

The Pitfalls of Joint Tenancy as an Estate Planning Tool - Part II

Just this week I received a telephone call that points out the negative consequences of adding someone else's name to your property as an estate planning tool. The elderly caller asked me what she could do to get \$20,000 back from her daughter who had taken the money from her (the mother's) bank account without permission. The mother had put her daughter on her bank account as a co-owner (or "joint tenant") to allow the daughter to use the money to care for her should she become ill and to have what was left go directly to her daughter when she passed away, thereby avoiding probate court. The mother said she trusted the daughter and never thought the daughter would take any of the money without asking for it. When questioned, the daughter said she had a "good investment" opportunity and used the money for that purpose.

Unfortunately, I repeated to this woman the same advice I have so often had to give people in similar circumstances: Essentially, there is nothing that can be done to recover the money short of a costly legal battle against the daughter in civil court or a criminal action against her under the elder abuse laws. Given the financial and emotional strain of these proceedings, in most cases the mother's best remedy is to try to talk her daughter into returning the money, if the money is still available.

The above example illustrates the first problem with adding someone to your bank account as a joint tenant. They have access to your account for their emergencies, their "investments", desires, etc. Another big problem is that their 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 tenant 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 !

By creating a living trust, you can 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 your money is to be distributed after you pass away. Your property 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.

I know of several cases that involve a parent making one of their children a joint tenant on their property because they trust that child to "do the right thing" -- divide the money with other family members, make sure the funeral and other financial matters are handled, etc. Unfortunately, the reality is that people and relationships change. For any number of reasons (usually greed), in some cases the "trusted one" looks out for only for his or her own interests and refuses to correctly or timely share the property or otherwise carry out the parent's wishes. Also, in some cases it happens that the "trusted one" has good intentions but passes away before making the proper distribution of the property. For example, suppose you put your married daughter on your bank account or your real estate as a joint tenant, then you pass away and unexpectedly she passes away shortly after you. In that situation, the property will go to her heirs, which

probably include her husband. Maybe he will share everything fairly with your other children, grandchildren, and other heirs. Maybe not.

Proper estate planning includes doing your best to make sure that your desires, goals, and or dreams for your wealth are carried through. Most people want to divide what they have among their children fairly. Maybe you want to also set some money aside to help your grandchildren through college or you just want to limit the amount of money your heirs can have access to on an annual basis. The real question is why leave all of this to chance when proper estate planning can help you make sure that your desires for your wealth are carried through. A revocable living trust can help you accomplish your goals.