposed access if there is another owner of such box.

2. With respect to new §331(b)(3), I would suggest consideration of delivery of the original Will to the person given access to the safe deposit box if such person is named in the Will as Executor. Protection against abuse could be accomplished by either requiring the financial institution to retain a photocopy of the Will, or deliver a copy of it to the Clerk of the Superior Court. §331(b)(4) will have to be modified accordingly.

Very truly yours,



William S. Johnstone, Jr.
 of HAHN & HAHN

WSJ:g

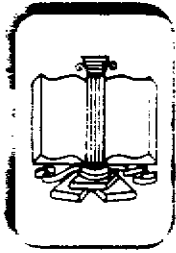
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STUDY L-3022
SEP 26 1989HENRY ANGERBAUER, CPA
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9/23/89California Law Revision
Commission:

I have reviewed your tentative recommendations relating to Access to Decedents' Safe Deposit Boxes and Notices to Creditors in Estate Administration. I have no comments or additions to make to your recommendations, and agree with your conclusions and suggest you propose your recommendations to the California Legislature. Thank you for permitting me to have input in connection with these recommendations.

Sincerely

HAC CPA



McGEORGE SCHOOL OF LAW

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WRITER'S DIRECT DIAL NUMBER

SEP 26 1989

September 20, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Attention: Mr. John H. DeMouilly, Executive Secretary

Subject: Recommendations Relating to
Access to Decedent's Safe Deposit Box
Miscellaneous Probate Code Revisions
Notice to Creditors in Estate Administration

Dear Mr. DeMouilly:

I concur in all of the tentative recommendations; but I do have some comments with respect to the filing of creditors' claims.

Probate Code section 9150 requires the claim to be filed; section 9002 provides that an unfiled claim is barred; and section 9054 gives the personal representative discretion to honor an unfiled claim. While we are presently concerned about the constitutionality of a one-year period of limitation, apparently no consideration has been given to the plight of a creditor who fails to file a claim. It must be conceded that most laymen do not make a study of the Probate Code, so it appears that an unsuspecting creditor may present his claim to the personal representative and lose his right to payment because he did not file the claim. Certainly, I am willing to concede that the vast majority of personal representatives and attorneys will not take advantage of that technicality; but, for the life of me, I cannot understand why we abandoned the long-established provision permitting the creditor either to present his claim to the personal representative or to file it with the court (in which event it was the responsibility of well-informed deputy clerks to mail a copy to the personal representative's attorney).

Very truly yours,

BDF:mb

-7-

CLAY COUNTY
CLERK OF COURT
SEP 26 1989

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

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September 21, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, Ca 94303-4739

In re: Tentative Recommendations Probate September 1989

Dear Administrator:

Concur with Notice To Creditors In Estate Administration.

Concur with Miscellaneous Probate Code Revisions.

Suggest change to Access to Decedent's Safe Deposit Box.


Occasionally the Will contains instructions for disposition of remains and by not separating a writing that is not an integral part of the Will may create confusion. If the instructions for disposition of remains is separate from the Will the person gaining access to the safe deposit box should withdraw the instrument, if an integral part of the Will then the copy of the Will should be sufficient.

I suggest the following 331 (b) (6)

(6) Permit the person given access to remove any instructions for disposition of the decedent's remains that are contained in a writing that are not an integral part of the will.

Thank you for the opportunity to comment on the proposed changes.

Very truly yours,


Wilbur L. Coats

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SEP 29 1989

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September 27, 1989

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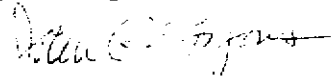
Re: #L-3022
Tentative Recommendation
relating to Access to
Decedent's Safe Deposit Box

Gentlemen:

I approve the above Recommendation.

Although I have never encountered a requirement that letters be issued before being allowed access to the safe deposit box, the section proposed will define the bank's duties and protect against possible destruction of a will by the party gaining access to the box.

Very truly yours,



John G. Lyons

JGL:car

CALIF. REV. COMMISSION

OCT 02 1989

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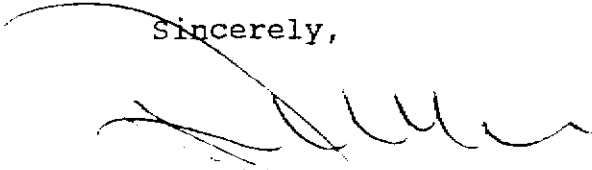
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: TENTATIVE RECOMMENDATION - SAFE DEPOSIT BOX

Honorable Commissioners:

Having read your tentative recommendations concerning access to decedent's safe deposit box, my only comment is that it is long, long overdue and such a recommendation will be an aid to proper procedure.

