

Estate Planning 101

By Attorney Marlene S. Cooper

PROPER HANDLING OF BANK ACCOUNTS

The bank account is used by many people to deposit funds they receive from an employer or other income source and to disburse those funds for goods and services, primarily by means of checks and ATM transactions. While bank accounts are very handy vehicles for handling money, they should be used with caution for estate planning.

On several occasions I have been contacted by people who have added someone else's name to their bank accounts, only to find that doing so had disastrous consequences. The usual reason given for adding the person to the account was to make sure that someone had access to the money should disability or death occur. While the goal was a good one, they did not realize that by adding that person on the bank account the person also became a joint owner of the funds on deposit in that account. The joint owner has access to the account for his or her emergencies, "investments", desires, etc. His or her creditors also have a right to go after that bank account to satisfy their outstanding debts! Also, just like adding someone on title to your real estate, you cannot take a joint owner off of your bank account without their consent. When you add someone as a joint owner on your account you give up control of that account, allowing that person immediate access to the entire balance!

When a person passes away, money in the bank account will become the property of the joint owner. If there is no joint owner, the bank will check its records to see if there is a beneficiary designated for the account. If so, the funds on deposit will be paid

to the beneficiary. This is a very straightforward way of transferring the money to a beneficiary; however, it must be recognized that the money becomes the property of the beneficiary to be used as the beneficiary sees fit. Even though you might have given instructions that the beneficiary share the money with his or her siblings or to use the money for your funeral expenses, it is up to the beneficiary whether to honor your wishes. If he or she chooses not to, there is generally nothing that can be done.

By creating a living trust, you can accomplish the goal of providing for someone to handle the money in your bank account in the event of your disability or death and still maintain total control of your money during your lifetime. Your living trust can own your bank account and through it you can specify that your money be used only for your needs during your lifetime. Your living trust can also specify how the money in the account is to be used and or distributed after you pass away. The money is not subject to probate and the person you designate to carry out the terms of your trust can be held legally liable for failure to follow your wishes. You can have peace of mind knowing that you have done the right thing. © 2010 by Marlene S. Cooper. All rights reserved.

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