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Poor Box Drilling Procedures Create Rich Box Renter

Nationwide, every day of every year, safe deposit box rental payments become delinquent. At what point should the financial institution intervene?

There are specific state regulations and nationally accepted procedures that are necessary when you notify a renter or take legal action when his box rent is overdue.

First, the financial institution must mail an annual box-rental-due notice. The second step would be a friendly reminder, then a 30-day past due notice and finally a required legal demand-for-payment letter must be mailed.

If none of these efforts bring forth a payment, the financial institution has no other recourse. The box must be drilled and its contents (if any) inventoried and impounded. Most delinquent boxes are often found to be empty.

To avoid potential liability, strict procedures dictate the handling of confiscated box contents. To illustrate the pitfalls of following flawed or careless procedures, let's examine a past due box situation that happened at a small financial institution.

After taking the appropriate actions to notify a renter that his box rental payment was long overdue, and when no response was forthcoming, the box was drilled. The contents were inventoried, listed in detail and the institution took possession of these items. So far, so good – right? Wrong! The items were placed in a manila envelope and stored in an unlocked file cabinet. This is where their problems begin.

Suddenly one day, eighteen months later, the renter shows up to claim his property. He watches the safe deposit attendant walk across the lobby, open the unlocked file cabinet and remove the envelope. The observant (and perhaps dishonest) box renter examines the envelope's contents, frowns, and slams the envelope on the attendant's desk.

"This is not my stuff!" he bellows. He asserts that a valuable coin collection is missing. Worthless items have been substituted for his coins, and the financial institution's inventory list is bogus.

Needless to say, our irate renter retains legal counsel and files a lawsuit. After lengthy legal maneuvering by both sides, the lawsuit goes to trial.

During the trial, the emotional renter claims that the missing coins represented his life savings. The financial institution testifies that the box was indeed drilled, but that the renter was properly notified that his box rental payment was long overdue. His box contents had been inventoried and listed. Then the institution had to admit that these items had been placed in a manila envelope and left in an unsecured file cabinet for eighteen months.

The jury, moved by the renter's pitiful testimony and disgusted by the institution's lackadaisical attitude towards the safekeeping of his property, found for the plaintiff to the tune of \$107,000.

The financial institution attorney's subsequent appeal was unsuccessful and cost the institution an additional \$80,000 in legal fees. Because the institution did not have a satisfactory defense during either trial, this expensive second attempt was predictably futile.

Had the institution adhered to the following five steps, it could have avoided this entire litigation.

Step 1. State Regulations

Follow your state's safe deposit delinquent box rent and unclaimed property regulations closely. These requirements differ from state to state, but most state laws dictate the required time periods, the type of notice given and the required procedures that must be followed when drilling a past due box.

Step 2. Sending Notice

After mailing your annual rent-due invoices, if the rent is not paid, send only one friendly reminder and one past due second notice. If there is no response to any of these notices, it is a waste of time and postage to continue sending notices each month. Wait until it's time to send your final notice and make sure it's worded properly. Unless your state law requires a written disclosure that the box will be drilled and contents impounded, never mention this in your final letter. Tell the renter that you will be taking legal action against him and you may turn him over to a credit-reporting agency if he doesn't respond within a specified number of days. Hopefully this language will get his attention. Never tell him that you are going to drill his box and impound the contents because most past due boxes are empty. Your renter obviously knows this and will ignore your demand letter and throw it away.

Step 3. Drilling Box

After the required notification period expires, the box can be drilled and the contents inventoried. This must be done under dual control on a properly worded box content inventory affidavit. Nothing listed on this inventory affidavit should appraise the box contents. (i.e. never list items as gold, silver, diamonds, etc. They should be listed as yellow or white metal or jewelry with blue, red or clear stones). A notary should also be present to notarize the inventory affidavit, which creates a legal document.

Step 4. Safekeeping Contents

After the box contents are inventoried, they should be placed in a tamper-resistant envelope and locked in safekeeping under dual control. A copy of the signed inventory affidavit should be secured in a sealed, clear pouch on the front of this envelope. The box renter's name, address, due date, box number, drill date and all other important information must be visible for recordkeeping and retention purposes.

Step 5. Report Unclaimed Property

If your renter never claims the drilled box contents, many states have a specific unclaimed property time period, 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 and the state authorities will auction these unclaimed items.

In Conclusion

After reviewing these five important steps, how did your past due box drilling procedures stack-up? Do you have copies of your state's safe deposit past due and unclaimed property regulations? Do you have a properly worded box content inventory affidavit? Do you secure all drilled boxes in tamper-resistant envelopes and provide dual control safekeeping protection? If you had difficulties with any of these questions, and need assistance or additional information, contact Dave McGuinn at www.sdspec.com.

About the Author: **David P. McGuinn**, President of Safe Deposit Specialists in Houston, is a former banker and often referred to nationwide as the safe deposit GURU. In all 50 states he has trained over 250,000 safe deposit personnel since 1969. He has created numerous procedures and compliance manuals, training videos/DVDs, forms, brochures and other safe deposit products, including state specific drilling procedures, inventory affidavits and tamper-resistant envelopes for drilled past due boxes. For almost 40 years, McGuinn's seminars, manuals, forms and other resources have been considered the accepted standard for the financial industry.