

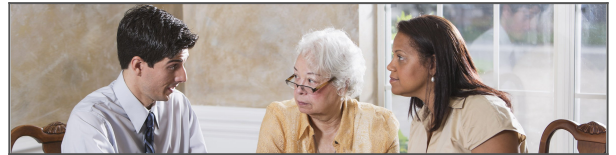
5 Reasons you Should Open an Estate Account, Even if you Don't Have to

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The Hidden Dangers of Cutting Corners

"My mother added me to her bank account as a joint account holder before she died. Can I just keep using that account for the Estate, instead of opening up a new Estate account?"



With the best of intentions, aging parents often add one or more adult children (or other trusted relatives or friends) to their bank account as joint account holders. The parent may intend that upon his or her death, the child will use the money in the joint account to pay Estate bills, funeral expenses, income taxes, and ultimately divide the remaining balance among the parent's beneficiaries (as named in his or her Will). Since the account is joint, the bank won't freeze the funds. The bank will simply remove the parent's name from the account upon receiving proof of death, leaving the surviving account holder with full access to and legal ownership of the account.

An Estate account is a different kind of account – it is a new account opened after someone has passed away, into which the Executor deposits the deceased person's money, from which the Executor pays the deceased person's debts and bills, and from which the Executor ultimately distributes funds to the beneficiaries of the Estate. During the time the money is in the Estate account, the Executor holds it in trust for the beneficiaries of the Estate.

Frequently, a surviving joint account holder will simply choose to continue using a joint account rather than opening a new Estate account.

Let's assume the Bank allows you to deposit incoming cheques to the Estate – for example, income tax refunds, insurance proceeds, and the CPP Death Benefit – into the joint account. (This is a big assumption – many banks will not allow it. That is because once the parent has died, the parent ceases to have any ownership interest in the joint account. You can't deposit money into an account that doesn't belong to you – and you can't deposit someone else's cheques into your account. Some banks might let you do it... but don't count on it.)

However, let's say the Bank does allow you to deposit incoming funds, meaning nobody is requiring you to open an Estate account. While simply continuing to use the joint account is attractive for its convenience and apparent simplicity, and is frequently carried out without problem or concern, it is a plan fraught with peril. If not done carefully, it can create more problems than it solves. Here are 5 reasons you should open an Estate account, even if you

don't need to.

1. Death of surviving joint account holder prior to distribution

If the surviving joint account holder dies after the parent but before all bills are paid and all funds are distributed, the bank may treat the funds in that account as belonging to the deceased child's Estate, not as funds belonging to the parent's Estate. If everyone is not on the same page, confusion and conflict can arise between the beneficiaries of the parent's Estate and the beneficiaries of the child's Estate.

2. What if the funds become commingled?

Executors have an obligation to provide an accounting to the residual beneficiaries, beginning on the date of death and ending on the date the funds are distributed. If you fail to keep careful track of every penny in and out of the account, you open yourself up to claims of mismanagement of Estate funds by the beneficiaries. Keeping track of funds in an Estate account is a simple matter. However, if the funds in the joint account are ever mixed or "commingled" with your own funds, preparing an accounting might be a confusing task. Worse yet, you may run the risk of having to share "your" money with the beneficiaries even if that money was not really part of the Estate – you will need to prove the money is yours.

3. What if the surviving account holder is not the same person as the Executor?

Let's say Child A is the Executor named in the Will, but the parent added Child B to the joint account. After the parent's death, Child A has all the Executor's obligations to pay bills and distribute funds, but Child B controls the purse strings. It is easy to say that "Child B holds the money in trust for the Estate", but what if Child B spends it all, or gives it away to his or her own family members? The bank can't stop Child B from this bad behaviour – after all, in the bank's eyes, that money legally belongs to Child B. Child A then faces the difficult task of pursuing Child B, on behalf of the Estate, for the funds that Child B has misspent.

4. What if the surviving account holder claims the money should belong to him/her alone?

Maybe the parent really intended for the money to be shared by the beneficiaries of his or her Estate – but maybe the parent intended for the surviving account holder to keep all the money as a gift. Perhaps the surviving account holder was the only child who helped the parent through a lengthy illness and the parent wished to thank this child by putting his/her name on an account. If there is any question about the parent's intention, conflict can (and frequently does) arise, resulting in protracted Court proceedings, significant legal bills, and

family discord.

5. Who claims the income on the account after the parent's death?

If the joint account generates a significant amount of interest (enough for the bank to produce a T5 slip), you will need to deal with the question of who must claim the interest on their income tax return. Someone needs to claim it – and it might be hard to convince the Canada Revenue Agency that the income should belong to the deceased parent when the parent's name is not on the account (or on the T5 slip).

Conclusion

Opening a new Estate account is not time-consuming or expensive. Often the only actual cost of opening an Estate account is the fee to print the chequebook. Although you might be tempted to carry on using the joint account instead of opening a new Estate account for the sake of convenience, you should consider the potential risks you run in doing so – and you might find that whatever convenience you gain just is not worth it.

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