

Memorandum 90-142

Subject: Study L-3022 - Access to Decedent's Safe Deposit Box
(Comments on Tentative Recommendation)

Attached is the *Tentative Recommendation relating to Access to Decedent's Safe Deposit Box*. We received 18 letters commenting on the TR. These are attached as Exhibits 1 through 18:

Exhibit 1: Wilbur L. Coats
Exhibit 2: Paul Gordon Hoffman
Exhibit 3: Dan L. Kirby, Western Surety Company
Exhibit 4: Alvin G. Buchignani
Exhibit 5: Jerome Sapiro
Exhibit 6: Ruth E. Ratzlaff
Exhibit 7: Richard E. Llewellyn, II
Exhibit 8: Thomas R. Thurmond
Exhibit 9: Robert J. Berton (former CLRC Chairman)
Exhibit 10: Kenneth M. Klug (the originator of this proposal)
Exhibit 11: Linda A. Moody
Exhibit 12: Henry Angerbauer
Exhibit 13: Mary J. Pierce
Exhibit 14: Ruth A. Phelps
Exhibit 15: Michael J. Anderson
Exhibit 16: David W. Knapp, Sr.
Exhibit 17: Frank M. Swirles
Exhibit 18: Stuart D. Zimring

Fourteen letters support the TR without qualification (Exhibits 2, 3, 5 through 10, 12, and 14 through 18). Three support it with suggested revisions (Exhibits 1, 4, and 13). One supports it with a question (Exhibit 11). None oppose it. Many expressed enthusiasm for the proposal:

-- "I commend you for reintroducing your recommendation on this subject." (Exhibit 1.)

-- "I am particularly pleased that something less than the death certificate may be adequate for access." (Exhibit 6.)

-- "I strongly support" the TR. (Exhibit 7.)

-- The TR "is excellent." (Exhibit 10.)

-- "This recommendation is a good idea." (Exhibit 14.)

-- "I highly approve the recommendation and it is long overdue." (Exhibit 16.)

The suggested revisions are discussed below.

Removal of Inter Vivos Trust Instrument

The TR permits a person with a key to decedent's safe deposit box to remove decedent's will and instructions for disposition of decedent's remains. Two commentators suggested the person should also be authorized to remove any inter vivos trust instruments in the box (Exhibits 1 and 13). The staff thinks this is a good suggestion.

Ordinarily the personal representative is the one who removes the contents of the decedent's safe deposit box. But instructions for disposition of remains are needed immediately so the disposition may be done in accordance with the decedent's wishes. The will is needed before letters are issued so it may be determined who is entitled to appointment as executor.

There is no urgent need to remove a trust instrument. If a personal representative is appointed, he or she is the best person to take custody of the trust instrument, along with other contents of the box.

But Mary Pierce (Exhibit 13) points out that there may not be a probate proceeding. In that case, there is no provision for removal of trust instruments from decedent's safe deposit box. It may be necessary to petition for probate just to get the trust instrument. This seems like an unnecessary expense to the petitioner.

A requirement that the financial institution make and keep a photocopy of any trust instrument removed from the box, like the requirement now in the TR for wills, should be sufficient protection against fraud. Accordingly, the staff recommends that subdivision (d) of proposed Section 331 be revised as follows:

(d) When the person seeking access has satisfied the requirements of subdivision (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) Make a photocopy of all wills and trust instruments removed from the safe deposit box, and keep the photocopy on file for a period of five years. The financial institution may charge the person given access with a reasonable fee for photocopying.

(4) Permit the person given access to remove instructions for the disposition of the decedent's remains, and, after a photocopy is made, to remove the wills and trust instruments.

Rights of Surviving Co-owner of Safe Deposit Box

The TR applies only to a safe deposit box held in decedent's sole name, or held by decedent and others where all are deceased. If the box is jointly held and a co-owner is still living, only the co-owner has access to the box.

Alvin Buchignani suggests a parallel section specifying the rights of the co-owner after decedent's death (Exhibit 4). The staff is reluctant to try to draft a statute to say what the rights of a surviving co-owner are. Such a statute might have the unintended effect of limiting those rights. However, the staff has no objection to adding the underscored sentence to subdivision (a) of Section 331:

(a) This section applies only to a safe deposit box in a financial institution held by the decedent in the decedent's sole name, or held by the decedent and others where all are deceased. Nothing in this section affects the rights of a surviving co-owner.