Sincerely,



DAVID W. KNAPP, SR.
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October 20, 1989

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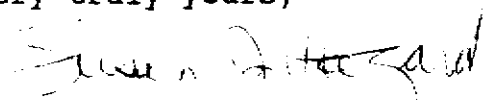
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Tentative Recommendation relating to
Access to Decedent's Safe Deposit Box

Ladies and Gentlemen:

I have reviewed the tentative recommendation and I
support the addition of Probate Code Section 331.

Very truly yours,


Susan J. Hazard
for MUSICK, PEELER & GARRETT

SJH:daw

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October 26, 1989

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California Law Revision Commission
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Re: Probate Recommendations1. Access to Decedent's Safe Deposit Box:

Probate Code Section 331(b)(4) should be changed to read "Deliver the Will to the Clerk of the Superior Court in the district where the decedent resided at the time of his death, mail a copy of the Will to the person named in the Will as Executor or beneficiary as provided in Section 8200.

Reason: If the Will is to be probated it will be probated in the court district where the decedent resided and it will make it easier for the executor to probate the Will. Let's be practical about some of these changes, as well.

2. Miscellaneous Probate Code Revisions:

a) Execution, extension, renewal, or modification of lease. Why not allow the Guardian or Conservator to extend, renew, or modify a real property lease without court authorization if the monthly rental does not exceed \$1,500. rather than \$750., since it is being recommended that he or she may execute a real property lease if the monthly rental does not exceed \$1,500. Let's be consistent.

b) Third persons acting in good faith. You haven't convinced me that we should change the statutes that specifically limit a third person acting in good faith to "a purchaser" and/or "encumbrancer". Cases have interpreted these persons and we should not change the law because the cases may construe these persons in a narrow sense. It is not a question of standarization throughout the code but it should be a question of who are we really trying to protect. It appears that the commission is trying to expand the scope of protection with the suggested change. Each statute should be considered separately.

Respectively submitted,


PETER R. PALERMO

-12-

PRP/dml

Cheryl Templeton

PROBATE AND ESTATE PLANNING PARALEGAL

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October 31, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739Re: Tentative Recommendations

Greetings,

I do appreciate receiving copies of your tentative recommendations and would like to continue receiving them. I have been a probate and estate planning paralegal for 15 years and hope that you will consider the following comments regarding the sets of recommendations sent to me within the last couple of months:

1. Uniform Statutory Form Power of Attorney Act. Good idea. The new form is much easier for a client to follow and at least provides a lead to the Civil Code provisions.

2. In-Law Inheritance. Prob.C. §6402.5 is much too difficult to apply (and, in fact, we in the field will do all we can to avoid its application). I hope it is repealed.

3. Access to Decedent's Safe Deposit Box - L-3022. The recommendation that the financial institution deliver the original Will to the County Clerk and mail a copy to the Executor is a bit unreasonable. How does the bank know to which county to mail the Will? Or the address of the Executor? Given the general incompetency of bank personnel, this is a risky proposal. Wouldn't it be more reasonable to require the bank to turn over the original Will to the named Executor? I suggest that the code also state that the bank shall make a copy of any original Trusts, Trust Amendments, Revocations, and Codicils, and give to the Executor or successor Trustee, and, possibly, make a copy of every item in the box for the key-holder.

4. Notice to Creditors - L-1025. One year statute for filing claims. Yes! (Does this bypass the State Legislature?)

5. Miscellaneous Probate Code Revisions - L. Fine, but please consider adding a corresponding guardianship section to proposed Prob.C. §10006 (Cotenants' consent to sale).

Sincerely,


Cheryl Templeton

-13-

NOV 06 1989

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November 3, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendations on
Access to Decedent's Safe Deposit Box,
Miscellaneous Probate Code Revisions, and
Notice to Creditors in Estate Administration

Ladies and Gentlemen:

With respect to your tentative recommendation on access to decedent's safe deposit box, I think it generally helpful to provide a procedure which allows access to a safe deposit box. However, I have a number of comments. First, if the person seeking entry is willing to pay the expense of drilling the box, it does not seem to me necessary that the person produce a key to the box. Often, the keys are impossible to find, yet there is a box in the decedent's name at the financial institution where the decedent maintained a regular banking relationship. Proposed §331 still requires proof of death and, in the absence of a key, could require reasonable proof that the boxholder is in fact the decedent in question.

