JOINT ACCOUNTS

WHO GETS THE ACCOUNT UPON YOUR DEATH?

By Patricia C. Marcin, Esq. © 2017

An account that is titled in your name and that of your child "with right of survivorship" passes to your child upon your death "by operation of law." That is, your Will does not control the disposition of this account. When an account is titled in your name and your child's name "as tenants in common," at your death one-half of the account is deemed to be owned by your child and the other half passes into your estate as a probate asset. That is, your Will does control the disposition of one half of this account. If the account is titled in your name and your child's name and says nothing else, the banking law presumes that it is meant to be a joint account with right of survivorship and the entire account passes to your child on your death by operation of law.

As people get older, they will frequently title an account jointly in their own name and that of a child who lives close to them in order to help with check-writing, bill paying, transfers and withdrawals. These are often called "convenience accounts" and, despite the joint title on the account, the parent does not intend for the assets in that account to pass to the named child upon the parent's death. Rather, the parent intends that the balance of the account at the parent's death be added to the parent's estate and, thus, the parent's Will will control the disposition of the assets in that account. Unfortunately, if the account signature card does not specifically state that it is titled jointly "for convenience purposes," joint accounts can be frequent fodder for litigation upon the death of the parent.

For example, let's say Lynn's daughter, Mary, lives close by; and her son, John, lives in Colorado. Lynn opened a joint account with Mary, with no indication of whether the joint title is "with right of survivorship" or "for convenience purposes." Mary sees Lynn frequently, helps her pay her bills and manage her money, takes her to the store and to the doctor. After several years, Lynn dies and Mary claims that the $150,000 remaining in the joint account passes to her by operation of law. After all, it was a joint account and the law presumes it is with right of survivorship, not to mention all the time Mary spent helping Lynn.

John, on the other hand, sees things differently. Lynn had always split everything equally between John and Mary, and Lynn's Will bequeaths her estate equally to John and Mary. John's position is that the joint account with Mary was only a convenience account; and the $150,000 remaining in the account should be added to Lynn's probate estate, to be divided equally between John and Mary in accordance with Lynn's Will. And the costly litigation begins.

To avoid litigation over joint accounts, you may consider using a durable power of attorney instead, so that your agent can help you pay your bills, write checks, etc. from an account in your name alone. If you prefer to use a joint account for convenience purposes, make sure "for convenience purposes" is in the title of the account on the signature card, unless, of course, you intend the child named on the account with you to receive the account in full upon your death. If you do intend that child to receive the account, you should consider signing a letter which explains this intent; and ask your estate planning lawyer to keep this letter with your original Will for safekeeping.

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