Attorney as Keyholder

Linda Moody (Exhibit 11) asks what happens where the decedent has given a key to the safe deposit box to his or her attorney, along with written authorization for access? Under the TR, an attorney with a key has the same access to the box as a family member or anyone else with a key. It is not necessary to have written authorization from the decedent -- possession of the key is sufficient.

If the key is lost and no one has a key, then the box must be drilled by the financial institution. Section 331 will not apply, and letters will have to be obtained to gain access. It is not necessary to expand our proposed statute to cover this situation. A petition for letters will bring the matter under court supervision as in other cases.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

September 25, 1990

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

CA LAW REV. COMMISSION

SEP 27 1990

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In Re: Tentative Recommendations relating to:
Recognition of Trustee's Powers;
Recognition of Agent's Authority--Statutory Power of Attorney;
Gifts in View of Death;
Repeal of Civil Code Section 704;
Recognition of Trustees' Powers; and
Access to Decedent's Safe Deposit Box.

Dear Sirs:

I concur in all of the above cited recommendations except the proposal concerning Access to Decedent's Safe Deposit Box.

Often individuals place the original of an inter vivos trust in their safe deposit box. Therefore, it may be just as important to remove a trust document as it is to remove a Will.

I suggest an additional paragraph (5) be added to Section 331. (d) which would read:

(5) Permit the person given access to remove any trust documents.

Very truly yours,


Wilbur L. Coats

HOFFMAN
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CA LAW REV. COMM'N

SEP 27 1990

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September 25, 1990

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

Re: Study L-3022-Tentative Recommendation Relating to
Access to Decedent's Safe Deposit Box

Ladies and Gentlemen:

I commend you for reintroducing your recommendation on this subject. I am particularly pleased by the idea that proof of the decedent's death could be made by a document other than a certified copy of the decedent's death certificate, since it often takes a substantial amount of time to obtain a certified copy of a death certificate.

Very truly yours,



Paul Gordon Hoffman

PGH:mem

PGH1001\LAUREV2.LTR



Western Surety Company

Office of General Counsel

September 25, 1990

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

CA LAW REV. COMM'N

SEP 27 1990

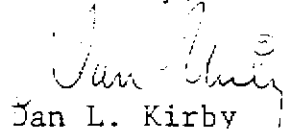
RECEIVED

Dear Sir/Madam:

Re: Tentative Recommendations #L-3022, #L-3046, #L-644,
#L-3034
Our Special File CA-3949

Thank you for furnishing us with copies of these Tentative Recommendations. This Company is in agreement with each of these recommendations, and would appreciate being kept on your mailing list.

Sincerely,



Dan L. Kirby

DLK:gm

SEP 28 1990

ALVIN G. BUCHIGNANI

ATTORNEY AT LAW

RECEIVED

ASSOCIATED WITH
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September 25, 1990

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

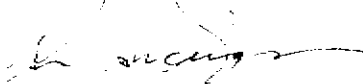
Dear Ladies & Gentlemen

I do not believe the proposed recommendation regarding Access to Decedent's Safe Deposit Box is broad enough. I believe it should also address the rights of access of a person who not only holds a key to the box but is also a joint owner of the box. Such a person should have access to the box, even in the event of a decedent's death, solely on presentation of the key, and proof of his identity as a joint owner.

I have no objection to the other requirements of the proposal relating to making of copies and imposing the duty to file the will with the Clerk of the Court on the person who removes it from the box.

Proposed Probate Code §331 specifically states that it only applies in the case of a safe deposit box held by the decedent in the decedent's sole name, or held by the decedent and others where all are deceased. In order to avoid confusion and to promote consistency, a related probate code section, with a number that is reasonably close, should specify the rights of the co-owner of the box in the event of death.

Very sincerely,



Alvin G. Buchignani

AGB/pzg

JEROME SAPIRO
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CA LAW REV. COMM'N

SEP 27 1990

Sept. 26, 1990

- 1 - E D

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

Re: Tentative Recommendation
relating to Access to
Decedent's Safe Deposit Box,
Sept. 1990 - # L-3022

Hon. Commission:

Undersigned approves the above-mentioned Tentative
Recommendation.