Second, the financial institution should be authorized to allow an inventory of the box. In situations where access to a safe deposit box has been available without a court order or formal court administration, some personnel at financial institutions allow an inventory to be made and others will not. Authorizing an inventory, and its release to the named executor, and to the person given access to the box, will protect the concerns of the financial institution and generally facilitate the initial steps of probate administration.

Third, I had overlooked the change from former Probate Code §320, which formerly required the custodian of a will to deliver the document either to the county clerk or to the executor named in the will. While infrequently a named executor might properly withhold a will, automatic delivery to the county clerk increases the administrative burden in connection with the estate. For example, it is convenient and cheaper to obtain copies of the often lengthy document prior to delivery to the clerk if probate is to

be established and in fact no dealings with the clerk need to occur in the situation of a funded revocable trust with a "pour-over" will unless there is a desire to appoint the executor. Also, it is possible that all parties may agree that the purported last dated will is not in fact the decedent's will without the need for formal court determination and the parties may not wish to make the matter the subject of a public determination. While I realize that Probate Code §8200 is not directly a part of your current proposal, I nonetheless wish to submit my concerns over that section, and apologize for overlooking the change and not commenting on it earlier.

I have reviewed the recommendation on notice to creditors in estate administration, and agree that a one-year limitation is generally desirable. My one concern would be those claims which by their terms are not yet due, even though unsecured. For example, the decedent may have had an obligation with no security or inadequate security payable annually, and if the death occurred immediately after an annual payment, there might be little time to go through the claim process if the death was only discovered at the time of the next annual payment.

With respect to the recommended miscellaneous probate code revisions, I find them generally helpful. I have only a few comments. With respect to the duration of custodianship under the Uniform Transfers to Minors Act, §3920.5, I think increasing the age to twenty-five creates a substantial risk that these "automatic" accounts would inadvertently cause immediate taxable gifts. Of course, for the majority of those involved, the consequences will not increase their ultimate tax because of the applicability of the unified estate and gift tax credit. Nonetheless, since it seems unlikely that there is a ready way to warn those who might create such accounts, retaining limit on inter vivos gifts to age twenty-one would be desirable. The consequence is that for substantial regular gifts, the donor will need to create a trust if the gifts are to continue beyond age twenty-one. Perhaps an alternative would be to create a procedure for a Crummey gift, allowing a Uniform Transfers to Minors Act transfer to be subject to notice to the donee and immediate short-term right of withdrawal. A further comment is that Uniform Transfers to Minors Act transfers might be allowed for someone over age eighteen (although not technically a minor); if the property is to be retained until age twenty-one or age twenty-five (or even some later age), it should not be a requirement that the donee be under age eighteen. This allows the simplified procedures of the Uniform Transfers to Minors Act to be used to handle the disposition of amounts expected to be relatively small and of relatively short duration of management (and possibly for which

the chance of a provision coming into play is remote). For example, rather than have complex successive trusts upon the death of a first or second generation beneficiary, a provision for Uniform Transfers to Minors Act may be satisfactory if the next recipient upon failure of the first or second generation is then under age eighteen, but may not be satisfactory (because it leads to immediate outright distribution) if the beneficiary is between eighteen and twenty-five.

With respect to new Probate Code §10006, which mirrors common practice, it would also be helpful for purposes of overbidding of one or more interests subject to probate and court confirmation if the minimum overbid could be set forth in a pre-determined way. One option would be to eliminate the extra 5% on the first \$10,000, which is now largely outmoded. Another would be to base the minimum overbid on all interests being confirmed, including those voluntarily subjected to the court procedure under Probate Code §10006. Currently, I believe that the code requires the minimum overbid to be calculated on the smallest percentage being sold subject to confirmation, and then that price is by custom prorated among all portions being sold. Again, the simplest solution would be to eliminate the extra 5% increment on the first \$10,000.

Finally, I particularly applaud the recognition under §12250 of informal distribution, since I find this occurring with increasing frequency for specific bequests and for distribution in the case of a very small group of friendly beneficiaries.

Thank you for the opportunity to comment on these tentative recommendations.

Respectfully submitted,


Peter L. Muhs

PLM:em:3021

CA LAW REV. COMMITTEE

NOV 06 1989

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LAKIN•SPEARS

Attorneys at Law

November 3, 1989

John H. DeMouly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation Relating to Access To
Decedent's Safe Deposit Box

Dear Mr. DeMouly:

This will acknowledge receipt of a copy of your Tentative Recommendation relating to Access To Decedent's Safe Deposit Box dated September, 1989. I am writing to offer some questions and comments with regard to the drafting of this statute.

