



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
March 9, 2016	Please review for March 16 meeting
To	Deadline
Executive Committee, Court Executives Advisory Committee (CEAC)	March 16, 2016
From	Contact
Mr. Richard D. Feldstein, Chair Records Management Subcommittee	Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov
Subject	
Court Records: Retention of Original Wills and Codicils and of Records in Gun Violence Cases	Josely Yangco-Fronda, 415-865-7626 Josely.yangco-fronda@jud.ca.gov

CEAC's Records Management Subcommittee developed a legislative proposal to amend the statutes governing the retention of trial court records. This proposal is largely intended as a cleanup effort to Assembly Bill 1352, a Judicial Council sponsored bill that was enacted by the Legislature in 2013. It was developed in collaboration with the Probate and Mental Health Advisory Committee.

This legislative proposal would amend Government Code sections 26810, 68150, 68151, and 68152 to clarify that original wills and codicils must be retained until there is a final order of discharge in a probate proceeding concerning all remaining testators named in the will. This proposal would also amend Probate Code section 12250 to provide a process whereby the personal representative may request delivery of the original wills and codicils in the ex parte petition for discharge. Lastly, this proposal would provide the retention period for court records in gun violence cases and would make technical amendments to the records retention statutes.

CEAC Executive Committee

March 9, 2016

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During its March 7 meeting, the Records Management Subcommittee voted to present this proposal to CEAC's Executive Committee for it to review and recommend for circulation for public comment to the Policy Coordination and Liaison Committee (PCLC).

Committee's Task

The committee is tasked with reviewing the draft legislative proposal and:

- Recommending to PCLC that all or part of the proposal be circulated for public comment during the spring 2016 cycle;
- Rejecting the proposal; or
- Asking staff or group members for further information and analysis.

Attachment

1. Draft legislative proposal to amend Probate Code section 12250 and Government Code sections 26810, 68150, 68151, and 68152.

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www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title

Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases

Action Requested

Review and submit comments by June 14, 2016

Proposed Rules, Forms, Standards, or Statutes
Amend Probate Code section 12250 and Government Code sections 26810, 68150, 68151, and 68152

Proposed Effective Date

January 1, 2018

Proposed by

Court Executives Advisory Committee
Richard D. Feldstein, Chair

Contact

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Executive Summary and Origin

The Court Executives Advisory Committee recommends amending various statutes governing records retention in the Government Code. This legislative proposal would amend Government Code sections 26810, 68150, 68151, and 68152 to clarify that original wills and codicils must be retained until there is a final order of discharge in a probate proceeding that concerns all remaining testators named in the will. This proposal would also amend Probate Code section 12250 to provide a process whereby the personal representative may request delivery of the original wills and codicils in the ex parte petition for discharge. Lastly, this proposal would provide the retention period for court records in gun violence cases and would make technical amendments to the records retention statutes.

Background

The Court Executives Advisory Committee recently led a collaborative effort with other advisory committees to modernize and improve the records retention statutes in the Government Code. This effort culminated in the enactment of Assembly Bill 1352 by the Legislature in 2013. This bill amended the Government Code to reduce the record retention periods for certain court records, to establish retention periods for new types of records that were not dealt with under existing law, and to eliminate ambiguities in the law relating to records retention.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Proposal

This legislative proposal would amend the records retention statutes in the Government Code to clarify that original wills and codicils may not be scanned and destroyed until there is a final order of discharge in a probate proceeding that concerns all remaining testators named in the will. It would also provide a process in the Probate Code for the personal representative to request delivery of the original wills and codicils after final disposition. Lastly, it would provide the retention period for court records in gun violence cases and would make technical amendments.

This proposal was developed in consultation with the Probate and Mental Health Law Advisory Committee.

Retain all original wills and codicils until final order of distribution

The statutes governing records retention arguably could be interpreted as allowing courts to scan and destroy original wills and codicils, even if a probate proceeding is pending or has never been initiated. This proposal would amend Government Code sections 26810, 68150(b)(2), and 68152(a)(11) to clarify that courts must retain all original wills and codicils unless and until there is a “final disposition of the case,” which would occur upon final order of distribution that concerns all remaining testators named in the will.