Personally, I have not experienced the problems
indicated since the abolition of the State Inheritance Tax.

However, the recommendation will visit uniformity of
treatment to this matter by financial institutions.

Respectfully,


Jerome Sapiro

JS:mes

OCT 01 1990

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RUTH E. RATZLAFF
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September 28, 1990

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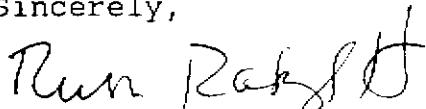
RE: Access to the Decedent's Safe Deposit Box

Dear Commissioners:

I have reviewed your tentative recommendation relating to access to the decedent's safe deposit box. I support the recommendation.

I am particularly pleased with the recommendation that something less than the death certificate may be adequate for access. This is necessary because death certificates are not issued until the cause of death has been identified, and in some cases that can be days or even weeks. Those types of cases may be exactly the ones where there is some urgency about getting a special administrator appointed to run a business or take over some other activity of the decedent's. If the executor has to wait for the death certificate in order to get the will, the delay may be damaging to the business or other activity.

Sincerely,



Ruth E. Ratzlaff

RER:pp

ALBERT J. GALEN
W. MICHAEL JOHNSON
RICHARD E. LLEWELLYN II
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October 2, 1990

CA LAW REV. COMM'N

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California Law Revision Commission
4000 Middlefield Road
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Re: Recent Tentative Recommendations

Dear Commission:


In response to your request for comment on the Commission's Tentative Conclusions, I strongly support and am in agreement with the Commission's recommendations relating to (1) Recognition of Agent's Authority Under Statutory Form Power of Attorney, and (2) Access to Decedent's Safe Deposit Box.

I have no approval or disapproval as to the tentative recommendation concerning Recognition of Trustee's Powers, since although I have occasionally had problems with persons or institutions acknowledging a trustee's authority, I have found that most of such problems are easily remedied by simply providing an abstract or a full copy of the trust instrument.

Lastly, with regard to the Commission's tentative recommendation relating to Gifts in View Of Death, I would prefer to see the repeal rather than the clarification of the existing old law. Gifts of this nature are largely problematical and they are often impossible to verify with anything other than the donee's testimony.

Very truly yours,

HOLLEY & GALEN

By 
Richard E. Llewellyn, II

REL:art
0000004EL.REL

THOMAS R. THURMOND

ATTORNEY AT LAW

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REV. COMM'N

OCT 04 1990

FILED

October 3, 1990

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

Re: Tentative Recommendations

The following comments are in response to the tentative recommendations dated June and September 1990.

Repeal of Civil Code section 704

I concur with this recommendation, which comports with Federal supremacy concepts.

L-3034 - Gifts In View of Death

I concur with this recommendation, which clarifies the nature of such gifts and establishes the concept of a condition subsequent. Moving these sections to the Probate Code makes sense.

L-644 - Recognition of Trustees' Powers

I concur with this recommendation. It is another step toward resolving the continuing problem with third parties' recognition of trustees' powers. This provides another arrow in the attorney's quiver to encourage out-of-state and other institutions to cooperate in trust matters.

L-3046 - Recognition of Agent's Authority Under Statutory Form Power of Attorney

I concur with this recommendation. This should be an effective measure to counter the tendency of banks and other financial institutions to insist on the use of their own form powers of attorney. While this situation has improved considerably in recent years, there still are many institutions that are reluctant to accept attorney-drafted documents.

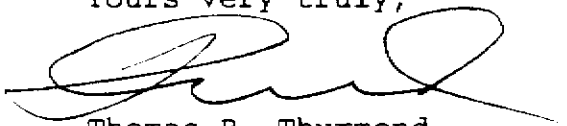
Page 2
California Law Revision Commission
October 3, 1990

L-3022 - Access to Decedent's Safe Deposit Box

I concur with this recommendation. The previous requirement that the institution directly file any will discovered in the safe deposit box created inefficiencies and delays in the establishment of probate estates. From an attorney's standpoint, this procedure is better.

Thank you for the opportunity to comment on these proposed revisions to the law.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Thurmond', with a large, stylized flourish extending from the end of the signature.