First, I think that there is a risk in requiring that a representative of a financial institution file any Will found in a safe deposit box. For instance, can a financial institution representative identify a valid holographic Will?

Also, insofar as the requirement that the financial institution "deliver the Will to the Clerk of the County in which the estate of the decedent may be administered," how does a representative of a financial institution deliver the Will? Does that mean delivery by certified mail, return receipt request? Is the financial institution required to hand deliver the document and obtain a receipt? Is the financial institution required to obtain a copy of the filed document with the file number marked on it or other such designation? Is the financial institution required to mail a filed copy of the Will to all executors and all beneficiaries or may the financial institution mail a copy to any one of them? The statute provides that it shall mail a "copy of the Will to the person named in the Will as executor or beneficiary. . ." Who is "the" person?

How does the financial institution representative determine the county in which the decedent's estate will be administered ? What if the Will was executed by a decedent of another state, but was kept in a safe deposit box in California? Where would the Will be filed?

Is there any duty on the part of the financial institution representative to list the other contents of the safe deposit box? If not, the statute should say so.

I note that in (4) of section 331, there is a reference to "the Will", yet in (5) there is a reference to "any Will." This inconsistency should be corrected.

Finally, I note that the statute pertains to a situation in which letters have not been issued. Should there be Probate Code statutory provisions permitting full access to a safe deposit box to the executor or administrator after letters have been issued?

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald A. Vandenberg".

RONALD A. VANDENBERG

RAV:nvm/CA Law Rev. Letter

Dorothy E. Rolling

PROBATE ADMINISTRATOR

82 BLACKSTONE DRIVE
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CALIF. LAW REV. COMMISSION

October 16, 1989

OCT 20 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739Re: Tentative Recommendation relating
to Access to Decedent's Safe
Deposit Box
#L-3022

Gentlemen:

I have been most fortunate to be included with those persons receiving your recommendations, and enjoy the privilege, and would like it to continue

As you will note from my letterhead, I am a Probate Administrator, and have been working in this field for 20 years. During that period of time I have seen many changes with regard to procedure, some good and some bad. The change that you are suggesting in your bulletin #L-3022 I believe is one of those bad ones.

I do not feel that the banks should have the burden of taking possession of the original will once removed from the safe deposit box and delivering it to the clerk of Superior Court. The original Will is such an important document and should only be in the hands of a person who is a family member of the decedent, named on the safe deposit box, the attorney for the decedent, the named executor under the will, etc. My fear is that the employees will not take the necessary steps to safeguard the will and promptly deliver it to the Court.

From my experience I have found that the family or personal representative of the decedent want to take the

California Law Revision Commission

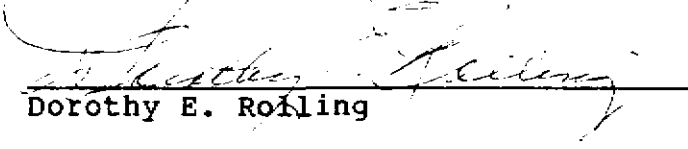
October 16, 1989

Page Two

necessary steps to take possession of the original Will and deliver it to the attorney, who in turn lodges it with the Court for safekeeping until a estate proceedings has been established.

I would like to continue to receive the tentative recommendations. This is my first comment and may be my last so I would ask that you send me the details on the charges and purchase procedure for the future.

Sincerely,


Dorothy E. Rolling

der

FRANK M. SWIRLES
LAW CORPORATION

OCT 01 1989

RECEIVED

October 3, 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Access to Decedent's Safe Deposit Box

Gentlemen:

Your recent tentative recommendation re subject is right off the wall in left field! Have any of you ever gone out into the real world to visit a bank lately?

Most of the people who have wills in safe deposit boxes keep them in local branches of larger banks, not in bank headquarters where there is a certain modicum of competent help. If you can find a man in a branch bank at all, it is probably because he is old and on his way out, or because he is as incompetent as the ladies who surround him. The ladies, bless their hearts, run branch banks because they are willing to work for less, not because they have special banking skills. Many of them will not and cannot make decisions on any matter.

The burden your proposal puts upon these bemused ladies is tremendous! How will they be able to identify a genuine certificate of death, statement from a coroner, treating physician, hospital or institution where the decedent died? How will they know if the requirements of Section 13104 are met, or even what that section is or where?

