CHAPTER 19

Safe Deposit Boxes

**SECTION 34‑19‑10.** Definitions.

 "Lessee" means a person contracting with a lessor for the use of a safe deposit box.

 "Lessor" means a bank, cash depository, or trust company renting safe deposit facilities authorized by law to operate in the State.

 "Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

HISTORY: 1962 Code Section 8‑501; 1952 (47) 1932.

**SECTION 34‑19‑20.** Safe deposit business authorized.

 Subject to the provisions of this chapter any bank, building and loan association, savings and loan association, savings association, savings bank, or trust company may maintain and lease safe deposit boxes and may accept property or documents for safekeeping.

HISTORY: 1962 Code Section 8‑502; 1952 (47) 1932; 1985 Act No. 124, Section 4.

**SECTION 34‑19‑30.** Lease of box to minor.

 A bank may lease a safe deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

HISTORY: 1962 Code Section 8‑503; 1952 (47) 1932.

**SECTION 34‑19‑40.** Access to box of fiduciary.

 Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

 (1) By any one or more of the persons acting as executors or administrators;

 (2) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting; or

 (3) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

HISTORY: 1962 Code Section 8‑504; 1952 (47) 1932.

**SECTION 34‑19‑50.** Access to box of decedent; removal of contents.

 A lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer, manager, or assistant manager of the lessor; and the lessor, if so requested by such person, must deliver:

 (1) Any writing purporting to be a will of the decedent to the executor, if one be therein named, otherwise to the court having jurisdiction of the decedent's estate;

 (2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

 (3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein.

 No other contents shall be removed, pursuant to this section until an executor or administrator qualifies and makes claim to the contents.

HISTORY: 1962 Code Section 8‑505; 1952 (47) 1932; 1996 Act No. 248, Section 5, eff April 1, 1996.

Effect of Amendment

The 1996 amendment revised this section by deleting the last paragraph respecting removal of contents of safe deposit boxes.

**SECTION 34‑19‑60.** Refusal of access because of adverse claim.

 An adverse claim to the contents of a safe deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

 (1) The lessor is directed to do so by a court order issued by a court of competent jurisdiction; or

 (2) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

 A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

HISTORY: 1962 Code Section 8‑506; 1952 (47) 1932.

**SECTION 34‑19‑70.** Opening box when rental is one year in default.

 If the rental due on a safe deposit box has not been paid for one year, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the box may be opened in the presence of an officer, manager or assistant manager of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

HISTORY: 1962 Code Section 8‑507; 1952 Code Sections 8‑572 to 8‑574; 1942 Code Section 7902; 1932 Code Section 7902; 1928 (35) 1271; 1951 (47) 363, 513; 1952 (47) 1932.

**SECTION 34‑19‑80.** Sale of contents unclaimed for two years.

 If the contents of the safe deposit box have not been claimed within two years of the mailing of the certificate as required by Section 34‑19‑70, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within thirty days, the contents of the box will be sold at public auction at a specified time and place, or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once seven days prior to the sale in a newspaper of general circulation in the community. If the articles are not claimed, and the accrued rent and disbursements of lessor paid, they may then be sold in accordance with the notice.

HISTORY: 1962 Code Section 8‑508; 1952 Code Section 8‑576; 1942 Code Section 7902; 1932 Code Section 7902; 1928 (35) 1271; 1951 (47) 363, 513; 1952 (47) 1932.

**SECTION 34‑19‑90.** Disposition of proceeds of sale of contents.

 The balance of the proceeds of a sale under Section 34‑19‑80, after deducting accumulated charges, including the expense of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank, cash depository, or trust company operating the safe deposit facility, and shall be identified on the books of the bank as arising from the sale of contents of a safe deposit box.

HISTORY: 1962 Code Section 8‑509; 1952 Code Section 8‑577; 1942 Code Section 7902; 1932 Code Section 7902; 1928 (35) 1271; 1951 (47) 363, 513; 1952 (47) 1932.

**SECTION 34‑19‑100.** Destruction of private documents of no apparent value.

 Any documents or writings of a private nature and having little or no apparent value need not be offered for sale under Section 34‑19‑80, but shall be retained, unless claimed by the owner, for a period of two years, after which they may be destroyed.

HISTORY: 1962 Code Section 8‑510; 1952 Code Section 8‑578; 1942 Code Section 7902; 1932 Code Section 7902; 1928 (35) 1271; 1951 (47) 363, 513; 1952 (47) 1932.

**SECTION 34‑19‑110.** Use of words "safe deposit" or "safety deposit".

 It is unlawful for a person to use the words "safe deposit", "safety deposit", or other similar words in connection with the rental of storage space, or in the title or name under which business is done.

 A person subject to the jurisdiction of the State Board of Financial Institutions, a manufacturer or dealer in safe deposit facilities or equipment, or an association, the membership of which is composed of officers or institutions subject to the jurisdiction of the board or the banking department of other states or of the United States, are exempt.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both.

HISTORY: 1962 Code Section 8‑511; 1952 (47) 1932; 1993 Act No. 184, Section 207, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change the maximum term of imprisonment to conform to the classification established for each offense.

**SECTION 34‑19‑120.** Access by person appointed as attorney‑in‑fact under durable power of attorney to obtain original durable power of attorney; statement of authorization.