Thomas R. Thurmond
Attorney at Law

TT/sr

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CALIF. LAW REV. COMM'N

OCT 05 1990

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F. PROCOPIO
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HARRY HARGREAVES
RETIRED
JOHN H. BARRETT
RETIRED

October 3, 1990

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

Dear John:

Recently I have received and reviewed the Tentative Recommendations of the California Law Revision Commission relating to the following subjects:

1. Repeal of Civil Code Section 704 (passage on death of ownership of U.S. Bonds);
2. Gifts in View of Death;
3. Access to Decedent's Safe Deposit Box;
4. Recognition of Agent's Authority under Statutory Form Power of Attorney;
5. Recognition of Trustees' Powers.

It has been almost a decade since I commenced to serve on the Law Revision Commission. As you will well remember, it was during that time that we first addressed ourselves to an overhaul of the California Probate Code. It is interesting to note that many of the Tentative Recommendations now being recommended are the result of determining the practical application of the Probate Code reforms that were enacted.

In any event, I am in favor of all of the above referenced Tentative Recommendations. I am particularly pleased with respect to the recommendations involving recognition of an

Mr. John H. DeMouilly
October 3, 1990
Page 2

agent's authority under a Statutory Form Power of Attorney, the matter of access to a decedent's safe deposit box, and recognition of a trustee's powers. Like many other attorneys, I have, from time to time, commiserated with clients who are unable to convince third parties, often banks or similar institutions, of their authority to act. The Tentative Recommendations, in that regard, appropriately address the practical aspects of obtaining recognition for authority to act.

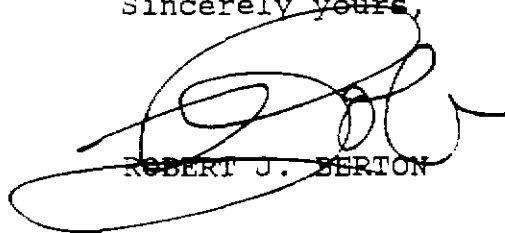
Turning to the Tentative Recommendation relating to recognition of trustees' powers, I call the following to your attention. It has been my experience that banks and other institutions often cause difficulties for trustees because of their refusal to proceed with the trust unless and until they have adequate proof of the existence of the trust and the identification of the trustee, as well as the authority of the trustee. Many a trustee client has requested that I prepare something akin to certified letters testamentary in a probate estate. To my knowledge, the closest one can come to such documentation is Probate Code Section 15603. That section allows the Clerk of the Court to issue a certificate showing that the trustee is duly appointed and acting, but only if there is some proceeding before the Court which would evidence those facts. Obviously, with most living trust situations, it is the desire of the trustee not to be involved with any Court proceedings. It is also true that in the case of a trust involving real property, the trust can be recorded pursuant to the provisions of Probate Code Section 15210. None of the cited sections truly address the desire of the typical trustee of a living trust with respect to having the ability to present proof of the trusteeship without the necessity of submitting the entire trust document. Your proposed Probate Code Section 18100.5 should go a long way towards providing a simple affidavit by virtue of which the trustee can satisfy third persons as to the trustee's authority without the necessity of presenting the entire trust document to the third person. In the context of the wording of proposed Section 18100.5 of the Probate Code, I recommend an additional sentence be added at the end of subsection (a) of Probate Code Section 18100.5. That additional sentence should read essentially as follows:

"The affidavit shall also state the name or other designation of the trust sufficient to identify it, that the trust is valid, and that the trust is in effect."

Mr. John H. DeMouilly
October 3, 1990
Page 3

It has been a while since I have talked with you, or corresponded with you or with other members of the staff. Therefore, please give my best regards to Nat, Bob and Stan. Hoping this letter finds you all well, I am

Sincerely yours,



ROBERT J. BERTON

RJB:jhc

THOMAS, SNELL, JAMISON, RUSSELL AND ASPERGER

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October 4, 1990

Mr. Robert J. Murphy III
Staff Counsel
California Law Revision Commission
Suite D-2
4000 Middlefield Road
Palo Alto, CA 94303-4739

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

Dear Bob:

Thanks for your letter of September 24. One of the great strengths of the Commission is its willingness to receive and consider all comments received, even those received after the deadline. I will try to get future comments to you more promptly.

The September, 1990, Tentative Recommendation Relating to Access to Decedent's Safe Deposit Box is excellent. The new procedure provides a very practical means of obtaining the Will while protecting beneficiaries and not imposing extra burden on the financial institution. The simplicity of the recommended procedure makes it far superior to the previous recommendation.

