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ESTATE CHECKLIST FOR TRUSTEES AND SURVIVORS

1. IMMEDIATE ASSISTANCE

Family and friends may assist immediately after the death with the following:

- Take turns answering the door or telephone and keep careful records of all calls.
- Provide meals for the first several days.
- Arrange for child care if necessary.
- Make a list of immediate family, close friends, and employer or business colleagues and notify each by telephone.
- Arrange for accommodations for visiting relatives and friends.
- Take care of special household needs such as cleaning, lawn care, and maintenance.
- Prepare a list of persons to receive acknowledgments of flowers, calls, etc., and send acknowledgments.
- Prepare a list of distant persons to be notified by letter and prepare printed notices to be sent to each.

2. INITIAL CONSIDERATIONS

A. CORONER'S INQUEST OR AUTOPSY

Coroner's Inquest

[Government Code §27491](#) requires the coroner to inquire into and determine the cause of all violent or sudden deaths, unattended deaths, deaths resulting from criminal acts, deaths of patients in state hospitals operated by the Department of State Hospitals or the Department of Developmental Services, and deaths due to accident, injury, or other unusual causes. When a death is the result of a circumstance specified in the statute, the body cannot be disturbed or moved from its position or place of death without permission of the coroner or the coroner's appointed deputy. [Govt C §27491.2](#). The coroner may take charge of the deceased's property at the scene of death and may secure the premises—costs of which may be charged against the estate. [Govt C §27491.3](#)

If a coroner's inquest is required, the attorney can assist the family in arranging delivery of the body to the funeral director and releasing the decedent's personal effects. The attorney may represent the family at the inquest, if that is advisable. The attorney should consult [Govt C §§27460–27530](#) relating to the coroner's office, particularly [Govt C §27465](#), which deals with releasing personal effects to the personal representative.

Autopsy

An autopsy may be performed in the following circumstances:

- If the decedent has authorized an autopsy in the will (regardless of the will's validity or when it was admitted to probate);
- If the decedent has authorized an autopsy in another written instrument; or
- On the receipt of a written authorization or a recorded telephonic authorization from any of the following ([Health & S C §7113](#)):
 - The surviving spouse or registered domestic partner (see [Fam C §297.5](#));
 - A surviving child, parent, or sibling;
 - Any other person who has acquired the right to control the disposition of the remains; or
 - A public administrator, coroner, or other authorized public officer.

A recorded telephonic authorization is not sufficient if the physician knew that the decedent, at the time of death, belonged to a religion, church, or denomination that relies solely on prayer to heal disease. [Health & S C §7113](#).

The coroner must order an autopsy on a written request by the surviving spouse or registered domestic partner or, if none, by a surviving child or parent or, if none, by the decedent's next of kin. The cost is borne by the person requesting the autopsy. Only a physician or surgeon can perform an autopsy. [Govt C §27520](#).

The coroner must cooperate with organ procurement organizations to maximize implementation of the Uniform Anatomical Gift Act ([Health & S C §§7150–7151.40](#); see [§§1.8–1.15](#)) and assist in the removal and disposition of organs and tissues from a body in the coroner's custody unless the coroner determines that removal of the organs will interfere with an investigation or autopsy. [Govt C §§27491.44–27491.45](#); [Health & S C §§7151.15–7151.20](#).

A family may wish to have an autopsy performed under other circumstances for the following reasons:

- To satisfy family members as to the cause of death;
- To provide insight as to whether the decedent died from a hereditary disease or condition that may affect other family members;
- To furnish evidence of possible medical malpractice by the attending physician's failure to either properly diagnose or properly treat the decedent. If this is the reason, the autopsy should be performed at an independent institution. If the attending physician opposes the autopsy, we would probably recommend that it be performed under Court Order;

Reasons why the family may wish that an autopsy not be performed might include:

- It may be offensive to the religious or cultural beliefs of the client or his family;
- The autopsy may yield information that would be harmful to the decedent's memory such as a disease which carries a social stigma;
- The autopsy may disclose a condition that the client did not disclose on an insurance policy application and the period of incontestability has not yet expired.

