

Memorandum 90-106

Subject: Study L-3022 - Access to Decedent's Safe Deposit Box

Senate Bill 1775 is the general probate bill for the 1990 session. This bill would effectuate a number of Commission recommendations.

The bill was scheduled to be heard by the Assembly Judiciary Committee on June 20. A few days before the hearing Senator Lockyer (who is carrying the bill for the Commission) was advised that the California Bankers Association (CBA) was opposed to the bill. CBA objected to the provisions relating to access to the decedent's safe deposit box. A copy of the letter of opposition is attached as Exhibit 1. The bill has since been rescheduled for hearing on August 8.

CBA suggested that Section 331 (a new provision to be added to the Probate Code by SB 1775) be revised to read (CBA changes shown in ~~strikeout~~ and underscore):

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 rented by the decedent in the decedent's sole name, or rented 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 may~~ 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.

(3) 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.

(c) 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) Take custody of all wills of the decedent found in the safe deposit box.~~

~~(4) 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.~~

~~(5) If the person given access is not entitled to a copy under paragraph (4), on payment of a reasonable fee by the person, 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 ~~if the instructions are not an integral part of the decedent's will.~~

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

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

The staff has no problem with the substance of the following revisions suggested by CBA:

(1) The substitution of "shall" for "may" in paragraph (1) of subdivision (b). This revision appears desirable in view of new paragraph (3) proposed to be added to subdivision (b) by CBA.

(2) The substance of new paragraph (3) proposed to be added to subdivision (b) by CBA. Without a provision like this, it would be unclear what additional duty, if any, the financial institution has to determine that the decedent is actually dead or the identity of the person seeking access. It is desirable to make clear that the financial institution can rely without further investigation on the documents described in the section.

CBA proposes to revise paragraph (6) of subdivision (c) to read:

(6) Permit the person given access to remove any instructions for disposition of the decedent's remains ~~if the instructions are not an integral part of the decedent's will.~~

The difficulty with this revision is that it would appear to permit the person given access to remove the decedent's will if the burial instructions are contained in the will. To make clear that this

is not permitted, the staff recommends that paragraph (6) be revised to read:

(6) Provide the person given access with a photocopy of any instructions found in the safe deposit box for the disposition of the decedent's remains.

The remaining revisions present a significant policy issue. CBA would delete paragraphs (3), (4), and (5) of subdivision (c). These paragraphs require the financial institution to

- (1) Take custody of the decedent's will or wills.
- (2) Deliver the wills to the clerk of the superior court.
- (3) Mail or deliver a copy to "the person named in the will as executor or beneficiary as provided in Section 8200."
- (4) On payment of a reasonable fee, provide the person given access with a photocopy of any will of the decedent found in the safe deposit box.

Section 8200 (referred to above) provides:

8200. (a) Unless a petition for probate of the will is earlier filed, the custodian of a will shall, within 30 days after having knowledge of the death of the testator, do both 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. No fee shall be charged for compliance with the requirement of this paragraph.

(2) 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.

(b) A custodian of a will who fails to comply with the requirements of this section is liable for all damages sustained by any person injured by the failure.

(c) The clerk shall release a copy of a will delivered under this section for attachment to a petition for probate of the will or otherwise on receipt of a court order for production of the will and payment of the required fee.

Paragraphs (3), (4), and (5) of subdivision (c) are designed to cover the case where the person given access is not named as executor in the will. For example, instead of a relative who has the key to the safe deposit box and obtains access to the box, the decedent may have named a friend as executor. Assume that the relative examines the contents of the safe deposit box and determines that the decedent's friend is named as executor. The relative then petitions for

appointment as personal representative, having priority over nonrelatives not named as executors in the decedent's will. The person named in the decedent's will as executor is unaware that he or she is named as executor in the will. The relative is appointed personal representative, thereby obtaining the right to remove the contents of the safe deposit box, and thereafter destroys the will. CBA opposes the provisions that were included in SB 1775 to cover this situation on the following ground:

In that bank tellers and clerks will be the individuals performing these duties, compliance with the proposed measure requires them to make legal decisions as to which documents constitute a valid will and which superior court is the appropriate forum for transmittal of the will. In addition, the will(s) may not provide addresses for mailing copies to executors and beneficiaries. The proposed obligations clearly create nonreimbursable operational burdens and potential legal liability which are more appropriately assumed by an executor or attorney for the decedent's estate. Accordingly, we request removal of these provisions from the bill as set forth in the draft attached to this letter. With these amendments, CBA will remove its opposition to SB 1775.

There was only one day for the staff to react to the CBA letter. The staff concluded that the CBA amendments would defeat a major purpose of the Commission's recommendation. For this reason, we did not want to make the CBA amendment to the bill. At the same time, we did not want to push for enactment of the provision as recommended by the Commission and run the serious risk that the entire bill would be defeated. We concluded that the best course of action was to delete the provision from the bill so that the Commission could discuss and approve the CBA proposal or could work out a new recommendation that would accomplish the purposes the Commission sought to accomplish by its original recommendation.

CBA is concerned that the enactment of the provision as recommended by the Commission would create nonreimbursable operational burdens and potential legal liability, since the provision would require the bank officer (actually a bank teller who may have little training) to determine which documents constitute a valid will and which superior court is the appropriate forum for transmittal of the will. Also there is a question as to what kind of a search, if any,

must be made for the current address of the person to whom a copy of the will is to be sent, and the liability, if any, for failure to mail the copy to the current address.