Proposed amendments to Government Code section 26810. Government Code section 26810 addresses probate documents, including original wills and codicils,¹ that are delivered to the court when an attorney has terminated a deposit under Probate Code section 732 or when the custodian of a will has died under Probate Code section 8200.

This statute authorizes scanning and destroying original wills if more than 10 years have passed since they were delivered to the court under Probate Code section 8200. (See Gov. Code, § 26810(a)(2), (e).) It also might be interpreted as allowing courts to scan and destroy original wills and codicils immediately if they are delivered to the court under Probate Code section 732. (See Gov. Code, § 26810(a)(1), (e).) These wills and codicils could be scanned and destroyed regardless of whether the testator is deceased and whether the will has ever been probated.

This proposal would amend Government Code section 26810(a)(2) and (e) to clarify that all original wills and codicils that are delivered to the court—whether they are delivered under Probate Code sections 732, 734, 8200, or 8203—may not be destroyed unless and until there is a “final disposition of the case” as defined in Government Code section 68151(c).

Proposed amendments to Government Code section 68150. Government Code section 68150(a) authorizes trial courts to maintain “court records” solely in electronic form. The term “court

¹ Probate Code section 704 defines “document” as including, inter alia, (a) a signed original will, declaration of trust, trust amendment, or other document modifying a will or trust; (b) a signed original power of attorney; and (c) a signed original nomination of conservator.

record” is defined broadly as including “[a]ll filed papers and documents in the case folder, but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.” (Gov. Code, § 68151(a).) Applying this broad definition to Government Code section 68150(a) suggests that upon filing original wills and codicils with the court,² they qualify as “court records” and trial courts would arguably be authorized to scan and destroy the originals.

There is a limited exception to Government Code section 68150(a) in section 68150(b)(2) for original wills and codicils that are delivered to the court under Probate Code section 8200. These originals may not be immediately scanned and destroyed; however, they are to be retained as provided in Government Code section 26810, which currently states that they may be scanned and destroyed 10 years after delivery to the court, regardless of whether the testator is deceased and whether the will has ever been probated.

The proposal would amend Government Code section 68150(b)(2) to expand the exception to include all original wills and codicils. The proposed language would require courts to retain the originals—regardless of how they come into the court’s possession—unless and until there is a final disposition of the case as defined in Government Code section 68151(c). If an original will or codicil never becomes associated with a probate proceeding, the court would have to retain the original will or codicil permanently.

Proposed amendments to Government Code section 68151. The phrase “final disposition of the case” is defined in Government Code section 68151(c) to mean that an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no postjudgment motions or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remittitur.” To clarify its application to probate proceedings for decedent estates, the term “order of judgment” would be defined for these proceedings as the order of distribution concerning all remaining testators named in the will. Applying this new definition to the other proposed amendments would require courts to retain the original wills and codicils until there is a final order of discharge concerning all remaining testators.

Proposed amendments to Government Code section 68152.

This proposal would make amendments to Government Code section 68152(a)(11)(B), which provides the retention period for wills and codicils transferred or delivered to the court under Probate Code sections 732, 734, 8200, or 8203. It would clarify that if there is no underlying case, the court must retain the originals permanently.

² See Prob. Code, § 8225 (“When court admits a will to probate . . . the will shall be filed”).

Provide a process for requesting delivery of the original wills and codicils

This proposal would amend Probate Code section 12250 and Government Code sections 26810(e), 68150(b)(2), and 68152(a)(11) to provide a process for the delivery of original wills and codicils upon request by the personal representative.

Probate Code section 12250(b) would be amended to recognize that the personal representative may request in the ex parte petition for discharge the delivery of all original wills and codicils in possession of the court under Government Code section 68150(b)(2). Government Code section 68150(b)(2), in turn, would be amended to provide that, if such a request has been made, the clerk must deliver the original wills and codicils to the personal representative or to the person identified in the order of discharge, subject to certain conditions.