B. DEATH CERTIFICATE

When providing information to the physician to complete the death certificate or reviewing the death certificate before it is filed, it is important to make sure that the information included on the death

certificate is accurate, especially the social security number of the decedent. The domicile of the decedent for example, is important for inheritance tax purposes, to determine who the heirs are, to determine the surviving spouse's and children's elective share rights and allowances to determine rights of creditors, and to determine the place of probate. The cause of death and age are important because they may affect insurance coverage.

C. DETERMINING DECEDENT'S DOMICILE

The terms "domicile" and "residence" though similar in meaning, are not the same. A person may have more than one residence, but only one domicile. A person may physically reside (be a resident) in more than one place. A person's domicile is that person's principal place of residence and legal residence. Domicile is a residence at a particular place accompanied by an intent to remain there permanently or for an indefinite length of time. To determine a decedent's domicile, consider both his subjective intention and the following objective factors:

- Voter Registration;
- Auto, boat and aircraft registrations;
- Driver's license, pilot's license, professional licenses, professional registrations, and other licenses;
- Gun permits and registrations;
- Ownership of residential real estate within the state;
- Residential leases;
- Location of financial accounts such as checking, savings, certificates of deposit, money market funds, mutual funds, securities accounts custody management accounts and investment management accounts;
- Location of safe deposit box;
- Location of Will and Living Will;
- Passport;
- Business interests and activities such as business cards employment contracts, office leases,
- Certificates of doing business, corporate records, and partnership records;
- Utility records;
- Insurance records;
- Membership records such as church, professional clubs, alumni organizations, health spas, political parties, and private clubs;
- Tax records such as place of filing federal income tax returns, state income tax returns, and payment of real estate taxes;
- Children's school attendance and other activities;
- Notices to officials of other states of termination of residence in that state.

D. OBITUARY

You have a choice as to whether or not to provide information to the newspaper for an obituary (which the newspaper may publish without charge) or for a funeral notice (which the newspaper charges for). You should consider whether or not to publish an obituary. An obituary does serve the purpose of advising friends and acquaintances of the death, the names of survivors, and the time and place of the funeral. The problem is that the obituary also advises burglars of the same information. It is not unusual for the decedent's home, as well as those of his relatives, to be burglarized during the time of the funeral. If you decide to publish an obituary, you may consider including some or all of the following:

- the names of relatives and their relationship to the decedent;
- organizations to which the decedent belonged;
- where contributions might be made in the decedent's memory;
- the date and place of the funeral services;
- the decedent's home address (may be included or omitted);
- the decedent's age, place of birth, cause of death;
- the decedent's occupation, college degrees, memberships held, military service, and outstanding work

E. SAVE ALL PAPERS

The survivors often start going through papers and throwing out those things that do not seem important. They should be advised not to throw anything out until after all papers have been reviewed by the attorney representing the Executor or Trustee.

F. LIFE CHANGING DECISIONS

A death in the family often results in the surviving spouse reassessing choices he or she has made and making new decisions. Life changing decisions such as moving, selling the house, going back to or quitting work, remarrying, and making changes in a Will (though the estate plan should be reviewed and changed where appropriate) should be delayed, or in any event, approached very cautiously. As a general rule of thumb, such changes should not be considered for at least the first six months to a year after the death.

G. PLANNING FOR FUTURE

The surviving spouse's existing Will and Trust should be reviewed to determine if it continues to represent his or her wishes for the distribution of property and the guardianship of children. Evaluate the surviving spouse's life insurance needs. Evaluate the surviving spouse's health insurance needs. The surviving spouse should obtain health insurance to protect him or her and his or her family in the event of substantial medical expenses. Arrange for the proper management of current funds. The surviving spouse may wish to employ a certified financial planner to assist and advise.

3. DISPOSITION OF REMAINS AND FUNERAL ARRANGEMENTS

A. INITIAL DECISIONS

There are basically three initial decisions to be made:

- what to do with the body: cremation, burial, or donation to medical school;
- whether there should be a viewing of the body;
- whether there should be a death ceremony, and if so, what type.