I am chagrined to think that the access problem I raised had such a simple solution. Whoever thought up this solution deserves the "Emperor's New Clothes Award" for 1990!

Very truly yours,



Kenneth M. Klug

Memo 90-142

EXHIBIT 11
MOODY & MOODY
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MILL VALLEY, CALIFORNIA 94941

REV. COMM'N
Study L-3022
OCT 12 1990
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LINDA A. MOODY
GRAHAM B. MOODY

TEL (415) 332-0216
FAX (415) 331-5387

October 10, 1990

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

Re: Tentative Recommendation: Access to Decedent's Safe
Deposit Box (September 1990)

Ladies and Gentlemen:

Moody & Moody supports the Commission's Tentative Recommendation relating to Access to Decedent's Safe Deposit Box (September 1990). Our only questions relate to the key. Some of my clients have me listed as an authorized signer to have access to their safe deposit boxes and I have a key, but I don't think I am a "holder" of the box [as in § 331(a)]. Does the phrase "has a key" mean that the person must have been (or be) authorized by the decedent to enter the box? Whether the decedent was the only authorized signer or not, what if the key is lost and no one has a key? What authority governs in that situation? Must one have temporary letters then to have access to the box? What requirements would or should be imposed on the bank in that situation?

Very truly yours,


Linda A. Moody

OCT 15 1990 3022

HENRY ANGERBAUER, CPA
4401 WILLOW GLEN CT.
CONCORD, CA 94521

RECEIVED

10/12/90

California Law Revision Commission

I have reviewed your recommendations as follows:

- (1) Access to Decedent's Safe Deposit Box,
- (2) Repeal of Civil Code Section 704,
- (3) Gifts in View of Death,
- (4) Recognition of Agent's Authority under Statutory Form Power of attorney,
- (5) Recognition of Trustees' Powers.

I agree with your recommendations and proposed conclusions related to the above mentioned items.

I suggest you implement your powers to recommend them to the legislature to be enacted

into law. Thanks for letting me make my views known
Henry Angerbauer - 15 -

LILLICK & CHARLES

OCT 20 1990

Two Embarcadero Center
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October 22, 1990

RECEIVED
LILLICK & CHARLES

EX-107-4983

10/22/90
415-421-4700

(415) 984-8456

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

Re: Access to Decedent's Safe Deposit Box

Gentlemen:

In response to your tentative recommendation relating to Access to Decedent's Safe Deposit Box, dated September 1990, I propose that Probate Code Section 331 be revised to permit a persons who has a key to a decedent's safe deposit box to also remove a decedent's inter vivos trust in addition to his or her pourover will. This access is particularly important in those cases where there will be no court proceeding and thus no letters will be issued.

In all other respects, I approve of this recommendation and would urge its approval by the legislature.

Very truly yours,

LILLICK & CHARLES

Mary J. Pierce
Mary J. Pierce

241:92000.PDPRPL

Memo 90-142

EXHIBIT 14

Phelps, Schwarz & Phelps

Edward M. Phelps
Deborah Ballins Schwarz
Ruth A. Phelps
Of Counsel
Barbara E. Dunn

Attorneys at Law
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CALIF. LAW REV. COMM'N
Study L-3022
OCT 25 1990

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October 23, 1990

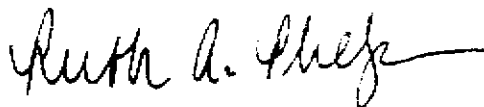
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

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

Dear Sir/Madam:

I have read the recommendation. I agree with it. We represent several banks and I have been questioned at length about whether a bank employee can be present when a safe deposit box is opened. Probate Code Section 331(d)(2) makes this clear. This recommendation is a good idea.

Very truly yours,



Ruth A. Phelps
PHELPS, SCHWARZ & PHELPS

RAP:sp

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LA W REV. COMM'N

OCT 25 1990

RECEIVED

Michael J. Anderson

October 24, 1990

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

To whom it may concern:

I favor without comment the following:

In respect to the Repeal of Code Section 704 I am in agreement with it. I am also in favor of Recognition of Trustees' Powers and Access to Descendant's Safe Deposit Box.