One condition would be that there must be a “final disposition in the case,” which would be defined for probate decedent estates proceedings as the final order of discharge concerning all remaining testators named in the will. Another condition would be that the clerk must maintain the record in a form authorized by Government Code section 68150(a), which provides that trial court records may be maintained “in any form or forms of communication or representation, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology, if the form or forms of representation satisfy the rules adopted by the Judicial Council.” The clerk could satisfy this condition, for example, by scanning and maintaining the wills and codicils as electronic records.

This process would allow for the personal representative to obtain the originals before they are scanned and destroyed by the clerk. At the same time, it would ensure that the originals are available to the court during the pendency of the probate proceeding and that they are maintained permanently as court records in an authorized form.

Parallel amendments would be introduced in Government Code sections 26810(e) and 68152(a)(11) to provide for consistency in the statutes addressing the retention of original wills and codicils.

Gun violence cases

This proposal would also amend Government Code section 68152(a)(6) to provide the retention period for court records in gun violence cases. The proposed amendment would require that the court records for gun violence cases be retained for the same period as civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, and workplace violence cases. Superior courts must retain these cases “for the same period of time as the duration of the restraining order or other orders and any renewals thereof, then retain the straining or other orders permanently as a judgment.” (Gov. Code, § 68152(a)(6).)

Technical amendments

This proposal would also amend Government Code section 68150(a) to recognize that the Judicial Council has already adopted a rule and implementing standards and guidelines for

creating, maintaining, reproducing, or preserving court records, as required by subdivision (c).³ It would remove the references to national standards that applied while the rule and implementing standards and guidelines were in development.

In addition, the proposed amendment would make Government Code section 26810(b) consistent with Government Code section 68150(c). It would remove the reference to the national standards. Instead, it would provide that photographs, micrographs, photocopies, or electronic images of wills and codicils must be made in a manner that satisfies the standards and guidelines adopted by the Judicial Council under Government Code section 68150(c). Because these standards and guidelines already address how to maintain court records, the additional instruction to indexing and storing the photographs, micrographs, photocopies, and electronic images would be removed. It would also remove an outdated reference to film reproductions in Government Code section 26810(a).

Alternatives Considered

Because judges and litigants need recourse to original wills and codicils during the pendency of probate proceedings, the committee did not consider alternatives.

Implementation Requirements, Costs, and Operational Impacts

To implement this proposal, the Judicial Council would need to make changes to the forms for ex parte order of discharge to allow personal representatives to request delivery of the original will and codicil. It would also require changes to the form order of discharge to indicate to whom the original wills and codicils should be delivered if a request is made by the personal representative in the ex parte petition. Making these changes would require expending staffing time and resources. Superior courts would have to implement processes for clerks to deliver, if there has been a request, original wills and codicils after the final order of discharge. Once the new forms and processes are in place, the courts would be relieved of the burden of retaining original wills and codicils after a case involving decedent estates is final.

³ The standards and guidelines for electronic court records are set forth in the *Trial Court Records Manual*. (Cal. Rules of Court, rule 10.854; Judicial Council of Cal., *Trial Court Records Manual* (rev. Jan. 1, 2016), pp. 35–45.)

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the references in Government Code section 68152(a)(11)(A) to “final disposition of the estate proceeding” be changed to “final disposition of the case” to be consistent with section 68152 generally?
- Should the references to “codicils” in Government Code sections 26810, 68150, and 68152 be replaced with “documents modifying a will”?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 1 year from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed amendments to Probate Code section 12250 and Government Code sections 26810 and 68150–68152, at pages 7–13

Probate Code section 12250 and Government Code sections 26810, 68150, and 68152 would be amended, effective January 1, 2018, to read as follows:

1 **Probate Code section 12250.**

2
3 (a) When the personal representative has complied with the terms of the order for final
4 distribution and has filed the appropriate receipts or the court has excused the filing of a
5 receipt as provided in Section 11753, the court shall, on ex parte petition, make an order
6 discharging the personal representative from all liability incurred thereafter.

7 (b) The personal representative's ex parte petition for discharge may request the delivery
8 of all original wills and codicils in the possession of the court pursuant to Government
9 Code section 68150(b)(2).

