

Selected Subjects Guru Chatter* on Safe Deposit Matters



Safe Deposit Box with a POD?

Question: Can someone name a payable on death beneficiary on their safe deposit box?

Answer by Ken Gollhofer:

Start with "No" and move to a different answer only when someone can support it with a specific citation to state law.

Generally, in order to pass property at death a decedent must have a will that meets the specific requirements of state law. State statutes allowing deposit accounts to pass at death due to survivorship or POD provisions create an exception to that general rule; i.e. if those statutes did not exist the survivorship and POD provisions on deposit accounts would not work. Because these statutes represent an exception to the requirement for a will, they are strictly construed; i.e. courts are unwilling to expand their language to be more permissive than the literal meaning of the words used.

Accordingly, in order to pass the contents of a safe deposit box to another party without using a will, there would have to be a specific state statute that says the action is permissible. Obviously, I can't say there aren't any such statutes, but I certainly don't know of any. Check the law of your state for specific enabling language. Otherwise, the disposition simply will not work and the custodian is misleading the customer by allowing it.

Safe Deposit Box Disclosure

Question: I was reading an article written by David McGuinn who is a safe deposit specialist. He said when we open a safe deposit box we should provide an "Identity Verification Disclosure Notice" What is this disclosure and is it mandatory by law to provide it. We just installed a new deposit system and I don't see this disclosure on their system.

Answer by John Burnett:

A safe deposit rental constitutes a "banking relationship" that's subject to the CIP rules in the USA PATRIOT Act. The notice David referred to is undoubtedly the standard CIP notice required by 31 CFR 103.121(b)(5).

Representative of Estate Opening Safe Deposit Box

Question: Upon the death of an individual safe deposit owner, what does the representative of the estate need to do to have the box opened for inventory? We do not have safe deposit boxes at my bank, but a client whose mother passed away and had one was told the box would be escheated.

Answer by Ken Gollhofer :

On a box rented to an individual, a court appointed personal representative stands in the same shoes as the renter prior to his date of death. Any denial of access would be the logical and legal equivalent of refusing access to the renter. The custodian would expect to receive a recent copy of the court order appointing the personal representative, the relevant CIP information and any other documents required by its own policies and procedures.

Any attempt to "supervise" what the personal representative removed from the box would be ill advised.

Generally, "escheat" would be a possibility only if the rent was unpaid.

Personal Representatives on Safe Deposit Box?

Question: On the safe deposit box lease we have here at our bank in Iowa, it states that a person may be designated as a personal representative... why can't more than one be designated with an "and" or an "or"?

Answer by John Burnett:

This is a matter of state law. By "personal representative," I assume you are referring to a person authorized to access the box within 30 days of a lessee's death under section 524.810A of the Iowa Code. That law provides for only one person to be designated for such access (by each lessee).

Reg to Supercede Safe Deposit Box Agreements?

Question: Is there a regulation governing the process for superceding safe deposit box agreements? (e.g., stamping the old agreement with specific verbiage)

Answer by Ken Gollhofer:

There is no federal regulation governing the language in safe deposit agreements. Your most likely source of guidance in how to go about amending or updating your leases/contracts is in your existing contracts.

Stamping the old agreement with specific verbiage is a highly unlikely option.

Unless your documents provide for unilateral amendments, it will be necessary to get your customers to agree to the changes.

Access to Safe Deposit Boxes by Agents

Question: I have been advised over the years that regardless of one having a power of attorney or appointed by the courts as guardians or conservators that we should not let them in the customers safe deposit box unless it clearly gives them permission by listing the bank name and box number. Does anyone know how true this is? Does a court appointment give someone all the rights to one's personal properties including their safe deposit box?

Answer by Ken Gollhofer:

I've come to believe that safe deposit boxes are the petri dishes in which some of the most tired myths in banking are grown.

A court appointed guardian stands in the same shoes as the individual whom the court is attempting to protect. If the order makes it clear that the individual is the guardian of the ward's property, not just his person, then the guardian is entitled to unfettered access to the ward's box. Any denial of access would be the logical and legal equivalent of refusing access to the renter.

As far as a power of attorney is concerned, the bank always wants it to be as specific as possible. If it does not mention safe deposit boxes and there is no statutory direction that language it does include incorporates access to safe deposit boxes, then you might be hesitant. However, you would want to make certain your refusal was reasonable. You would look at all of the circumstances, among them is it still possible for the principal to execute a revised POA with the language you desire? If the principal is now incapacitated, then any refusal would effectively say that no one was entitled to access.

Finally, in my opinion, if the POA empowers the agent to enter, add to or remove property from safe deposit boxes, then refusing because the power of attorney does not mention the bank name or box number would be ridiculous, not just unreasonable. I've read a couple hundred and acted under a couple dozen POAs where the bank was named as attorney-in-fact. Not one ever mentioned a box number or the bank where it was located. Obviously, that kind of specificity would have required the execution of a new POA just because the principal opened a new safe deposit box - that would be an emblem of poor draftsmanship on the part of the attorney who wrote it.

Storing Cash in a Safe Deposit Box

Question: Can individuals store cash in their safe deposit box? I was told this was illegal along with drugs, firearms, etc.?

Answer by Ken Gollhofer:

My knowledge of the law of safe deposit boxes is limited to five states in the Midwest. None have statutory restrictions on what can be placed in a safe deposit box. Depending on the odds you are willing to offer, I would bet that no other states have a statute or regulation with such a prohibition. Such a restriction would be a tad ridiculous because it would largely be unenforceable and would not serve any public purpose.

Nevertheless, the idea that you cannot keep cash in a safe deposit box is more than mythology - such a restriction is a common term in safe deposit leases. As such, it is the law of the contract; it binds the parties as much as any statute would.

If a safe deposit box is burglarized, it would be easy for the renter to insist, "There was \$85,000 in cash in that box!" If the bank had been negligent and was found liable for the burglary, all the renter would have to do is make the finder of fact believe there really was cash in the box. However, if the contract said that no cash was to be kept in the box, the bank might be able to have the claim dismissed because the renter had agreed not to do the very thing for which it was attempting to hold the bank liable.

The purpose of the language is to prevent fraudulent claims; i.e. to protect the safe deposit custodian. It is not a general attempt to actually control what people put in their safe deposit boxes.

Minors & Safe Deposit Boxes

Question: Can a minor be a co-owner/lessee on a safe deposit box?

Answer by Ken Gollhofer:

The capacity to contract is entirely an issue of state law. Many states have statutory provisions that create exceptions to the general rule that contracts with a minor are voidable by the minor. A common exception is that a bank opening a deposit account with a minor is deemed to have an enforceable contract. You need to see if your state has an exception that would make the safe deposit contract enforceable. I doubt that you will find one.

Even if the contract for the safe deposit box was enforceable under state law, my opinion is that a contract with a minor to have access to a safe deposit box is a singularly bad idea.