The provision as modified by the CBA does provide a person with the key to the safe deposit box a method of obtaining access to the box, making an inventory, and obtaining burial instructions. This clear authority would be a significant improvement in existing law which is unclear. Is this sufficient? Do we need to impose an additional requirement that the financial institution assume the responsibilities of someone who has undertaken the responsibility of being the custodian of the will? The staff leans toward adopting the substance of the provision as revised by CBA. If the substance of the CBA revision is acceptable to the Commission, the staff suggests that proposed Probate Code Section 331 be approved in the form set out in Exhibit 2 attached.

If the Commission believes that filing the will with the court and sending a copy to the executor or beneficiary is important, the staff believes some revisions are needed to deal with the concerns of CBA. For example, consideration might be given to dealing with the CBA concerns by creating a central filing system for these documents. The documents could be filed in an appropriate office in Sacramento, thus avoiding both problems identified by CBA. Any document that appears that it might be a will (or a notice of its existence and place where it is deposited) could be sent to the designated office, and the need to determine the particular superior court to file the will would be avoided. The financial institution could be provided with immunity for a good faith effort to comply with the central filing requirement, including immunity for sending to the central filing office a document (or notice of a document) that is not actually a will. The central filing might also avoid the need for the financial institution to give notice to the executor or beneficiary. However, adoption of a central filing system might require that a search be made of the central file in each probate, a requirement that the State Bar Section has strongly opposed. Moreover, some scheme for financing the system would need to be developed. On the other hand, the central filing system need not be limited to the case where a person is given access to a safe deposit

box. Any person might be permitted to file a notice of will in the central filing office. The Commission has considered a draft of a statute to permit this. Also a central filing system would provide a place where a retiring attorney or the estate of a deceased attorney could file wills held by the attorney. Does the Commission wish to give further consideration to a central filing system for wills? Is the cost such a system would impose on probates outweighed by the benefit to be achieved?

If the CBA proposal is not acceptable to the Commission, the staff recommends that this matter be considered at the September Commission meeting, and that we request representatives of CBA to be present at that meeting with a view to developing legislation that satisfies all concerned if that is possible. If legislation that is agreeable to all concerned cannot be developed, the Commission should review its recommendation in light of the objections of CBA and propose a new recommendation to the 1991 session. The staff suggests that the new recommendation be presented in a separate bill.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

California Bankers Association
Established 1891

CA LAW REV. COMMENT

JUN 19 1990

RECEIVED

June 18, 1990

The Honorable Bill Lockyer
Member, California State Senate
State Capitol, Room 2032
Sacramento, California 95814

RE: OPPOSITION TO SENATE BILL 1775

Dear Senator Lockyer:

The California Bankers Association (CBA) regrets to inform you that we must OPPOSE your SB 1775 and urge Assembly Judiciary Committee members to vote NO on SB 1775 as it relates to access to safe deposit boxes unless it is amended. We apologize for the delay in notifying you of our position; however, due to the varying impact the proposal has on many aspects of banking practices such as legal departments, trusts and operations, industry consensus on a position has only recently been achieved.

SB 1775 requires financial institutions to give access to any person who has a key to a safe deposit box of a decedent, without obtaining court approval, upon satisfactory proof of death of the decedent and adequate proof of the identity of the key holder. Once access is granted, the financial institution must keep a record of the identity of the key holder, supervise the person's access, inventory the safe deposit box contents and permit the person to remove burial instructions from the box. These provisions appear reasonable, however, to assure that bank tellers and clerks performing these functions are not held liable for fraudulent proof of identity or decedent's death, it is necessary to grant immunity from liability to bank employees reasonably relying on such information. In addition, financial institutions must be given immunity from liability for unauthorized forceful removal of the box contents by a key holder. Draft language to address these issues is attached to this letter.

Our primary objections to the measure are the provisions which require the financial institution to take custody of all wills found in the safe deposit box, transmit the will(s) to the appropriate superior court clerk and provide copies of the will(s) to executor(s) and beneficiary(ies) named in the testamentary document.

In that bank tellers and clerks will be the individuals performing these duties, compliance with the proposed measure requires them to make legal decisions as to which documents

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constitute a valid will and which superior court is the appropriate forum for transmittal of the will. In addition, the will(s) may not provide addresses for mailing copies to executors and beneficiaries. The proposed obligations clearly create nonreimbursable operational burdens and potential legal liability which are more appropriately assumed by an executor or attorney for the decedent's estate. Accordingly, we request removal of these provisions from the bill as set forth in the draft attached to this letter. With these amendments, CBA will remove its opposition to SB 1775. Thank you for your consideration.

Sincerely,



MAURINE C. PADDEN
Legislative Counsel

cc: All members, Assembly Judiciary Committee
James Provenza, Counsel, Senator Judiciary Committee
Deborah DeBow, Consultant, Assembly Judiciary Committee
Mark Redmond, Consultant, Assembly Republican Caucus
John DeMouly, Executive Director, California Law Revision
Commission

06/28/90

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 rented by the decedent in the decedent's sole name, or rented 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 examine and make an inventory of its contents.

(3) Provide the person given access with a photocopy of any instructions found in the safe deposit box for disposition of the decedent's remains.

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

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