10 ~~(b)(c)~~ Nothing in this section precludes discharge of the personal representative for
11 distribution made without prior court order, so long as the terms of the order for final
12 distribution are satisfied.

13
14 **Government Code section 26810.**

15
16 (a) The clerk of the superior court may cause the following documents to be
17 photographed, microphotographed, photocopied, or electronically imaged, ~~or otherwise~~
18 ~~reproduced~~ on film and stored in that form:

19 (1) A document transferred to the clerk under Section 732 of the Probate Code.

20 (2) A will or codicil delivered to the clerk of the superior court under Sections 732, 734,
21 8200, or 8203 of the Probate Code ~~if the clerk has held the will for at least 10 years;~~
22 however, the originals may not be destroyed except as provided under subdivision (e).

23 (b) The photograph, microphotograph, photocopy, or electronic image shall be made in a
24 manner that meets the ~~minimum standards or guidelines recommended by the American~~
25 ~~National Standards Institute or the Association for Information and Image Management~~
26 standards and guidelines adopted by the Judicial Council of California under Section
27 68150(c). All these photographs, microphotographs, photocopies, and electronic images
28 shall be indexed, and shall be stored in a manner and place that reasonably assures their
29 preservation indefinitely against loss, theft, defacement, or destruction.

30 (c) Before proof of death of the maker of a document or will referred to in subdivision
31 (a), the photographs, microphotographs, photocopies, and electronic images shall be
32 confidential, and shall be made available only to the maker. After proof of death of the
33 maker of the document or will by a certified copy of the death certificate, the
34 photographs, microphotographs, photocopies, and electronic images shall be public
35 records.

36 (d) Section 26809 does not apply to a will or other document referred to in subdivision
37 (a), or to the reproduction authorized by this section.

38 (e) Upon making the reproduction authorized by this section, the clerk of the superior
39 court may destroy the original document, except that the clerk shall not destroy an
40 original will or codicil until there is a final disposition of the case as defined in Section
41 68151(c) in a probate proceeding. If requested by the personal representative under
42 Section 12550(b) of the Probate Code, the clerk shall provide the originals to the personal

1 representative or other person identified in the order of discharge, but only after final
2 disposition of the case and only if the clerk maintains the records in a form authorized by
3 Section 68150(a).

4
5 **Government Code section 68150.**

6 (a) Trial court records may be created, maintained, and preserved in any form or forms of
7 communication or representation, including paper, optical, electronic, magnetic,
8 micrographic, or photographic media or other technology, if the form or forms of
9 representation or communication satisfy the rules adopted by the Judicial Council
10 pursuant to subdivision (c), ~~once those rules have been adopted. Until those rules are~~
11 ~~adopted, the court may continue to create, maintain, and preserve records according to the~~
12 ~~minimum standards or guidelines for the preservation and reproduction of the medium~~
13 ~~adopted by the American National Standards Institute or the Association for Information~~
14 ~~and Image Management.~~

15 (b)(1) This section shall not apply to court reporters' transcripts or to specifications for
16 electronic recordings made as the official record of oral proceedings. These records shall
17 be governed by the California Rules of Court.

18 (2) This section shall not apply to original wills and codicils ~~delivered to the clerk of the~~
19 ~~court under Section 8200 of the Probate Code. Original wills and codicils shall be~~
20 ~~retained as provided in Section 26810. The originals shall be retained until the final~~
21 disposition of the case. If requested by the personal representative under Section
22 12550(b) of the Probate Code, the clerk shall provide the originals to the personal
23 representative or other person identified in the order of discharge, but only after final
24 disposition of the case and only if the clerk maintains the records in a form authorized by
25 Section 68150(a).