When considering these initial decisions, it would be helpful to first ascertain whether the

decedent left any written instructions. If the decedent did leave instructions, these may be found:

- in his Will;
- in a separate letter in a safety deposit box or personal papers;
- with his clergy; or,
- with a pre-arranged funeral plan which may be on file with a mortuary or private company

For religious, monetary, or other reasons, family disputes may arise over the funeral arrangements. If a dispute arises in a family over the type of funeral, if any, to arrange for a decedent and/or the particulars of the funeral and internment arrangements, the attorney should encourage settlement by agreement. If the matter cannot be settled by agreement, the attorney should explain that under Health & S C 7100(a), the following persons, in the order named, have a right to dispose of the decedent's remains (subject to the decedent's own written wishes):

- An agent under a power of attorney for health care under Prob C §§4600-4806
- The decedent's competent surviving spouse or registered domestic partner
- The decedent's competent children;
- The decedent's surviving competent parent(s);
- The surviving competent adult persons in the next degrees of kinship; and
- The public administrator when the deceased has sufficient assets.

B. DEATH CEREMONIES

Death ceremonies are important in the healing process of the survivors. If planned carefully, the death ceremony can meet important social and emotional needs of the survivors, reestablish relationships, affirm values, provide emotional support for the family, and help significantly in the healing process. There are basically four types of death ceremonies:

- Funeral Service. This is a service with the body present (either in an open or closed casket).
- Memorial Service. This is a service with the body not present.
- Commitment Service. This is a brief optional service held at the graveside or in a chapel of a crematory. It may be in addition to the funeral or memorial service.
- Sprinkling of Ashes. This is to dispose of the remains of cremation without inurnment or internment.

C. ARRANGING FOR THE CEREMONY

Funeral and memorial services are generally planned by the family sitting with their clergyman, if they have one, or funeral director and reminiscing about the decedent's life, ideals, goals, plans, and affections. The actual ceremony may take many different forms since people experience grief in different ways and are comfortable with different customs. The service is usually held two or three days after the death and if possible on a weekend or evening so that more people can attend. It may include: music, singing, prayers, biographical remarks, reminiscences, pictures, silence, readings of poetry, scripture and un-programmed contributions. Often the service will be followed by a time of fellowship and refreshments.

D. COST OF A FUNERAL

It is advisable to ascertain whether the decedent had made any funeral arrangements and, if so,

the extent of these arrangements. For example, the decedent may have signed a contract with a funeral director or cemetery association and paid the required consideration. Family members should check with the decedent's attorney to see if the attorney has a copy of such a contract. If no previous arrangements have been made, the family will need to discuss the costs directly with the funeral home. Funeral directors are required by law to provide price information upon request (either in person or over the telephone). The funeral director will give you an itemized list of services and merchandise.

E. OPTIONS AVAILABLE

The various options available to you in the order of cost are:

- Immediate Gift to the Medical School Followed by Memorial Service. This avoids virtually all costs. Arrangements can be made with the medical school to return the ashes to the family within two years or earlier.
- Immediate Cremation, Followed by a Memorial Service. If cremation is done within 30 hours of death, there is no need for the body to be embalmed.
- Immediate Burial, followed by Memorial Service.
- Funeral Service with Body Present, Followed by Removal to Medical School.
- Funeral Service with Body Present, Followed by Cremation.
- Funeral Service with Body Present, Followed by Burial.

All but the first two above generally involve the services of a funeral director.

F. CREMATION OR AQUAMATION

Approximately twelve percent (12%) of the bodies in the United States are cremated. The ashes are usually returned to the family or disposed of by the crematory as desired. The ashes may be stored indefinitely. They are clean, white and sanitary. Some families prefer to scatter the ashes in a meaningful place such as a favorite garden or at sea. First make sure that the ashes are pulverized to avoid visible bone fragments. This can be done by request at the crematory. Some families have the ashes placed in a container, the ashes take up about six inches square. They can be shipped by mail anywhere in the world. California does not have any law prohibiting the scattering of the ashes. Some states do have laws prohibiting this and other states require a permit.

A newer alternative to cremation by fire is referred to as "Aquamation" or "Resomation." This is a green method of disposal which still produces "ash" which is really just pulverized bone. Aquamation is a process of alkaline hydrolysis in which the body's tissues are dissolved in a stainless steel tank or pressurized container called a resomator.

