

#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.

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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).