The Law and You
Unintended Consequences of Joint Accounts

A husband and wife often hold bank accounts in joint names. Generally this doesn't present any problem since both spouses have an interest in such accounts.

But when one spouse dies, the surviving spouse will often add a son's or daughter's name to the accounts. Doing so, usually causes unintended consequences.

To better understand what happens, we have to understand Utah laws. Part 6 of Chapter 75 of the Probate Code governs how joint accounts are treated during and after the lifetimes of the joint account holders.

First, "accounts" means checking or savings accounts, certificates of deposit, and other similar arrangements.

A "joint account" means an account that is payable on request of at least one of the persons named on the account. And this doesn't require that the joint account specify any right of survivorship.

A joint account belongs, during the lifetime of all persons named on the account, to the named persons in proportion to the net contributions made by each of them.

For example, assume that your spouse has died and you add one of your children's name to your savings account. Further assume that the child has not made any deposits to that account.

During your lifetime, the entire account belongs to you and not to your child. The child may be able to make withdrawals against the account, but he or she doesn't own any part of the account.

However, upon your death, the child that was added to your account will be entitled to the entire account. The only way to avoid this result is to make a written declaration at the time you add your child's name to the account. Alternatively, you can deliver a written request to the financial institution that changes the form of the account.

Why is this such a big deal? Well, it can have dire consequences that you never intended.

Making what seems to be a practical decision to have a child able to sign on your account can defeat the intentions you made in your will.

Suppose that you have a will that leaves your estate in equal shares to all of your children. For practical reasons, you add the name of your daughter to your account because she lives with or nearby you and helps you with your affairs.

Upon your death, your bank account belongs to your daughter, despite what you have written in your will. That is, your other children will have no claim to any part of your bank account.

In a recent case, a loving widowed mother late in her life sold her house and invested the entire proceeds in a certificate of deposit. Since she had always had another name on her accounts, namely her husband while he was alive, she added her daughter's name to the certificate of deposit. In her will, she expressly left her entire estate to her four children in equal shares.

But when she died, the entire certificate of deposit, worth more than $200,000, went to the daughter that had been added to the certificate of deposit. As a consequence, one child received the mother's entire estate while the other three children received nothing!

Did the mother intend this result? Absolutely not. But when she added her child's name to her account, she defeated the intent expressed in her will.

Now, how do you avoid this unintended consequence? You need to make sure that you have clearly written instructions with the financial institution where the deposit account is held. This can be done at the time the account is created or subsequently.

In general, I advise my clients to avoid adding any child's name to a deposit account. Otherwise, such accounts can defeat the will that I am preparing for them. I also advise my clients to remove any beneficiaries named on accounts or life insurance policies.

By having all accounts and insurance policies go to your estate, your will controls how your estate is to be distributed. There are some exceptions with respect to life insurance, but generally speaking, it is best to have the proceeds of such policies funnel through your will. This makes sure that your estate will be distributed as you express in your will.

If you need help and guidance in this area, you should contact an Elder Law Attorney. To locate an Elder Law Attorney, check with the National Academy of Elder Law Attorneys at (520) 881-4005, or your local Yellow Pages.

YOUR QUESTIONS: Do you have a particular question that you would like answered? To better serve the regular readers of this Elder Law Column, please direct your questions <u>in writing</u> to Michael A. Jensen, Elder Law Attorney, PO Box 571708, Salt Lake City, Utah 84157. From time to time, I will attempt to answer some of those questions. Also, you may send your questions to:

mike-spirit@utahattorney.com