26 (c) The Judicial Council shall adopt rules to establish the standards or guidelines for the
27 creation, maintenance, reproduction, or preservation of court records, including records
28 that must be preserved permanently. The standards or guidelines shall reflect industry
29 standards for each medium used, if those standards exist. The standards or guidelines
30 shall ensure that court records are created and maintained in a manner that ensures
31 accuracy and preserves the integrity of the records throughout their maintenance. They
32 shall also ensure that the records are stored and preserved in a manner that will protect
33 them against loss and ensure preservation for the required period of time. Standards and
34 guidelines for the electronic creation, maintenance, and preservation of court records
35 shall ensure that the public can access and reproduce records with at least the same
36 amount of convenience as paper records previously provided.

37 (d) No additions, deletions, or changes shall be made to the content of court records,
38 except as authorized by statute or the California Rules of Court.

39 (e) Court records shall be indexed for convenient access.

40 (f) A copy of a court record created, maintained, preserved, or reproduced according to
41 subdivisions (a) and (c) shall be deemed an original court record and may be certified as a
42 true and correct copy of the original record. The clerk of the court may certify a copy of
43 the record by electronic or other technological means, if the means adopted by the court

1 reasonably ensures that the certified copy is a true and correct copy of the original record,
2 or of a specified part of the original record.

3 (g) Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant,
4 certificate of service, writ, subpoena, or other legal process or similar document issued by
5 a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified
6 using a computer or other technology in accordance with procedures, standards, and
7 guidelines established by the Judicial Council pursuant to this section. Notwithstanding
8 any other provision of law, all notices, orders, judgments, decrees, decisions, rulings,
9 opinions, memoranda, warrants, certificates of service, writs, subpoenas, or other legal
10 process or similar documents that are signed, subscribed, or verified by computer or other
11 technological means pursuant to this subdivision shall have the same validity, and the
12 same legal force and effect, as paper documents signed, subscribed, or verified by a trial
13 court or a judicial officer of the court.

14 (h) A court record created, maintained, preserved, or reproduced in accordance with
15 subdivisions (a) and (c) shall be stored in a manner and in a place that reasonably ensures
16 its preservation against loss, theft, defacement, or destruction for the prescribed retention
17 period under Section 68152.

18 (i) A court record that was created, maintained, preserved, or reproduced in accordance
19 with subdivisions (a) and (c) may be disposed of in accordance with the procedure under
20 Section 68153, unless it is either of the following:

21 (1) A comprehensive historical and sample superior court record preserved for research
22 under the California Rules of Court.

23 (2) A court record that is required to be preserved permanently.

24 (j) Instructions for access to data stored on a medium other than paper shall be
25 documented.

26 (k) Each court shall conduct a periodic review of the media in which the court records are
27 stored to ensure that the storage medium is not obsolete and that current technology is
28 capable of accessing and reproducing the records. The court shall reproduce records
29 before the expiration of their estimated lifespan for the medium in which they are stored
30 according to the standards or guidelines established by the Judicial Council.

31 (l) Unless access is otherwise restricted by law, court records created, maintained,
32 preserved, or reproduced under subdivisions (a) and (c) shall be made reasonably
33 accessible to all members of the public for viewing and duplication as the paper records
34 would have been accessible. Unless access is otherwise restricted by law, court records
35 maintained in electronic form shall be viewable at the court, regardless of whether they
36 are also accessible remotely. Reasonable provision shall be made for duplicating the
37 records at cost. Cost shall consist of all costs associated with duplicating the records as
38 determined by the court.

39
40 **Government Code section 68151.**

41 The following definitions apply to this chapter:

42 (a) "Court record" shall consist of the following:

43

1 (1) All filed papers and documents in the case folder, but if no case folder is created by
2 the court, all filed papers and documents that would have been in the case folder if one
3 had been created.

4 (2) Administrative records filed in an action or proceeding, depositions, transcripts,
5 including preliminary hearing transcripts, and recordings of electronically recorded
6 proceedings filed, lodged, or maintained in connection with the case, unless disposed of
7 earlier in the case pursuant to law.

8 (3) Other records listed under subdivision (g) of Section 68152.

9 (b) “Notice of destruction and no transfer” means that the clerk of the court has given
10 notice of destruction of the superior court records open to public inspection, and that
11 there is no request and order for transfer of the records as provided in the California
12 Rules of Court.

