

STATE OF CALIFORNIA  
California Law Revision Commission

TENTATIVE RECOMMENDATION

relating to

ACCESS TO DECEDENT'S SAFE DEPOSIT BOX

September 1989

*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 that you believe it should be revised.*

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NO LATER THAN OCTOBER 31, 1989.

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

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

TENTATIVE RECOMMENDATION  
*relating to*  
ACCESS TO DECEDENT'S SAFE DEPOSIT BOX

When a person dies, the person's will and instructions for disposition of his or her remains may be in a safe deposit box in a financial institution. Instructions for disposition of remains are needed immediately so this may be done in accordance with 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 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.<sup>1</sup> However, this practice is not invariably followed: Sometimes financial institutions will not permit access to a safe deposit box until after letters are issued.<sup>2</sup>

The Commission recommends legislation to permit a person who has a key to decedent's safe deposit box to have immediate access to obtain a copy of decedent's will or to remove instructions for disposition of

---

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. 1978) (executor, surviving spouse, or close relative may ask bank to open safe deposit box to remove will). Former Section 14344 of the Revenue and Taxation Code prohibited removal from a safe deposit box of anything other than a will or burial instructions without consent of the California Controller. Section 14344 was repealed in 1980 as part of a bill to conform California law to federal law. See 1980 Cal. Stat. ch. 634; *Review of Selected 1980 California Legislation*, 12 Pac. L.J. 235, 569-77 (1981).

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

decedent's remains.<sup>3</sup> The person seeking access should be required to establish the fact of the decedent's death by furnishing the financial institution with 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 to give the financial institution reasonable proof of the identity of the person seeking access.

When the person seeking access has given the financial institution this 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 itself should be required to take custody of any original will of the decedent found in the safe deposit box and to do all of the following:

(1) Deliver the will to the clerk of the superior court of the county in which the estate of the decedent may be administered.<sup>4</sup>

(2) Provide the person given access with a photocopy of any will of the decedent found in the safe deposit box on payment of a reasonable fee.

(3) Mail a copy of the will to the person named in the will as executor, if the person's whereabouts is known, or if not, to any person named in the will as a beneficiary, if the person's whereabouts is known.

(4) Permit the person given access to remove any instructions for disposition of decedent's remains.

---

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 decedent's employer, to deliver decedent's personal property to decedent's surviving spouse, relative, conservator, or guardian, without the need to wait 40 days after death.

4. This duty is already imposed on custodians of wills generally by Probate Code Section 8200.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend the heading to Part 10 of Division 2 of, and to add Section 331 to, the Probate Code, relating to decedents' estates.

*The people of the State of California do enact as follows:*

Heading to Part 10 (commencing with Section 330) (amended). Immediate steps concerning decedent's tangible personal property

SECTION 1. The heading to Part 10 (commencing with Section 330) of Division 2 of the Probate Code is amended to read:

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

SEC. 2. Section 331 is added to the Probate Code, to read:

331. (a) If a decedent has a safe deposit box in a financial institution, a person who has a key to the safe deposit box may, before letters have been issued and without the need to wait 40 days after death, obtain access to the safe deposit box solely 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 may 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.

(b) When the person seeking access has satisfied the requirements of subdivision (a), 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.

(3) Take custody of any original will of the decedent found in the safe deposit box.

(4) Deliver the will to the clerk of the superior court and mail a copy of the will to the person named in the will as executor or beneficiary as provided in Section 8200.

(5) On payment of a reasonable fee by the person given access, provide the person with a photocopy of any will of the decedent found in the safe deposit box.

(6) Permit the person given access to remove any instructions for disposition of the decedent's remains.

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

(d) Nothing in this section prevents collection of a decedent's property pursuant to Division 8 (commencing with Section 13000).

Comment. Section 331 is new, and permits a person who has a key to a decedent's safe deposit box to gain immediate access solely to obtain a copy of the decedent's will and to remove instructions for disposition of the decedent's remains. 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. See also Sections 40 ("financial institution" defined), 52 ("letters" defined), 88 ("will" includes a codicil).