

**Issues Associated with Regulation of Safe-Deposit Boxes under Chapter 655**  
**WHITE PAPER**  
**PROPOSED NEW FLORIDA STATUTE 655.935**

Safe-Deposit Box Access Subcommittee  
Probate Law and Procedure Committee  
Real Property, Probate and Trust Law Section

June 5, 2009

**I. SUMMARY**

The purpose of the proposed addition to §655.935 of the Florida Statutes is to implement a statutory requirement that a record be kept when a bank officer permits a person to open, examine and remove contents from the safe-deposit box prior to the initial opening of the safe-deposit box pursuant to §733.6065 by a personal representative appointed by a court in this state.

**II. CURRENT SITUATION**

Upon satisfactory proof of death to the lessor of a safe-deposit box (financial institution), a person named in a court order, or otherwise, the spouse, parent, an adult descendant, or a person named as a personal representative in a copy of a purported will produced by such person, can open and examine the contents of a safe-deposit leased or coleased by a decedent, in the presence of an officer of the lessor. The lessor must deliver to the person making the request any writing purported to be a deed to a burial plot or burial instructions, or any document purporting to be an insurance policy on the life of the decedent, if the requesting person is the named beneficiary. The lessor also must deliver, to the court having jurisdiction in the county where the financial institution is located, any writing purported to be the last will and testament of the decedent.

The right to open and examine the contents of a safe-deposit box leased by a decedent, and to receive the items described above, is separate from the right of a personal representative under the Florida Probate Code, and §655.935 specifies that an opening under its authority shall not be considered an “initial opening” under §733.6065. F.S. 733.6065 requires, at the opening, the preparation of an inventory of the contents of the box, verification of that inventory by the persons present at the opening and the filing of a copy of the inventory of the safe-deposit box with the court.

There is no requirement in §655.935 that the lessor retain an inventory, delivery record or any other record of documents removed from the safe-deposit box nor a record of who removed those items. This lack of control may result in no copies of the documents delivered (for example, a burial deed or a life insurance policy) being available to the personal representative on the subsequent opening of the safe-deposit box. When the personal representative accomplishes an “initial opening” (and inventory) he or she may not know an insurance policy was in the safe-deposit box at the decedent’s death nor to whom it was delivered. While a record of the entry exists in the entry log, the persons making that entry may not then be found or have

any independent recollection, and the entry record would not indicate what, or even if, documents were delivered.

### III. EFFECT OF PROPOSED CHANGE GENERALLY

The proposed change would impose a requirement on financial institutions to document when a safe-deposit box is opened and examined prior to the appointment of a personal representative and to photocopy any documents released pursuant to F.S. 655.935. Thus, when the personal representative is appointed and conducts an “initial opening” they have an accurate record of everything in the safe-deposit box when the decedent died. If, for example, the personal representative has to file a federal estate tax return, the personal representative will have a copy of any life insurance owned by the decedent at his death.

The proposal does not otherwise impose significant duties on the part of the financial institutions. It includes a provision that allows the financial institution to charge the person seeking delivery for any copies made. The proposal would only require that the entry be documented and a record of what was taken and by whom be kept in the safe-deposit box.

### IV. ANALYSIS

The primary purpose of §655.935 is to allow family members and nominated personal representatives to gain access to information of the decedent needed before a probate administration can be initiated. The documents retained in safe-deposit boxes are usually original wills, life insurance policies, deeds to burial plots or burial instructions and other documents relating to ownership of assets. In most circumstances, a funeral takes place before a probate administration can be initiated and the family members need the deed to the burial plot or the burial instruction. In circumstances when a probate is necessary to transfer the property of the decedent, the named personal representative needs the original will in order to petition the court for appointment. In situations where there are no assets to probate, but the decedent has life insurance policies with designated beneficiaries, the named beneficiary needs the policy in order to claim the proceeds. Understanding the importance of this right to enter a safe-deposit box of the decedent for examination purposes, it is equally important for the personal representative to later have a record of all actions taken and all items removed from the safe deposit box after the death of the owner but before the initial opening of the box.

### V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS--None

### VI. DIRECT IMPACT ON PRIVATE SECTOR-- 1) Impact of reduction in attorneys fees and related claims expenses unknown. 2) Impact per probate case for expense to be paid to banks for access, minimal. 3) Impact upon bankers, minimal, if any as reasonable expenses to be paid by the party seeking access to the box.

### VII. CONSTITUTIONAL ISSUES — None apparent

### VIII. OTHER INTERESTED PARTIES — Florida Bankers Association.