G. MEMORIAL SOCIETIES

There are several non-profit organization providing services for disposition of remains. The cost to join is nominal and it helps its members obtain dignified and appropriate funeral arrangements at a reasonable cost through advanced planning. They act in an advisory capacity and have contracts with various funeral directors for discounted services for their members. Most of the work is done by unpaid volunteers. They inquire around, compare services and prices, and provide this information to their members. They do not provide funeral services, cremation services, or offer prepayment plans.

H. PAYMENT TO FUNERAL DIRECTOR

Often funeral directors want to get paid one-half or more for their services in advance. If you do

not have available funds from the decedent's assets, often a family member will come forward to provide these funds. California law provides that reasonable funeral expenses will be paid prior to unsecured debts and claims but after the cost and expense of administration. Therefore, if a person obligates himself to pay for funeral expenses, and the estate is not sufficient to first pay the cost and expenses of administration (filing fees, publication costs, appraisals, personal representative's and attorney's fees) then he may not get reimbursed for the funeral expenses. In any event, a person assisting with the funeral expenses should not do so as a volunteer. This may affect his ability to get reimbursement. If assisting with the payment of funeral expenses, the person should get the nominated personal representative's written authority.

4. ANATOMICAL GIFTS

A. CALIFORNIA LAW

Under California's revised Uniform Anatomical Gift Act (UAGA) (Health & S C §§7150-7151.40), an anatomical gift is defined as "a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education." [Health & S C §7150.10\(a\)\(3\)](#).

- An anatomical gift can, but need not, be made to a hospital, accredited medical school, dental school, college, university, or organ procurement organization, for research or education. [Health & S C §7150.50\(a\)\(1\)](#). A gift can also name an individual as a recipient of a part. [Health & S C §7150.50\(a\)\(2\)](#). If an anatomical gift to a named individual cannot be transplanted into that particular individual and the gift document does not outline a contingent arrangement, then the part passes to the appropriate eye bank, tissue bank, or organ procurement organization. [Health & S C §7150.50\(b\), \(g\)](#).
- If the recipient of an anatomical gift is named, the gift passes under rules specified in [Health & S C §7150.50\(c\)–\(h\)](#), depending on the purpose, if any, specified in the gift document.
- If a part cannot be used for therapy, transplantation, education, or research, then the body or part passes to the individual with the responsibility to dispose of the body. [Health & S C §7150.50\(I\)](#).
- For list of persons having the right to dispose of decedent's remains, see the previous reference. However, in [Conroy v Regents of Univ. of Cal. \(2009\) 45 C4th 1244](#), 1255, the court held that the decedent's gift was irrevocable on his death and the university had the exclusive right to control the disposition of the body under [Health & S C §7100.1\(a\)](#), limited only by the donation agreement itself.

B. WHAT MAY BE GIVEN

The entire body or any part of the body may be given to the medical school for training future doctors and dentists. It may be given at death or after the funeral provided that the body has been embalmed according to specific instructions from the medical school. The medical school will, if requested, return the ashes to the family after they have completed their use of the body. Corneas from eyes are acceptable for transplantation regardless of the age of the donor at time of death. Other organs which are useful include: eardrums and ear bones, kidneys, liver, heart, pancreas, lungs, pituitary glands, skin, blood, and brain tissue. Aside from organs, the decedent's glasses can be left to New Eyes for the Needy.

C. COSTS

There is no cost for organ donation. The hospital assumes the cost from the time of death until removal of the organ. Unless the entire body is given, the family is then responsible for the disposition of the balance of the body.

5. IMMEDIATE CASH NEEDS

Sources of immediate cash may include the following:

A. JOINT BANK ACCOUNT

The surviving joint tenant of a joint bank account has immediate access to the entire mount in that account upon presentation of a Certified Death Certificate.

B. DECEDENTS EMPLOYER

You should check with the decedent's employer to determine if there is any money available for unpaid wages, accumulated vacation pay, or sick time. There may also be group insurance benefits and pension benefits available. The employer may also have survivor's benefits, and sometimes funeral expenses are covered by insurance with the employer. If occupational factors were involved in the death, possibly worker's compensation will be payable.

C. LIFE INSURANCE

Lump sum death benefits may be obtained rather quickly from the life insurance company upon presentation of a Certified Death Certificate. You should check other sources of life insurance also, such as the automobile club, credit card insurance or insurance held with credit unions, banks, unions, fraternal orders or other associations to which the deceased may have belonged.