 (A)(1) The person who has been appointed as attorney‑ in‑fact under a durable power of attorney by a lessee of a safe deposit box may open, or direct the lessor to open, the safe deposit box of the lessee and obtain the original copy of the durable power of attorney, if a statement in the form of item (3), or in a similar form showing the same intent, is:

 (a) incorporated in the body of the original durable power of attorney contained in the safe deposit box; or

 (b) contained in a separate statement in the form provided in subsection (B), or in a similar form showing the same intent as that attached or annexed to the original durable power of attorney contained in the safe deposit box.

 (2) If the statement is contained in a separate writing, the execution of the separate statement is not an amendment, modification, or revision of the original power of attorney.

 (3) The statement must be substantially in the following form:

 "I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Principal, do hereby authorize and direct my appointee or appointees as my Attorney‑in‑Fact in my durable power of attorney, to have access at any time or times to any safe deposit box rented by me, wherever located, in order to remove my original durable power of attorney; and any institution in which any such safe deposit box may be located is not required to make any inquiry, and shall not incur any liability to me or my estate as a result of permitting my appointee or appointees in my original durable power of attorney to exercise this power. This power is exercisable without: (i) any contact with or notice to me, my spouse, and/or any interested persons to my estate; (ii) any prior court order or authorization; (iii) any knowledge of or any prior determination as to my mental or physical capacity or incapacity; (iv) any knowledge as to my whereabouts regardless whether my whereabouts are known or unknown; or (v) any inquiry."

 (B) The lessee, at any time after the execution of his durable power of attorney, may execute a separate statement authorizing the removal of his original durable power of attorney from his safe deposit box pursuant to subsection (A), if the separate statement is executed by the Principal with the same formalities as the execution and recording of a deed in the State of South Carolina pursuant to Section 30‑5‑30, and the separate statement is attached or annexed to the original durable power of attorney in the following form, or in a similar form showing the same intent, with the acknowledgement for recorded deeds pursuant to Section 30‑5‑30(B) or (C).

 "STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_

 COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 I, \_\_\_\_\_\_\_, the Principal, do hereby authorize and direct my appointee or appointees as my Attorney‑in‑Fact in my durable power of attorney dated the \_\_day of \_\_, in the year \_\_, to have access at any time or times to any safe deposit box rented by me, wherever located, in order to remove my original durable power of attorney; and any institution in which any such safe deposit box may be located is not required to make any inquiry, and shall not incur any liability to me or my estate as a result of permitting my appointee or appointees in my original durable power of attorney to exercise this power. This power is exercisable without: (i) any contact with or notice to me, my spouse, and/or any interested persons to my estate; (ii) any prior court order or authorization; (iii) any knowledge of or any prior determination as to my mental or physical capacity or incapacity; (iv) any knowledge as to my whereabouts regardless whether my whereabouts are known or unknown; or (v) any inquiry."

 IN WITNESS WHEREOF, I have executed this statement on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, in the year, \_\_\_\_\_\_\_\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Witness) (Principal)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Witness)"

 (C) If the original durable power of attorney does not contain a statement in the form provided in subsection (A) or in a similar form showing the same intent, or a separate statement in the form provided in subsection (B) or in a similar form showing the same intent is not attached or annexed to the original durable power of attorney, in order to allow removal of the lessee's durable power of attorney from the lessee's safe deposit box the financial institution must have:

 (1) contact with or notice to the lessee, the lessee's spouse, or an interested person in the lessee's estate;

 (2) a prior court order or court authorization;

 (3) knowledge of or a prior determination as to the mental or physical capacity or incapacity of the lessee;

 (4) knowledge as to the lessee's whereabouts, whether the lessee's whereabouts are known or unknown; or

 (5) other inquiry.

 (D) A witness to a statement provided for in subsection (B), who also is an officer authorized to administer oaths pursuant to the laws of this State may notarize the signature of the other witness of the statement in the manner provided by this section.

 (E) A financial institution that authorizes a person who has been given a durable power of attorney by a lessee of a safe deposit box to remove the original durable power of attorney from the safe deposit box of the lessee, pursuant to subsection (A) or (B), or a financial institution that removes the original durable power of attorney from the safe deposit box of the lessee pursuant to the direction of the person who has been given a durable power of attorney by the lessee, is not required to make further inquiry and is not liable to the lessee or the lessee's estate as a result of permitting removal of the original power of attorney. The financial institution may request the person purporting to have been given the durable power of attorney to produce a certified copy of the power or an affidavit declaring that he has been given the power before opening the box. No other contents may be removed from the box pursuant to this section.

 (F) The provisions of this section enable the person who has been appointed as attorney‑in‑fact under a durable power of attorney by a lessee of a safe deposit box to remove or obtain the original durable power of attorney from the safe deposit box of the lessee and enable the financial institution to allow the removal of the durable power of attorney from the safe deposit box without court action or findings of incapacity of the lessee. This section supplements and does not supplant the current procedures for obtaining the power of attorney of the lessee from the safe deposit box and is not the exclusive method.

HISTORY: 1988 Act No. 499, eff May 9, 1988; 2002 Act No. 362, Section 8, eff August 2, 2002, applicable to instruments executed thereafter.

Effect of Amendment

The 2002 amendment rewrote this section.