

Elder Law Matters

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Don't Add Your Kids or Others as Joint Owners on Your Bank Accounts!

During an initial consultation, Wilma Doe tells me, “I recently added my daughter Susie as joint owner on my bank accounts . . . that way, if I ever need Susie to pay bills for me, she can get to the money.”

When I hear that – my head starts to hurt! This topic comes up often with my widowed clients who are 65 and older. In most cases, I would advise Wilma and others like her Not to add Susie as a joint owner on bank accounts. Why? It just isn't necessary to accomplish Wilma's goal. Further, there are too many potential problems that far outweigh the “benefits” of having a joint owner on Wilma's account.

When I ask a client like Wilma why Susie was added as a joint owner on the account, the response is typically, “to make things easier – so that if I get sick, she can write checks and pay the bills for me. Plus, when I die, she'll be able to pay my funeral bill.”

Here's the truth – Susie doesn't need to be a joint owner on Wilma's account in order to be able to pay Wilma's bills from the money in the account. That's what an agent under a Power of Attorney can do while Wilma is alive.

Let's take my father as an example. I took care of paying dad's bills for more than a decade before he died. During that entire time, I was never a joint owner on any of his accounts or assets. It was the legal authority as the agent under dad's Power of Attorney that allowed me to write checks and pay bills on dad's behalf. But, I had no ownership rights to his assets.

Wilma can name Susie as her agent under a valid Power of Attorney (POA). This would allow Susie to handle Wilma's financial matters without being a joint owner of the account.

Please understand, it's not that I dislike Susie or any of the the sons/daughters that are often added by their parent as joint owners on the account. I'm sure Susie is a wonderful person and would never intentionally do anything inappropriate with Wilma's funds. However, in almost 100% of the cases, the parent has no real appreciation for the legal effect of adding a joint owner on the account. Wilma believes she is doing the “right thing” and making things “easier” for Susie by adding her to the account. In Wilma's mind, adding Susie as a joint owner only matters if Wilma needs help in the future. Wrong!

Joint ownership equals outright control. Once Susie is added to the account, she has the legal ability to control all the funds. A joint owner could withdraw all the money from the account; no

questions asked at the bank. Wilma insists, “but Susie would never do anything like that!” I hope that is correct. But, what if Susie owes someone else money? Technically, Susie's creditor could seek to recover Susie's debt from the money in the joint account. After all, Susie has access to the funds as a joint owner.

What if Susie gets divorced? Are the assets in the joint account subject to claims of Susie's ex-spouse in the divorce? Would any of these problems be a concern if Susie was simply Wilma's POA rather than having been added as a joint owner? Nope.

Let me explain what happens to the joint account after Wilma dies. While there are several types of joint ownership, the most common is joint ownership with right of survivorship (JTWROS). When one joint co-owner dies, his or her interest passes automatically to the surviving joint owner(s), not to his or her heirs. JTWROS does avoid probate on the death of one co-owner, but it can lead to problems.

Let's just say that upon Wilma's death, the joint account with Susie has a balance of \$90,000. Wilma has another daughter Pat that she loves very much. In fact, the only reason Pat wasn't added to the account was because she lives in California. Wilma's Last Will & Testament directs that upon death, her assets pass 50% to Susie and 50% to Pat. The JTWROS on the bank account means that it doesn't pass according to Wilma's Last Will & Testament and Susie alone owns the \$90,000 account. While Wilma thinks Susie will use the money to pay her funeral bill, Susie has no legal obligation to do so. Susie could instead use Wilma's other assets to pay the funeral bill, so that Pat pays her “fair share of the expense”. Susie also has no legal obligation to share the \$90,000 account balance with Pat. Before this, the sisters always got along so well.

Without careful consideration and planning, Wilma's good intentions in adding Susie to her bank account could end with disastrous family consequences. That is why it is so important to consult with a skilled and experienced attorney regarding your estate planning questions. Ultimately, estate planning is done for your loved ones. The peace of mind knowing you have your legal and financial affairs in order is a wonderful by-product.