13 (c) “Final disposition of the case” means that an acquittal, dismissal, or order of judgment
14 has been entered in the case or proceeding, the judgment has become final, and no
15 postjudgment motions or appeals are pending in the case or for the reviewing court upon
16 the mailing of notice of the issuance of the remittitur. In a criminal prosecution, the order
17 of judgment shall mean imposition of sentence, entry of an appealable order, including,
18 but not limited to, an order granting probation, commitment of a defendant for insanity,
19 or commitment of a defendant as a narcotics addict appealable under Section 1237 of the
20 Penal Code, or forfeiture of bail without issuance of a bench warrant or calendaring of
21 other proceedings. In a probate decedent estates proceeding, the order of judgment shall
22 mean the order of final distribution concerning all remaining testators named in the will.

23 (d) “Retain permanently” means that the court records shall be maintained permanently
24 according to the standards or guidelines established pursuant to subdivision (c) of Section
25 68150.

26
27 **Government Code section 68152.**

28
29 The trial court clerk may destroy court records under Section 68153 after notice of
30 destruction, and if there is no request and order for transfer of the records, except the
31 comprehensive historical and sample superior court records preserved for research under
32 the California Rules of Court, when the following times have expired after the date of
33 final disposition of the case in the categories listed:

34 (a) Civil actions and proceedings, as follows:

35 (1) Except as otherwise specified: retain 10 years.

36 (2) Civil unlimited cases, limited cases, and small claims cases, including after trial de
37 novo, if any, except as otherwise specified: retain for 10 years.

38 (3) Civil judgments for unlimited civil cases: retain permanently.

39 (4) Civil judgments for limited and small claims cases: retain for 10 years, unless
40 judgment is renewed. If judgment is renewed, retain judgment for length of renewal
41 pursuant to Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of
42 Title 9 of Part 2 of the Code of Civil Procedure.

- 1 (5) If a party in a civil case appears by a guardian ad litem: retain for 10 years after
2 termination of the court's jurisdiction.
- 3 (6) Civil harassment, domestic violence, elder and dependent adult abuse, private
4 postsecondary school violence, gun violence, and workplace violence cases: retain for the
5 same period of time as the duration of the restraining or other orders and any renewals
6 thereof, then retain the restraining or other orders permanently as a judgment; 60 days
7 after expiration of the temporary restraining or other temporary orders; retain judgments
8 establishing paternity under Section 6323 of the Family Code permanently.
- 9 (7) Family law, except as otherwise specified: retain for 30 years.
- 10 (8) Adoption: retain permanently.
- 11 (9) Parentage: retain permanently.
- 12 (10) Change of name, gender, or name and gender: retain permanently.
- 13 (11) Probate:
- 14 (A) Decedent estates: retain permanently all orders, judgments, and decrees of the court,
15 all inventories and appraisals, and all wills and codicils of the decedent filed in the case,
16 including those not admitted to probate. If requested by the personal representative under
17 Section 12550(b) of the Probate Code, the clerk shall provide the original will or codicil
18 to the personal representative or other person identified in the order of discharge, but only
19 after final disposition of the case and only if the clerk maintains the records in a form
20 authorized by Section 68150(a). All other records: retain for five years after final
21 disposition of the estate proceeding.
- 22 (B) Wills and codicils transferred or delivered to the court pursuant to Sections 732, 734,
23 8200, or 8203 of the Probate Code in which there is no underlying case: retain the the
24 original records permanently. ~~For wills and codicils delivered to the clerk of the court~~
25 ~~under Section 8200 of the Probate Code, retain the original documents as provided in~~
26 ~~Section 26810.~~
- 27 (C) Substitutes for decedent estate administration:
- 28 (i) Affidavit procedures for real property of small value under Chapter 3 (commencing
29 with Section 13100) of Part 1 of Division 8 of the Probate Code: retain permanently.
- 30 (ii) Proceedings for determining succession to property under Chapter 4 (commencing
31 with Section 13150) of Part 1 of Division 8 of the Probate Code: retain permanently all
32 inventories and appraisals and court orders. Other records: retain for five years after final
33 disposition of the proceeding.
- 34 (iii) Proceedings for determination of property passing or belonging to surviving spouse
35 under Chapter 5 (commencing with Section 13650) of Part 2 of Division 8 of the Probate
36 Code: retain permanently all inventories and appraisals and court orders. Other records:
37 retain for five years after final disposition of the proceeding.
- 38 (D) Conservatorships: retain permanently all court orders. Documents of trusts
39 established under substituted judgment pursuant to Section 2580 of the Probate Code:
40 retain as provided in clause (iii) of subparagraph (G). Other records: retain for five years
41 after the later of either (i) the final disposition of the conservatorship proceeding, or (ii)
42 the date of the conservatee's death, if that date is disclosed in the court's file.
- 43