In respect to Recognition of Agent's Authority Under Statutory Form Power of Attorney, I would request that it be expanded to include any Power of Attorney drafted by an Attorney.

I have no objections to Gifts in View of Death.

Sincerely,



MICHAEL J. ANDERSON

MJA/fa

DAVID W. KNAPP, SR.
DAVID W. KNAPP, JR.

LAW OFFICES
KNAPP & KNAPP
1093 LINCOLN AVENUE
SAN JOSE, CALIFORNIA 95125
TELEPHONE (408) 298-3838

FAX (408) 298-1911

October 5, 1990

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

Re: YOUR TENTATIVE RECOMMENDATIONS CONCERNING THE FOLLOWING
REVISIONS:

1. ASSESS TO DECEDENT'S SAFE DEPOSIT BOX:
I highly approve the recommendation and it is long overdue;
2. RECOGNITION OF TRUSTEE'S POWERS:
I highly approve as it will be a great help;
3. RECOGNITION OF AGENTS AUTHORITY UNDER STATUTORY FORM POWER OF ATTORNEY:
Since the inception of the law (1982) I have had many difficult sessions with both Bank of America (who insists on the use of their own forms) and the local Wells Fargo who at first refused entirely to honor the same. Your recommendation, if only accepted, will be of great service to we probate lawyers and will possibly "educate" the institutions of the protection they have in honoring the powers of attorney. It's a great idea;
4. GIFTS IN VIEW OF DEATH:
I approve. It puts the law where it should be;
5. REPEAL OF CIVIL CODE SECTION 704:
I approve.

Your Commission should be congratulated on the fine work you are doing in straightening out many misunderstand sections of the law.

Very truly yours,

DAVID W. KNAPP, SR.
LAW OFFICES OF KNAPP & KNAPP
DWK:dd

Memo 90-142
FRANK M. SWIRLES
LAW CORPORATION

EXHIBIT 17

CA LAW REV. COMMISSION
Study L-3022
OCT 27 1990
RECEIVED

October 26, 1990

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

Re: Tentative Recommendations - re

1. Repeal of CC Section 704
2. Access to decedent's safe deposit box ✓
3. Recognition of Trustee's powers
4. Recognition of agent under statutory power
5. Gifts in view of death

Gentlemen:

I have no objections to your recommendations in the above matters.

Very truly yours,


Frank M. Swirles

LAW OFFICES OF

LEVIN, BALLIN, PLOTKIN, ZIMRING & GOFFIN

A PROFESSIONAL CORPORATION

2650 RIVERSIDE DRIVE

NORTH HOLLYWOOD, CALIFORNIA 91307-3492

TEL: 818-706-8831 • (818) 984-3650

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HARMON R. BALLIN (1912-1989)

OF COUNSEL

KANYA BERTRAM

JUSTIN GRAF

TEVEN CERVERIS

LEGAL ASSISTANTS

PATRICIA D. FULLERTON

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WILLIAM LEVIN
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STUART D. ZIMRING
JUDY O. MARUTANI
GEORGE M. GOFFIN
J. KIRK ADDI
LENN H. HESTER
JUSTIN E. GRAF
STEPHEN L. BUCKLIN

November 8, 1990

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

Re: Recommendations L-3022, L-644, L-3046, L-3034, L-3025

Gentlemen:

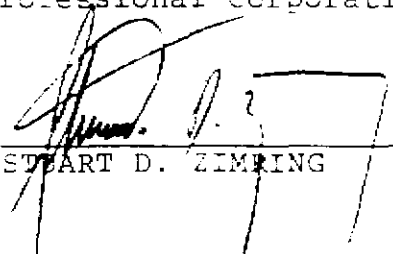
I have reviewed the latest set of tentative recommendations and am in favor of all of them. However, I do wish to express my concern that it appears necessary to provide for a cause of action of "specific performance" as regards Statutory Form Powers of Attorney and Recognition of Trustee Powers. It is regrettable that such useful estate planning tools are not accepted willingly within the business and economic community.

On the other hand, as I read proposed Civil Code Section 2480.5, it only applies to a Statutory Form Power of Attorney. I think it would be more useful (especially since I never use the Statutory Form) to enlarge the enforcement power to apply to any duly executed Durable Power of Attorney.