D. CREDIT INSURANCE

You should check to see whether installment purchases or other credit purchases, such as for appliances, automobile, or furniture are covered by credit insurance. Loans from the credit union are often covered by insurance. Such insurance would pay off the debt and thereby eliminate the need for future monthly payments.

E. SOCIAL SECURITY BENEFITS

The surviving spouse, if living with a decedent who is covered by social security at the time of death, is entitled to a \$255 lump sum death benefit. If the surviving spouse was not living with the decedent at the time of death, he or she is entitled to the lump sum death benefit only if he or she was receiving a monthly benefit or was eligible to receive a monthly benefit on the deceased's record during the month of death. If there is no surviving spouse, then a child who is eligible for social security monthly benefits on the deceased's record during the month of death is entitled to the lump sum death benefit.

Monthly income benefits are available to:

- spouse caring for a child who is under age 16 or who is disabled before age 22;
- disabled widow, widower or divorced spouse at age 50;
- widow, widower or divorced spouse at age 66;
- dependent parents; and
- unmarried children under age 18 who are disabled before age 22.

Application for benefits can be made over the telephone. It is, therefore, not necessary to personally go to the social security office. Benefits are not paid retroactively. You should, therefore, apply as soon as you become eligible. It would be helpful to obtain and review the most recent publication of the "Social Security Handbook" published by the United States Department of Health and Human Services, Social Security Administration. Online access to the Social Security Administration can be obtained through the following link: <https://www.ssa.gov/>

F. VETERANS BENEFITS

Where the death is due to a service connected disability, the VA will provide a burial allowance. There may also be a monthly income benefit. If the death is in a VA facility, the Veterans Administration provides a stipend plus transportation costs. If the veteran is receiving or eligible for VA compensation or pension benefits, the Veterans Administration will provide a burial and funeral expense benefit. A veteran can be buried in a national cemetery and receive a government headstone or marker for a grave in a government or other cemetery. In lieu of burial in a government cemetery, the Veterans Administration will provide a plot allowance. An allowance will also be made toward the purchase of a marker in lieu of a government headstone. Online access to the Veteran's Administration is available at <https://www.va.gov/>

G. CREDIT UNIONS

Many credit unions pay a death benefit up to a certain amount (i.e. \$1,000 or \$2,000) based on the amount on deposit, the age of the decedent at the time he made the deposit, or his age at the time of death. Money borrowed from the credit union may also be covered by insurance.

6. PROTECTING PROPERTY

Immediate action should be taken to safeguard and protect the decedent's personal and real property. The personal representative's authority to safeguard assets relates back to the date of death. He should take common sense steps to protect valuable or perishable property and should not wait until he has been officially appointed by the probate court to take appropriate action. If a probate proceeding is not necessary, the Trustee under the decedent's Trust will usually take charge of this action. Most of the time, the nominated Executor under the Pour Over Will is the same person as the successor Trustee under the decedent's Trust.

Appropriate action may include:

A. PROTECT HOME CONTENTS DURING FUNERAL

Have someone (perhaps a friend or neighbor) stay at the decedent's home during the funeral.

Relatives should consider this also. If high value assets are in the home, consider hiring a private security guard during the funeral.

B. PROTECT HOME CONTENTS

If the decedent resided alone, the door locks should be changed and valuables such as jewelry and silver should be moved to a safe location (possibly the home of a close relative).

C. CEASE HOME DELIVERIES

If decedent resided alone, home deliveries (such as newspapers or magazines) should be terminated and the post office should be notified to forward all mail to the person who will serve as personal representative, or held by the post office until a personal representative has been appointed by the court.

D. INVENTORY

It would be advisable to make an immediate inventory of all tangible personal property located in the house and take precautions to avoid pilferage by relatives, friends, and employees.

E. CASUALTY AND LIABILITY INSURANCE

Existing casualty and liability insurance policies should be carefully reviewed and such policies as are necessary to protect all assets should be taken out. Check to make sure that the property is insured to its full value and that a rider is attached to cover all persons with insurable interests including the personal representative, any testamentary trustee, and all heirs and beneficiaries of the estate.

