

A STEP AHEAD

IMPORTANT NEWS ABOUT SAFE DEPOSIT BOXES

Safe deposit boxes, frequently used by our clients to store heirlooms, jewelry, coins, securities and important papers, present estate planning issues that are frequently overlooked. Each bank has its own rules regarding the use and access to its customers' boxes and, for this reason, unanticipated problems arise. Thus, for instance, if a box is owned in joint names and one of the two owners passes away, does the surviving owner have the right to collect the contents of the box and close it? The answer to this question is, simply, "No," although most people, including some bank representatives, believe otherwise.

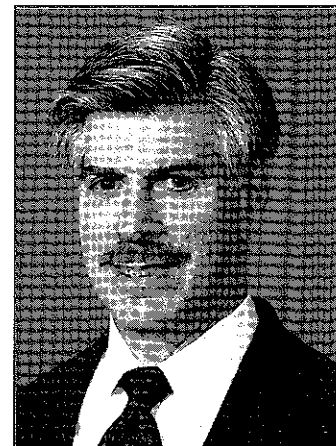
In New York, to secure a safe deposit box, one enters into a form of lease agreement with the bank. There should be a signed, written contract, specifying not only the names of those who have access to the box but also the terms and conditions of the rental. For instance, most banks will specify that cash should not be maintained in a safe deposit box and that, under no circumstances, will they be responsible for its loss. It is important that the lessee, the person who rents the box, read the contract carefully.

Ordinarily, only persons authorized

under the contract may enter the box. A box that is leased in two names is leased jointly. This means that, while both lessees are alive, either may freely enter the box alone, examine, remove or insert contents, and/or surrender the box. Some banks permit the appointment of a "deputy," one who has equal access to the box with the one who has appointed him, but only during the lifetime of the owner of the box.

The agreement will also specify the circumstances under which the bank can open the box. Usually, if the rental fee has not been paid for a period of time or the contents of the box have not been removed following the termination of the lease, the bank has the authority, after giving notice to the owner(s), to open the box, remove the contents and sell or auction them.

What most of our clients don't realize is that the bank also has the right to refuse access to a box if it learns that a lessee is incapacitated or has died. This is true even if there are two names on the box and the other lessee is the one who seeks entry. Because the bank has an obligation to safeguard the contents of the box, it can seal the box and require the personal representative or



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guardian of the deceased or incapacitated lessee to present authorization from the Court permitting access to the box. This is precisely what recently happened to one of our clients. She and her husband jointly owned a box in a bank at which they also had several joint accounts. After his death, she wanted to remove his name from the box and authorize her child to have access. The bank refused, demanding that she secure Letters Testamentary from the Court.

Other things to know:

- The contents of the box are not insured by the FDIC or by the bank - since no one but you knows what's inside. You can insure the contents privately.
- You should keep a complete list and description of all items in your box together with proof of ownership where applicable.
- Deeds, car titles, insurance policies, even birth and death certificates, are easily replaceable and need not be kept in a safe deposit box.
- Your Will should never be kept in your safe deposit box because, after your death, when the Will is needed, access may be denied by the bank and a special proceeding may be required in order to secure the Will for filing.
- Boxes are not indestructible. The Chase vault was incinerated during 9/11 and numerous banks were inundated by flood waters and their vaults destroyed during hurricane Katrina. ♦

ORGAN AND TISSUE DONATION - NEVER TOO OLD, NEVER TOO LATE

Let's face it: we are all going to die one day. At that point, our family members may be asked about donating our organs and tissue. A decision on this sensitive issue is much more difficult for our loved ones to make unless, during our lifetime, we have shared our views and expressed our intentions. For various reasons, personal, cultural or religious, and because it raises concerns which are genuine or superstitious, most people avoid talking about the end of life. But, we probably should.

Tens of thousands of

Americans are on organ and tissue transplant waiting lists, hoping for that precious "Gift of Life." The national waiting list count is continuously updated throughout the day. The decision as to who should have priority to organ and/or tissue transplant is based solely on medical factors. Blood and tissue type, body size, geographic location and medical urgency determine the recipients. The transplant waiting list is blind to the age, gender, race, religion, wealth or celebrity status, and no one can advance his or her position on the waiting list based on

these factors. Moreover, in the U.S., it is illegal to sell human organs and tissue. Violators are subject to imprisonment and fines. One of the reasons for this rule is the government's concern that buying and selling organs might lead to inequitable access to donor organs with the wealthy having an unfair advantage.