Lastly, I seem to have misplaced my copy of the Law Revision Commission's Report on the new probate code with commentary. I would appreciate it if you could forward a copy to me. If there is any cost involved, give me a call and I will send you a check.

Sincerely,

LEVIN, BALLIN, PLOTKIN, ZIMRING & GOFFIN
A Professional Corporation

BY: 
STUART D. ZIMRING

SDZ:rs

#L-3022

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

Access to Decedent's Safe Deposit Box

September 1990

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 the Commission that you believe it should be revised.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **OCTOBER 31, 1990.**

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

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

THE CALIFORNIA LAW REVISION COMMISSION

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CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
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ANN E. STODDEN

Letter of Transmittal

This recommendation proposes to make clear that, when a decedent dies having a safe deposit box in a financial institution, a survivor with a key to the box may gain access to remove the decedent's will and instructions for the disposition of the decedent's remains, and to inventory the contents of the box. Most, but not all, financial institutions now permit this without explicit legislative authorization.

This recommendation renews a recommendation made to the 1990 session of the Legislature. The recommendation was part of a comprehensive probate bill, but was removed from the bill to deal with concerns expressed by the California Bankers Association. This recommendation imposes the duty to file the will with the court clerk on the person removing the will, rather than on the financial institution.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

RECOMMENDATION

When a person dies, the person's will and instructions for disposition of the person's remains may be in a safe deposit box in a financial institution. Instructions for disposition of remains are needed immediately so the disposition may be done in accordance with the 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 the 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 a financial institution 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 a decedent's safe deposit box to have immediate access to remove the decedent's will and instructions for disposition of the decedent's remains, and to inventory the contents of the box.³ The person seeking access should be required (1) to establish the fact of the decedent's

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. 1982) (executor, surviving spouse, or close relative may ask bank to open safe deposit box to remove will); former Rev. & Tax. Code § 14344 (1945 Cal. Stat. ch. 1019, repealed by 1980 Cal. Stat. ch. 634) (removal from safe deposit box of anything other than a will or burial instructions prohibited without Controller's consent).

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

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 a decedent's employer, to deliver the decedent's personal property to the decedent's surviving spouse, relative, conservator, or guardian, without the need for issuance of letters to a personal representative.

death by providing the financial institution 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 (2) to give the financial institution reasonable proof of the identity of the person seeking access. The financial institution should have no duty to inquire into the truth of any statement, declaration, certificate, affidavit, or document offered as proof of the decedent's death or of the identity of the person seeking access.

When the person seeking access has given the financial institution the necessary 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 should be required to make a photocopy of all wills removed from the box, and to keep the photocopy on file for a period of five years. The financial institution should be authorized to charge the person given access a reasonable fee for photocopying.

The person given access who removes a will must comply with existing law which requires the custodian of a will who learns of the testator's death to deliver the will to the clerk of the superior court of 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, and if not, to a person named in the will as a beneficiary.⁴

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following amendment and new provision:

4. Prob. Code § 8200.

Heading to Part 10 (commencing with Section 330) (amended).

**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

331. (a) This section applies only to a safe deposit box in a financial institution held by the decedent in the decedent's sole name, or held 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, obtain access to the safe deposit box only 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 shall 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.

(c) The financial institution has no duty to inquire into the truth of any statement, declaration, certificate, affidavit, or document offered as proof of the decedent's death or proof of identity of the person seeking access.

(d) When the person seeking access has satisfied the requirements of subdivision (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) Make a photocopy of all wills removed from the safe deposit box, and keep the photocopy on file for a period of

five years. The financial institution may charge the person given access with a reasonable fee for photocopying.

(4) Permit the person given access to remove instructions for the disposition of the decedent's remains, and, after a photocopy is made, to remove the wills.

(e) The person given access shall deliver all wills found in the safe deposit box to the clerk of the superior court and mail or deliver a copy to the person named in the will as executor or beneficiary as provided in Section 8200.

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

Comment. Section 331 is new. It permits a person who has a key to a decedent's safe deposit box to gain immediate access in order to obtain a copy of the decedent's wills, remove instructions for disposition of the decedent's remains, and inventory the contents of the box. 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.

Subdivision (e) requires the person given access to deliver the wills to the clerk of the superior court and mail or deliver a copy 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). See also Sections 40 ("financial institution" defined), 52 ("letters" defined), 88 ("will" includes a codicil).