- 1 (E) Guardianships: retain permanently orders terminating the guardianship, if any, and
2 court orders settling final account and ordering distribution of the estate. Other records:
3 retain for five years after the later of (i) the final disposition of the guardianship
4 proceeding, or (ii) the earlier of the date of the ward's death, if that date is disclosed in
5 the court's file, or the date the ward reaches 23 years of age.
- 6 (F) Compromise of minor's or disabled person's claim or action, and disposition of
7 judgment for minors and disabled persons under Section 372 of the Code of Civil
8 Procedure and Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the
9 Probate Code:
- 10 (i) Retain permanently judgments in favor of minors or disabled persons, orders
11 approving compromises of claims and actions and disposition of the proceeds of
12 judgments, orders directing payment of expenses, costs, and fees, orders directing
13 deposits into blocked accounts and receipts and acknowledgments of those orders, and
14 orders for the withdrawal of funds from blocked accounts.
- 15 (ii) Retain other records for the same retention period as for records in the underlying
16 case. If there is no underlying case, retain for five years after the later of either (I) the
17 date the order for payment or delivery of the final balance of the money or property is
18 entered, or (II) the earlier of the date of the minor's death, if that date is disclosed in the
19 court's file, or the date the minor reaches 23 years of age.
- 20 (G) Trusts:
- 21 (i) Proceedings under Part 5 (commencing with Section 17000) of Division 9 of the
22 Probate Code: retain permanently.
- 23 (ii) Trusts created by substituted judgment under Section 2580 of the Probate Code:
24 retain permanently all trust instruments and court orders. Other records: retain as long as
25 the underlying conservatorship file is retained.
- 26 (iii) Special needs trusts: retain permanently all trust instruments and court orders. Other
27 records: retain until the later of either (I) the retention date of "other records" in the
28 beneficiary's conservatorship or guardianship file under subparagraph (D) or (E), if any,
29 or (II) five years after the date of the beneficiary's death, if that date is disclosed in the
30 court's file.
- 31 (H) All other proceedings under the Probate Code: retain as provided for civil cases.
- 32 (12) Mental health:
- 33 (A) Lanterman Developmental Disabilities Services Act: retain for 10 years.
- 34 (B) Lanterman-Petris-Short Act: retain for 20 years.
- 35 (C) Riese (capacity) hearings under Sections 5333 and 5334 of the Welfare and
36 Institutions Code: retain for the later of either (i) 20 years after the date of the capacity
37 determination order, or (ii) the court records retention date of the underlying involuntary
38 treatment or commitment proceeding, if any.
- 39 (D) Petitions under Chapter 3 (commencing with Section 8100) of Division 8 of the
40 Welfare and Institutions Code for the return of firearms to petitioners who relinquished
41 them to law enforcement while detained in a mental health facility: retain for 10 years.
- 42 (13) Eminent domain: retain permanently.
- 43

- 1 (14) Real property other than unlawful detainer: retain permanently if the action affects
- 2 title or an interest in real property.
- 3 (15) Unlawful detainer: retain for one year if judgment is only for possession of the
- 4 premises; retain for 10 years if judgment is for money, or money and possession.
- 5 (b) Notwithstanding subdivision (a), any civil or small claims case in the trial court:
- 6 (1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with
- 7 state or local rules: retain for one year.
- 8 (2) Voluntarily dismissed by a party without entry of judgment: retain for one year.* * *

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