People of ALL ages, from newborns to the very elderly, may donate organs and tissue. Do not rule yourself out due to health concerns: people of ALL medical histories, even those with diabetes, cancer

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and hepatitis "C" are potential donors. The circumstances of death, the donor's medical condition at that time and the condition of the specific organs and tissue will determine their viability for donation. Donors are evaluated on a case-by-case basis to ensure the medical suitability of their organs and tissue.

You can donate such organs as the heart, kidney, liver, pancreas and lungs. Tissue donations include skin, bones, eyes/corneas, heart valve and cardiovascular tissue, middle ear, blood vessels, arteries, tendons and connective tissue. It costs nothing to donate, none of the costs are passed on to your family or estate. All costs related to donation are paid by the organ or tissue recipient, usually through insurance, Medicare or Medicaid.

Some people are under the impression that a doctor will stop trying to save his patient's life if he is informed that the patient wishes to be an organ donor. The medical team, whose job it is to save lives, is completely separate from the transplant team. The organ procurement organization ("OPO") is not notified, and organs are not removed, until all life-saving efforts have failed and death has been determined. In order

to prevent conflicts of interest, the physician who determines death is never a member of the transplant recovery team. The OPO does not notify the transplant team until the family has consented to the donation.

Often people believe that donation will result in a delay in the funeral arrangements or that they may be disfigured. The donor is treated with extreme care. The donation takes place under sterile conditions in procedures similar to surgery. The donation does not usually delay or interfere with chosen funeral arrangements, even an open casket.

If you wish to be a donor, it is important to express your wishes to your family. This will make it easier for them to consent to the donation and make sure that your instructions are honored. Hospitals are required to follow certain protocols in asking family members for permission to procure organs. If you make no provision for donation, under New York law, only certain individuals are authorized to consent on your behalf: (1) your spouse; (2) an adult child, 18 years of age and older; (3) either of your parents; (4) siblings, 18 years of age and older; and (5) a guardian appointed by court

prior to your death.

If you are 18 years of age and older, there are several ways to express a wish to become a donor: by joining a donor registry, a computerized database of people who wish to be donors; by signing an organ and tissue donor card and carrying it in your wallet; by indicating the intent to donate on your driver's license; or by including donation in your health care proxy and/or living will. You may specify the desire to make a gift of only a particular organ, or to make a donation to a specified individual. You may specify if you want your organ(s) or tissue to be used for research or educational purposes or for transplantation.

The decision to be a donor is a difficult one, but one that can be truly rewarding and meaningful. Having a greater understanding enables us to make better decisions and to express them in a way that will help our loved ones, in a time of great sorrow, to carry out our wishes. If you have questions or concerns about organ and tissue donation, please do not hesitate to contact our offices. We will be happy to discuss these issues with you in further detail. ♦

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OLGA RUH JOINS B & D



Berwitz & DiTata LLP welcomed Olga Ruh as an associate attorney of the firm in June. Olga has been practicing in the areas of estate planning and elder law

for over fifteen years, first as a paralegal and, since 2004, as an admitted attorney. She obtained her law degree from St. John's University School of Law. Olga was born and raised in Russia. Before coming to the United States, she obtained her teaching certificate from the Moscow Pedagogical Institute. She is fluent in Russian and also has a working knowledge of German. She is happy to lend her linguistic assistance to the "B & D Circle of Friends." Olga is an active member of the Surrogate's Court, Estates and Trusts Committee and of the Elder Law Committee of both the Nassau and Suffolk

County Bar Associations. In addition, she is a volunteer for the Russian Gift of Life, a non-for-profit organization which sponsors un-privileged Russian children to come to the United States for open heart surgery. In her spare time, Olga enjoys participating in local community events and taking belly dance classes. She is married and has a daughter who lives and practices anti-trust law in Paris, France. It is our pleasure to have Olga on board and she looks forward to meeting with our friends and clients. ♦

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