

# Living Trust and Payable on Death Clause

As a safe deposit consultant, I receive hundreds of phone calls each month from financial institutions requesting guidance on various safe deposit issues. Over the past few years a significant number of these callers are asking the following two questions:

Question #1: Can a renter have a P.O.D. (Payable on Death) clause in his lease?

Question #2: Can a safe deposit rental lease be put into a renter's Living Trust?

Answer: My answer to both of these questions is always the same:

"You cannot make a will or an estate document out of a safe deposit rental lease."

## Payable on Death Clause

Renters who ask for a P.O.D. clause on their safe deposit lease are trying to establish access rights and content ownership that will activate only after they die. In some cases they even go so far as to ask the financial institution to add a special provision that says, upon the renter's death, all of their children must be present, sign for access, enter the box together and only then will they be allowed to remove all the box contents.

My biggest concern about accepting a P.O.D. clause is the liability and responsibility that a financial institution assumes when it accommodates the renter's request. A significant problem can occur if a safe deposit employee doesn't understand P.O.D. requirements and permits access to the children before the parents die. In a recent case, a stepbrother showed up after all the box contents were given to other children. The stepbrother sued the financial institution for his missing inheritance and won!

Currently, Iowa is the only state in the entire nation that now has a safe deposit regulation that permits renters to designate a "Beneficiary" on their lease. This beneficiary appointment activates only after the renter dies.

## Living Trust

Requests for Living Trusts are also causing much concern for safe deposit managers. Renters are asking their financial institutions to change all of their accounts and put them into their Living Trusts. Changing the checking, savings and CD accounts doesn't create a problem because these are assets that belong to the individuals. When renters want their safe deposit rental lease put into this Living Trust however, this question must always be answered: How can a small, rented space and container, inside a safe deposit vault be considered an asset belonging to an estate?

So the Living Trust answer is much the same as the P.O.D. request. You can't make an estate document out of a safe deposit rental lease, and you can't put the box, an item that you don't own, into your estate.

A safe deposit rental lease is merely an agreement between the financial institution and the renter to lease a space inside a vault. In most states this agreement is considered a Landlord/Tenant or Lessee/Lessor relationship. This relationship should be viewed much the same as renting an apartment from a landlord.

Example: What would an apartment landlord tell a tenant who asks for his apartment lease to be changed into a Living Trust or a P.O.D. and the ownership of the apartment and all contents be given to a relative after he dies? Obviously the answer would be "No." When asked a similar question, the financial institution's answer should also be "NO!"

### **Co-Renter Option**

In most states, after a box renter dies, safe deposit regulations allow all box contents to be released immediately to the surviving renter. In a few states, regulations still require that boxes be frozen and contents inventoried before releasing them to the surviving renters. Clearly explain your state requirements to your renter. Putting a trusted friend or family member on the contract as a co-renter should satisfy concerns about box access and content removal after death. If adding a co-renter to this rental agreement is still not acceptable, the renter should be referred to his own attorney for other options.

### **In Conclusion**

Before you are confronted with these legal questions contact your legal counsel and write your own internal procedures. Renters will usually accept a negative response to a P.O.D. or Living Trust question if it is reinforced with your attorney's legal opinion.

One last thought – you're probably receiving about \$15 to \$50 a year for this box. Why would you want to accept any additional UNLIMITED LIABILITY?

**About the Author:** David P. McGuinn, President of Safe Deposit Specialists, is a former banker and is often referred to nationwide as the safe deposit GURU. In all 50 states he has trained over 200,000 safe deposit personnel since 1969 and has served as President of the American Institute of Banking and the American, Texas and Houston Safe Deposit Associations. He has created numerous safe deposit manuals, training videos, products, compliance forms and other products. During the past 35 years, McGuinn's safe deposit manuals, videos, products and forms have been recognized as the national standard for the financial industry.