F. SAFEGUARD PAPERS

All of the decedent's papers should be assembled and safeguarded until the attorney has had an opportunity to review them and pick out those which should be saved, such papers may include:

- Last Will and Testament
- all Trust Agreements;
- title to burial plot;
- birth certificate;
- naturalization and adoption papers;
- marriage certificate;
- divorce papers;
- social security card;
- safety deposit box number (and key);
- checkbooks;
- savings account passbooks;
- bank statements;
- records of investments;
- financial statements;
- stock and bond certificates;
- deeds;
- title policies;

- leases;
- appraisals;
- mortgage papers;
- contracts;
- insurance policies;
- automobile title and registration,
- veterans papers;
- unpaid bills;
- credit cards;
- income and gift tax returns; and,
- all other papers of a "business nature".

G. DECEDENT'S BUSINESS

If the decedent was sole owner of a corporation or operated a sole proprietorship, immediate action should be taken to arrange for the temporary management of the business and to make cash available for employees' salaries and other current expenses. This may require the appointment of a special administrator.

H. MORTGAGE PAYMENTS

The Personal Representative or Trustee of the decedent's Trust should keep mortgage payments current, even though a formal claim has not been filed, as part of his duty to protect and preserve the estate assets. The Personal Representative or Trustee should also satisfy lump sum mortgages when due to prevent foreclosure or loss to the estate. The final liability for mortgage indebtedness may fall upon one or more of the beneficiaries during the settlement of the estate.

I. SOCIAL SECURITY

Any Social Security check made payable to the decedent for the month in which the decedent died is not an asset of the estate or of the surviving spouse and must be returned. The Social Security check is issued for the prior month (i.e., the check for May is issued in June), and there is no proration for part of a month. For example, if the decedent died on May 25, the check issued in June, for the month of May, must be returned.

J. PREDATORS

Watch out for predators. It is not uncommon for con-artists to prey upon the survivors, particularly widows. The following are common scams:

- One scam is to try to collect a nonexistent debt.
- Another is to deliver merchandise that was never ordered.
- Still another is to inform the survivor that final premiums on a nonexistent life insurance policy must be paid before the proceeds can be collected.
- This same ploy is used for other valuable assets with the claim that a final payment needs to be made before the asset can be delivered.
- Survivors that are inexperienced with investments are often prime prospects for bad investments. Even reputable investment firms will sometimes change stock portfolios merely to obtain commissions.

The best advice is to be careful, go slow and consult experienced members of the family or other trusted advisors before proceeding.

7. OBTAIN DEATH CERTIFICATE

The Funeral Director will generally order several certified copies of the Death Certificate as a matter of routine. It is advisable, however, to initially order at least a dozen certified copies of the Death Certificate. Xeroxed copies will not do. They may be needed for collecting life insurance proceeds, social security, veterans benefits, transferring securities, obtaining access to the safe deposit box, obtaining the appointment of a Special Administrator, opening a probate administration, re-registering an automobile and for many other purposes. Certified copies of the Death Certificate may be obtained by the mortuary or ordered directly from the Department of Vital Statistics in the County or State where the decedent died.

8. LOCATE WILL

If the decedent left a Will, it can usually be located either:

- (1) in his personal or business safe deposit box;
- (2) with the attorney that drafted it; or,
- (3) with the person nominated to serve as the Personal Representative in the Will.

A. SAFE DEPOSIT BOX

All safe deposit boxes to which the decedent had access should be opened in search of the most recent will and any codicils affecting it. A person who has a key to a financial institution safe deposit box held solely in the decedent's name, or held by the decedent and other deceased persons, may obtain access to the box for specified purposes before letters have been issued, on presenting both of the following [Prob C §331\(b\)](#):

- Proof of the decedent's death, in the form of a certified copy of the death certificate or a written statement of death from the coroner, treating physician, or hospital or institution where the decedent died; and
- Reasonable proof of the identity of the person seeking access (see [Prob C §13104](#)).

If these requirements are met, the financial institution must permit the person to open the safe deposit box under the supervision of an officer or employee, remove instructions for the disposition of the decedent's remains and, after a photocopy that will remain in the safe deposit box is made, remove the wills and trust instruments. [Prob C §331\(d\)\(2\)–\(4\)](#). The person may not remove any other items. [Prob C §331\(f\)](#). NOTE: If no key is available, it may be possible to persuade the bank to drill the box.

