

## First Supplement to Memorandum 83-92

Subject: Study L-651 - Recording Affidavit of Death (Additional Comments on Tentative Recommendation)

We have received comments on the tentative recommendation relating to recording affidavit of death from the Probate and Trust Law Section of the Los Angeles County Bar Association (Exhibit 1) and from the State Bar's Executive Committee for Estate Planning, Trust and Probate Law (Exhibit 2).

The Los Angeles group (Exhibit 1) believes an affidavit or court order establishing death should not have to be executed by "a person who claims an interest in the property," which the current draft requires. They point out that it may be desirable for a law firm, escrow company, title company, or other person to record the document. The "person who claims an interest" language was taken from model legislation on recorded affidavits. Existing law as to recordation of a court order does not contain such limiting language, however. On balance, the staff agrees with the Los Angeles position, since though it would be possible for the interested person to establish an agency for purposes of recordation, this would simply generate paperwork. It is unlikely, in any event, that a person who does not have an interest would want to record a document establishing death, whether in person or by agent.

The State Bar Committee (Exhibit 2) is concerned about recordation of a false affidavit of death by a person who seeks to clear title to property in the person's own name and then convey the property to a bona fide purchaser before the false affidavit is discovered. The staff does not believe this is a serious problem, since the affidavit is only given prima facie, as opposed to conclusive, effect; it is more a problem for the title insurers in making a decision whether to rely on the affidavit. In any case, the staff proposes in the main memorandum to require an affidavit of death to be accompanied by a death certificate. This would give additional assurance of validity that the State Bar Committee desires.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

**Probate and Trust Law Section**

October 24, 1983



California Law Revision Commission  
4000 Middlefield Road, #D-2  
Palo Alto, California 94306

Attn: Nathaniel Sterling, Esq.

Re: L-651 - Recording Affidavit of Death

Dear Mr. Sterling:

Proposed Section 250 should be modified. There is no sound policy reason for requiring the recording to be done by "another person who claims an interest in the property". It is immaterial who records the affidavit or court order; it may be a law firm, escrow company, title company, or friend of the person with a property interest. We recommend striking the quoted language and substituting "any person".

As I commented to you by telephone, due to changes in the tax laws and in practical use, proceedings to establish death are now rarely used. However, we believe we should retain the procedure for those rare situations where an affidavit may be inappropriate. One such situation may be where there is a dispute as to whether the person named in the death certificate is the same person named on the title to the real property.

Very truly yours,

A handwritten signature in cursive script that reads "Valerie J. Merritt".

Valerie J. Merritt  
Secretary-Treasurer

**DINKELSPIEL, DONOVAN & REDER**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ONE EMBARCADERO CENTER - 27TH FLOOR

SAN FRANCISCO 94111

(415) 788-1100

TELECOPIER: (415) 397-5949

TELEX: 172-083

October 27, 1983

CLARE H. SPRINGS

IN REPLY REFER TO:

8061-4675-13

John De Mouilly, Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

LRC Study L-651  
Recordation of Affidavit of Death

Dear Mr. De Mouilly:

Members of the State Bar's Executive Committee for Estate Planning, Trust and Probate Law have reviewed the above-numbered study. The following are a collection of comments from several of the members:

While the present system has worked extraordinarily well for a long period of time, there was no real objection to codifying the procedure. However, it would be most unfortunate if the procedure for transferring joint tenancy property became more complicated. The individuals who use joint tenancy, knowing of the adverse tax consequences, usually have very small estates. Therefore, the speed with which the assets may be transferred remains a high priority in those situations.

The only major complaint with the study is the inclusion of subparagraph (b) in Section 250. This allows anyone to sign an affidavit to the effect that another person has died. As long as Section 250(b) is there, there would be no need to have a proceeding to establish the fact of death. I can certainly imagine some of my previous heirs, who, if they thought they could clear title merely by running down and filing an affidavit of death, would not have hesitated to clear joint tenancies into their own name and try to sell the property before anyone could do anything about it. I

October 27, 1983

Page Two

---

believe that Section 250(b) is dangerous and should be deleted. It opens up a large area for potential abuse and does not add measurably to the ease with which joint tenancy properties may be transferred upon death. We strongly urge you to delete Section 250(b).

Thank you for your consideration of this matter.

Sincerely yours,

*Clare H. Springs*

(Ms.) Clare H. Springs

cc: Mr. H. Neal Wells, III  
Mr. Charles A. Collier, Jr.  
Mr. Leonard Pollard  
Mr. James B. Quillinan