

First Supplement to Memorandum 88-80

Study L-3021 - Delivery of Decedent's Personal Property

Attached as Exhibit 1 is a letter from Kenneth Klug. He would add decedent's employer to those who may deliver decedent's property to family members under proposed Section 330 attached to the basic memo. The staff agrees, and would revise subdivision (a) of proposed Section 330 as follows:

(a) Except as provided in subdivision (b), a public administrator, government official, law enforcement agency, ~~or~~ the hospital or institution in which a decedent died, or the decedent's employer, may, without the need to wait 40 days after death, deliver the tangible personal property of the decedent in its possession, including keys to the decedent's residence, to the decedent's surviving spouse, relative, or conservator or guardian of the estate acting in that capacity at the time of death.

Parenthetically, there is no general rule of statutory construction that failure to have an all-inclusive list implies that matters not included are intended to be excluded: The maxim "expressio unius est exclusio alterius"

is a rather elaborate, mysterious sounding, and anachronistic way of describing the negative implication. Far from being a rule, it is not even lexicographically accurate, because it is simply not true, generally, that the mere express conferral of a right or privilege in one kind of situation implies the denial of the equivalent right or privilege in other kinds. Sometimes it does and sometimes it does not, and whether it does or does not depends on the particular circumstances of context. Without contextual support, therefore, there is not even a mild presumption here. Accordingly, this maxim is at best a description, after the fact, of what the court has discovered from the context.

R. Dickerson, *The Interpretation and Application of Statutes*, at 234 (1965).

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

EXHIBIT 1

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THOMAS, SNELL, JAMISON, RUSSELL AND ASPERGER

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

RECEIVED

HOWARD S. THOMAS  
WILLIAM N. SNELL  
T. NEWTON RUSSELL  
PAUL ASPERGER  
CHARLES E. SMALL  
ROGER E. FIPPS  
JAMES E. LAFOLLETTE  
SAMUEL C. PALMER, III  
JAMES O. DEMSEY  
ROBERT J. TYLER  
JOHN G. MENGSHOL  
KENNETH M. KLUG  
GERALD D. VINNARD  
JOHN J. MCGREGOR

WILLIAM A. DAHL  
STEVEN M. MCCLEAN  
JEFFREY R. KANE  
BRUCE D. BICKEL  
E. ROBERT WRIGHT  
DAVID M. GILMORE  
DONALD R. ASPERGER  
JANET L. WRIGHT  
RUSSELL D. WOOD  
DAVID A. DIAMOND  
SCOTT R. SHEWAN  
DANIEL W. ROWLEY  
ANDREW M. CUMMINGS  
ROSE SAFARIAN

2445 CAPITOL STREET  
POST OFFICE BOX 1461  
FRESNO, CALIFORNIA 93716  
TELEPHONE (209) 442-0600  
TELECOPIER (209) 442-5078

ABA/NET 2715

OF COUNSEL:  
OLIVER M. JAMISON  
FENTON WILLIAMSON, JR.  
PHILIP H. WILE

CONFERENCE OFFICES:  
DELANO  
MERCED  
MODESTO  
VISALIA

November 15, 1988

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

Re: Study L-3021, Memo 88-80

Dear Bob:

I recommend that proposed Section 330 as set forth in the above memo be expanded to include the decedent's employer among the list of persons described in Subdivision (a) who may deliver the decedent's tangible personal property to family members. Most employees keep personal effects in their desks, lockers, or similar facilities provided at the place of employment. The common practice of employers is to deliver those items to the spouse or other relative.

If the law is to be amended to provide express statutory authority for certain persons to deliver tangible personal property, we should be sure that the list is all-inclusive. Failure to have an all-inclusive list implies that persons not expressly named may not deliver such tangible personal property. I would prefer no statute to a statute limited to public officials as set forth in the draft.

Very truly yours,



Kenneth M. Klug

cc: James V. Quillinan