

If you Must Have a Safe Deposit Box, Don't Own it

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Readers of this newsletter are all too familiar with our advice regarding causes of probate avoidance failure (such as solely-owned demutualized insurance company stock or life insurance payable to a predeceased spouse), and they have come to appreciate that Pa. Dept. of Revenue regulations designed to thwart inheritance tax evasion require probate in order to obtain entry into a decedent's safe deposit box, even if it's jointly titled with anyone other than a spouse. Our standard advice has always been to get rid of the safe deposit box.

However, one of our clients (and a longtime newsletter recipient) may have come up with a very clever alternate solution. We only found out about it after he died and incident to our preliminary review of the case to determine if probate would be necessary. What we always do is send out a questionnaire to the decedent's survivors that's designed to ferret out the "usual suspects" of probate avoidance failure, and the questionnaire specifically asks if the decedent had a safe deposit box. In this case, that question was answered yes, so when I initially met with the decedent's son and daughter to discuss estate administrative matters, I launched into my apology for having to go through an otherwise unnecessary probate proceeding just to gain entry into the box. They interrupted me by saying that they had already gone to the bank and encountered no difficulty in emptying and closing their father's safe deposit box. The bank knew of the death, yet they told the son and daughter, "The box is yours; you own it." I was stunned. Impossible, I thought. Usually, the news that survivors get from the bank is bad news (your power of attorney ceased at death / you're not the executor just because the Will says so). How could this possibly have been permitted to occur? It couldn't have been bank stupidity – banks make sure their employees are well aware that those same Revenue regulations can result in jail time for personnel who permit an unauthorized safe deposit box entry.

On the other hand, banks often have their own customer-ready solutions for routine legal situations that have been handily reduced to signature card format. "Just sign here" and the problem is solved. Although I haven't confirmed it, I think that this might be exactly what our client did in this case. He had executed a firm-prepared general power of attorney in favor of his children as part of his estate planning, so he knew how powers of attorney worked, and he also knew that probate couldn't be avoided if he had any ownership interest in his safe deposit box at death. I think that he (and/or the bank) brilliantly realized that he could keep his safe deposit box and foil the revenuers (at least as to post-mortem access) simply by switching roles with his children. Banks have signature cards that determine who owns a safe deposit box, and they have signature cards that grant non-owners authority to access a safe deposit box. All that the client would have to have done is taken his children to the bank to have everyone sign the

proper signature cards to (1) have the children made the only owners of the safe deposit box, and (2) have the children (as new owners) give their father power of attorney to access it. Problem solved. Client has unrestricted access during lifetime by virtue of power of attorney. Survivors have unrestricted access after death by virtue of sole ownership. No probate and no interference by the Dept. of Revenue.

If this is what you want to accomplish, talk to the bank. Also, please drop me a line to let me know if you have any success with this strategy, so that I can share it with others as an alternative to getting rid of the safe deposit box altogether.