

Third Supplement to Memorandum 91-33

Subject: Study L-812 - Preliminary Distribution Without Court
Supervision Under Independent Administration of Estates
Act (Comments of ExComm of State Bar Probate Section)

Exhibit 1 is a letter from Valerie Merritt for the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar. They disagree with the suggestion of the LA Bar Probate and Trust Law Section that a provision should be added to proposed Section 10520 to make clear that a personal representative who distributes a motor vehicle is not liable as owner for negligent operation by another person. They say that if "the law were to be changed" for distribution of automobiles, it should be applied to all distributions, not just preliminary distributions under the Independent Administration of Estates Act. But this is not a change in the law. It codifies *Fountain v. Bank of America*, 109 Cal. App. 2d 90, 95, 240 P.2d 414 (1952).

The Executive Committee makes a good point when they say it is easy for the personal representative to avoid owner's liability by filing a notice of transfer with the Department of Motor Vehicles. This point was made at the last meeting, and the Commission seemed receptive to it. Vehicle Code Section 5900 requires a notice of transfer, and provides that when "the registered owner is not in possession of the vehicle that is sold or transferred, the person in physical possession" shall give the notice. So the personal representative, if in physical possession of the vehicle, has a duty to file the notice under existing law. The Executive Committee says they "do not see why personal representatives should be treated differently from other owners of vehicles." Although the personal representative is not the "owner," if he or she has physical possession of the vehicle, he or she should file the notice. The staff has no objection to omitting subdivision (b) from Section 10520 as set out in the Second Supplement.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

JUN 10 1991

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June 5, 1991

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REPLY TO:

56570-000

BY FEDERAL EXPRESS

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

Re: Memoranda 91-33, 91-36, 91-37 and 91-39

Dear Commissioners:

At its meeting on June 1, 1991, the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar discussed and approved the report of Team 1 on the above referenced memoranda, which was transmitted to you on May 31, 1991. Thus, the positions expressed in the report are now the positions of the Executive Committee.

The Executive Committee also discussed the proposal set forth in the First Supplement to Memorandum 91-33. The Executive Committee disapproved the proposed change. It is relatively simple for a personal representative to avoid liability based on ownership of an automobile after its transfer (by sale or upon distribution) by completing the DMV Notice of Transfer form and filing it with the DMV. We do not see why personal representatives should be treated differently from other owners of vehicles. If the law were to be changed for distribution of automobiles, then it should be applied to all distributions, not just preliminary distributions under the Independent Administration of Estates Act.

Very truly yours,

Valerie J. Merritt
Valerie J. Merritt

cc: Robert L. Sullivan, Jr., Esq.
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