

First Supplement to Memorandum 90-106

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

In Memorandum 90-106, the staff reported that the California Bankers Association had serious problems with the Commission recommended legislation relating to access to the decedent's safe deposit box. The staff requested the Commission to determine whether the CBA proposal (set out in Memorandum 90-106) was acceptable to the Commission.

The attached letter from the Legislative Committee of the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association notes that the CBA proposal fails to deal with the need to provide to the court the original of a will found in a safe deposit box. The Committee believes that this is a matter that needs to be dealt with. The Committee has some suggestions as to approaches that might be taken.

The attached letter also raises another problem which is not dealt with in the Commission's recommendation--the situation where a safe deposit box is held in joint tenancy and the joint tenant is an individual who might or might not be hostile to the will. The attached letter includes suggestions for dealing with this situation.

If the CBA proposal is not acceptable to the Commission, the staff recommended in Memorandum 90-106 that this matter be considered at the September Commission meeting, and that we request representatives of CBA to be present at that meeting with a view to developing legislation that satisfies all concerned if that is possible. The staff would prepare a background memorandum on the problems.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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July 13, 1990

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, CA 94303-11

Re: Memorandum 90-106
Access to Decedent's Safe Deposit Box
Our File Number: 11582-11

Dear Mr. De Mouilly:

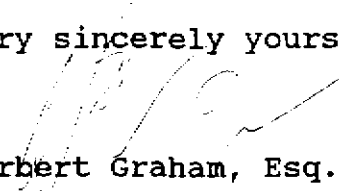
On behalf of the Legislative Committee of the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association, I wish to express two of our concerns in regard to study L-03022.

The CBA proposal creates a substantial conflict with Probate Code §8200. In Los Angeles County, at least, the clerk and the court will not accept a petition for probate unless it is accompanied by a copy of the will and, further, unless the original of the will has been filed for safekeeping. As a result, we do support the staff's proposal that a bank deliver the original of the will to the Secretary of State. However, we do understand the bank's reluctance to be burdened with that responsibility. As a compromise, we would therefore suggest that if the individual requesting an examination of the box is the named executor of the will and meets the identification requirements of the proposed code section, the original of the will be delivered to the executor, and that the executor sign a receipt to which would be attached a photocopy of the will.

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Another problem which we have discussed, and which is not responded to in this code section, is a situation where a safe deposit box is held in joint tenancy and the joint tenant is an individual who might or might not be hostile to the will. Under present law, as we understand it, access to that box might never be available to anyone. We would suggest, in the case of a joint tenancy box in which one tenant was a decedent, the code include a provision that the box be opened with the joint tenant present and similar provisions regarding the examination of the will, delivery of the will to the executor, etc.

Very sincerely yours,



Herbert Graham, Esq.

HG/jk

cc: Lisa Alexander, Esq.