Even before appointment and qualification, a named executor is authorized to take measures necessary to maintain and preserve the estate under [Prob C §8400](#). Other prospective personal representatives have no statutory authority to take any action affecting the estate until after appointment and qualification.

Occasionally, an uninformed bank officer may attempt to deny a nominated representative access to a safe deposit box. Under [Prob C §8201](#), the nominated representative may seek a court order compelling the bank, as custodian of the will, to produce it as required under [Prob C §8200](#). Bringing [Prob C §§8200](#) and [8201](#) to the bank officer's attention may persuade the officer to allow access without requiring the nominated representative to go to court.

B. ATTORNEY

If a copy of the will can be found, the name of the attorney that drafted it will often be found printed somewhere on the Will or the binder or protective cover which holds the Will. If the attorney's name cannot be found stamped on the Will, you should check the names of the witnesses. Often the attorney, or the attorney's staff member, will serve as a witness to the Will. The attorney's name may also be found by going through the decedent's address book.

C. PERSONAL REPRESENTATIVE

If a corporate Personal Representative is nominated in the Will, the original Will may be held for safekeeping by them.

D. DUTY TO DELIVER

Unless a petition for probate of the will is filed earlier, the custodian of a will must, within 30 days after learning of the testator's death ([Prob C §8200\(a\)](#)):

- Deliver it to the clerk of the superior court of the county having jurisdiction of the estate; and
- Mail a copy of the will to the person named as executor, if the custodian knows that person's whereabouts, or, if not, to a person named in the will as a beneficiary, if the custodian knows the beneficiary's whereabouts.

The fee for delivering the will to the clerk is \$50. [Govt C §70626\(d\)](#); [Prob C §8200\(d\)](#). A person given access to the decedent's safe deposit box must deliver all wills found in the 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 [Prob C §8200](#). [Prob C §331\(e\)](#).

If a person who has possession of a will fails to deliver it, a court order requiring production of the will may be obtained under [Prob C §8201](#). [Probate Code §8200\(b\)](#) imposes on the custodian liability for all damages (including the cost of obtaining a court order) sustained by anyone who is injured by a custodian's failure to turn over a will for filing.

The attorney or any other custodian should file any wills in his or her possession with the court clerk for safekeeping, even if subsequent wills are known to exist. A subsequent instrument may be invalid or successfully attacked, in which case the earlier will may be the valid will. If it is known that another attorney has prepared a subsequent will, he or she should be notified that an earlier will has been filed.

9. INVENTORY ASSETS

Information regarding assets owned by the decedent must be obtained in order that preliminary decisions may be intelligently made. Such decisions include:

- determining whether or not there is a need for probate;
- if there is a need for probate, which level of probate is appropriate (i.e., small estates, informal or supervised);
- determining whether or not there will be an estate tax; and,
- whether immediate action needs to be taken to protect certain assets which may require the appointment of a Special Administrator prior to the appointment of a Personal Representative.

This information, as well as other relevant information, is most efficiently obtained by use of an information checklist. An excellent start for such a checklist is the completion of the Decedent's Trust and Estate Inventory in PDF format attached to this website. Information about the decedent's assets can usually be obtained by examining records found in his or her safe deposit box and personal papers including bank books, checking account statements, brokerage account statements and income tax returns.

A. EXAMINE DOCUMENTS

It is important to confirm the exact status of title to assets by examining the deeds, stock certificates, etc. You should never rely on the memory of family members as to how property is titled. We can assist in performing an informal title report on all parcels of real property upon your request.

B. INCOME TAX RETURNS

The various schedules to the decedent's income tax returns will let you know about stocks, brokerage accounts, bank accounts, businesses, partnership interests, trust interests, and income producing real property.

C. REAL PROPERTY

Information about real property owned by the decedent can be obtained by having us perform an informal title search through our specialized program online through a First American Title Company known as Data Tree.

D. MAIL

Another source of information is the decedent's mail. By watching the decedent's mail, statements will be received over time which should eventually identify most all of his property.

E. COMPUTER

The decedent's personal computer should also provide a wealth of information through favorite websites and data files regarding assets and liabilities.