How will they "supervise" the person entering the box? What does "take custody of any original will" mean? How will they know what an original will is, or any will, for that matter? Will all wills have to be printed on will paper? Green paper? Orange paper?

How will they know what person is named as executor or beneficiary. They can hardly pronounce the words, let alone define them or a corresponding capacity.

How will they know what instructions for disposition are?

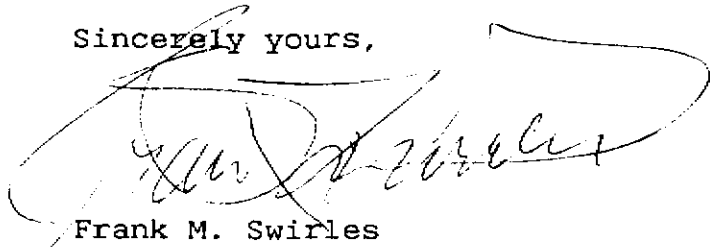
Obviously, some one has to do these things, but not these ladies. Why not probate referees? They don't do anything anyway. Why not get them trained so they can perform these cerebral functions?

FRANK M. SWIRLES

LAW CORPORATION

Do anything, but don't put us in the hands of bank
clerks, please.

Sincerely yours,

A large, stylized handwritten signature in dark ink, appearing to read 'Frank M. Swirles', is written over the typed name.

Frank M. Swirles

RAFAELHO SANTA FE, CALIFORNIA 92067

STATE OF CALIFORNIA
California Law Revision Commission

TENTATIVE RECOMMENDATION

relating to
ACCESS TO DECEDENT'S SAFE DEPOSIT BOX

September 1989

This tentative recommendation is being distributed so interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments sent to the Commission are a public record, and will be considered at a public meeting of the Commission. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise that you believe it should be revised.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NO LATER THAN OCTOBER 31, 1989.

The Commission often substantially revises tentative recommendations as a result of comments it receives. Hence, this tentative recommendation may not be the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

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 permit a person who has a key to decedent's safe deposit box to have immediate access to obtain a copy of decedent's will or to remove instructions for disposition of

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).

decedent's remains.³ The person seeking access should be required to establish the fact of the decedent's death by furnishing the financial institution with a certified copy of the decedent's death certificate, or a written statement of death from the coroner, treating physician, or hospital or institution where decedent died, and to give the financial institution reasonable proof of the identity of the person seeking access.

When the person seeking access has given the financial institution this proof, the financial institution should be required to keep a record of the identity of the person, and to permit the person to open the safe deposit box under the supervision of an officer or employee of the financial institution. The financial institution itself should be required to take custody of any original will of the decedent found in the safe deposit box and to do all of the following:

(1) Deliver the will to the clerk of the superior court of the county in which the estate of the decedent may be administered.⁴

(2) Provide the person given access with a photocopy of any will of the decedent found in the safe deposit box on payment of a reasonable fee.

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

(4) Permit the person given access to remove any instructions for disposition of decedent's remains.

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 duty is already imposed on custodians of wills generally by Probate Code Section 8200.

PROPOSED LEGISLATION

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

An act to amend the heading to Part 10 of Division 2 of, and to add Section 331 to, the Probate Code, relating to decedents' estates.

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

Heading to Part 10 (commencing with Section 330) (amended). Immediate steps concerning decedent's tangible personal property

SECTION 1. The heading to Part 10 (commencing with Section 330) of Division 2 of the Probate Code is amended to read:

PART 10. ~~DELIVERY-OF~~ IMMEDIATE STEPS CONCERNING DECEDENT'S TANGIBLE PERSONAL PROPERTY AND SAFE DEPOSIT BOX

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

SEC. 2. Section 331 is added to the Probate Code, to read:

331. (a) If a decedent has a safe deposit box in a financial institution, a person who has a key to the safe deposit box may, before letters have been issued and without the need to wait 40 days after death, obtain access to the safe deposit box solely 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 may 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.

(b) When the person seeking access has satisfied the requirements of subdivision (a), 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.

(3) Take custody of any original will of the decedent found in the safe deposit box.

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

(5) On payment of a reasonable fee by the person given access, provide the person with a photocopy of any will of the decedent found in the safe deposit box.

(6) Permit the person given access to remove any instructions for disposition of the decedent's remains.

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

(d) 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 solely to obtain a copy of the decedent's will and to remove instructions for disposition of the decedent's remains. 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. See also Sections 40 ("financial institution" defined), 52 ("letters" defined), 88 ("will" includes a codicil).