

## **“Drill Baby Drill” - Mystery Boxes Create Unhappy Renters**

An individual enters a financial institution with the intention of renting a safe deposit box. This person has certain expectations. By the very nature of the term “safe deposit box”, he assumes that he is renting a box in which he can deposit his valuables in a safe place within this facility. Since he is renting from a financial institution, he expects ethical, highly trained personnel who will do their utmost to protect his valuables with dedication, integrity and professionalism. He also should know that, although his box contents are not insured, the financial institution must meet specific state, federal and OCC safe deposit regulations, guidelines, and nationally accepted procedures, all designed to safeguard his property.

Fortunately, in the vast majority of cases, all of these expectations are met. However, over the past few years, many financial institutions have been acquired by other larger institutions and this trend is escalating. As these acquisitions, mergers, branch closings and consolidations of records, equipment and personnel are occurring, serious mistakes are resulting. In all the confusion and flux created by relocations, records such as lease agreements, access forms and computer records are being lost or destroyed. Faulty key control can also be a problem, and all of this may result as a phenomenon known in safe deposit circles as “mystery boxes”.

When a box renter enters his financial institution and requests access to his safe deposit box, he may find, to his dismay, that his box is no longer located in the vault of the facility from which it was rented. The employee may be clueless concerning its whereabouts. Without the proper documentation that could lead to the box’s present location, our renter now has a “mystery box”.

Mystery boxes fall into two categories. The first category is boxes that have no keys or contract. The second category is boxes that have a contract, access record and keys that are found in the unrented key storage area. Sometimes safe deposit boxes from many locations are brought to a central vault area. If these boxes have no activity over an extended period of time and/or records, contracts and keys have been lost, the financial institutions could find themselves in the unfortunate position of being in possession of a renter’s unclaimed property. Now these “orphaned” boxes must be drilled, inventoried and the contents stored in yet another vault location until, hopefully, the property and the owners can be reunited.

When renters discover their boxes and their valuables are in limbo somewhere, they are furious, they feel betrayed and lawsuits are bound to follow. Without implementing all state, federal and OCC regulations and procedures, a financial institution’s chances of winning any safe deposit litigation will be difficult, if not impossible. To illustrate the severity of the mystery box dilemma, consider the following situation:

### **Mystery Boxes Created**

After merging numerous branch offices, one financial institution very carelessly consolidated their safe deposit boxes into a central vault location. Proper recordkeeping and key control procedures were not followed correctly. Because of these missing procedures, many box renters’ identities and records were lost.

After this consolidation was complete, an audit was performed and a significant number of mystery boxes were found. When these mystery boxes were identified, the financial institution immediately scheduled a massive box drill to open hundreds of boxes and inventory their contents. Unfortunately, this was all done while their lobby was still open and these boxes were drilled while other box renters roamed in and out of the vault. After spreading these mystery box contents over the vault floor, many inaccurate box content inventories were performed and only one person signed some of the inventory forms. To make matters worse, none of these inventory form signatures were notarized.

Many of these inventoried items contained the box owner’s name and address and clearly identified the box owners. Unfortunately, these poorly trained employees made no effort to research existing deposit account records to identify and notify these renters that their contents were now in the institution’s possession. After removing these drilled contents, the employees merely placed them in sealed bags and transported them to another vault location. This is where they remained for months until the box renters arrived at the branch to access their box. This was when the renters learned that their contents had been incorrectly and illegally removed from their box. Needless to say, many of these renters were very unhappy and retained legal counsel to file a lawsuit.

## Reducing Your Liability

Had these troubled institutions adhered to the following five steps; they would have avoided these potentially libelous conditions.

**Step 1. Box Relocation and Consolidation:** When merging safe deposit boxes from different locations, renter notification is essential. Proper documentation of box renter's contract information, box access history and all other computer records relevant to the boxes is crucial, particularly if boxes sharing duplicate numbers are stored together.

**Step 2. Safe Deposit Audit:** An effective safe deposit audit program is an institution's best protection against losses due to negligence. Doing so will hopefully identify and correct most audit exceptions. This audit will also identify all mystery boxes. Someone other than a safe deposit area employee should perform the audit.

**Step 3. Identifying Mystery Boxes:** First, record all of the box numbers, contracts and available keys on your audit forms for all boxes and keys located in your vault. If you find a box that has no contract and no keys, this is a mystery box. Now check your open and closed contracts to determine if this box was previously surrendered and no keys returned.

Extreme caution should be exercised if your audit form indicates that you have a contract, access record and keys for the same box. First, check your records thoroughly to determine if the renter might have returned the keys but did not properly release the contract. If there is no indication that the renter surrendered this box, DESTROY THESE KEYS IMMEDIATELY.

**Step 4. Drilling Mystery Boxes:** If all efforts fail to identify and solve these mystery box situations, follow these steps. First, insert a red "Box Sealed" keyhole signal into the mystery box lock. Then prepare a "dummy contract" labeled Mystery Box and indicate the discovery date. From this date, wait twelve months, plus the additional period of time that your contract or state regulation requires you to provide a renter before drilling a past due box. If the renter doesn't pay his rent or request access, you can now consider this box past due. Drill the box under dual control, inventory the contents on a notarized affidavit, and if you cannot identify the renter, follow your state's unclaimed property requirements. If the renter can be identified, have your legal counsel create a "Release of Liability Affidavit", contact the renter and ask him to come in and redeem his property immediately.

**Step 5. Safekeeping and Unclaimed Property:** After inventorying the box contents, place them in a tamper-resistant envelope in safekeeping under dual control. The notarized affidavit should be secured in a sealed, clear pouch located on the front of this envelope. If information is available, the renter's name, address, box number, drilling and mystery box date must be visible for recordkeeping and retention purposes. If your renter never claims the drilled box contents, many states have specific unclaimed property time periods, usually ranging from three to seven years. When this retention period expires these abandoned box contents must be reported and/or delivered to the state. Many state authorities will then auction these unclaimed items.

## In Conclusion

After reviewing these five important steps, how did your box relocation, mystery box and drilling procedures stack-up? Do you have an effective safe deposit audit program and all current state, federal and OCC regulations? Do you have a properly worded box inventory affidavit and do you secure all drilled box contents in tamper-resistant envelopes in a dual control safekeeping area? If you had difficulties with any of these questions, and need assistance or additional information, contact Dave McGuinn at [www.sdspec.com](http://www.sdspec.com).