Use and Abuse of Joint Accounts

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Joint accounts, when properly used, can be an effective tool for estate planning. Unfortunately, the law which applies to the transfer of joint accounts on the death of one account holder is not well understood. This frequently leads to costly court fights between family members.

A joint account is a bank account in two or more names in which each account holder has an equal legal right to the entire balance of the account. The precise terms of the account agreement will vary, but in general, either account holder has the right to withdraw money from the account during their joint lives and on the death of an account holder, the balance in the account passes to the remaining account holders by right of survivorship.

The right of survivorship makes joint accounts useful in estate planning. It is not necessary for the surviving joint account holders to obtain probate or administration of the estate of the deceased account holder in order to claim the funds in the joint account. This will save legal fees and probate charges. In Manitoba, probate charges are currently $7.00 per $1,000.00 of estate assets so for an account of $100,000.00 the potential saving from transferring assets through a joint account rather than through an estate would be $700.00.

Married couples usually set up a joint chequing account to cover household expenses. When one of them dies, the survivor will have continued access to the account without any delay. If the couple puts all of their savings and investment accounts in joint names as well, it may be possible to transfer the entire estate to the survivor without paying any legal fees or probate costs.

After the death of a spouse the survivor may set up a joint account with one of his or her children. This will allow the child to manage the parent's account and pay expenses for the parent. When the parent dies, the child will also benefit from the right of survivorship in the joint account.

If the child is an only child, this can be an effective estate planning tool. The surviving child

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can simply take the money in the account without paying probate fees.

The problems arise if there is more than one child or other beneficiaries to the estate. These other beneficiaries may challenge the right of the joint account holder to receive the balance in the joint account. The joint account holder may be surprised to learn that notwithstanding what the account agreement says, he or she is not automatically entitled to keep the balance in the account.

The reason for the confusion is that while the account agreement clearly states that the surviving account holder is entitled to the balance in the account, this agreement only deals with the relationship between the account holders and the bank. If the bank makes a payment out of a joint account to the order of the surviving account holder, the bank has no further liability for that payment.

The actual ownership of the money in a joint account is determined by the doctrine of resulting trusts. The doctrine of resulting trusts holds that where one person deposits money into the name of a joint account with another person, the person who deposits the money remains the owner of the funds in the joint account.

On the death of the depositor the surviving account holder would hold the balance in the account in trust for the estate of the depositor. The estate of the deceased depositor can therefore sue the surviving account holder for the balance in the joint account. The surviving account holder has the onus of proving that the deceased intended to make a gift of the balance in the joint account to him or her.

The onus of proof is reversed where the joint account is held by spouses or where the depositor is a parent and the surviving account holder is a minor child. In these cases the depositor is presumed to have intended to make a gift of the money to the other account holder unless someone can produce evidence to the contrary. At one time it was thought that the presumption of advancement applied in all cases of transfers from parent to child. However, a recent decisions of the Supreme Court of Canada held that the presumption only applies where the child is a minor. Adult children have the onus of proving that the parent intended to make a gift of the balance in the joint account.

In order to determine whether or not a parent intended to make gift of the balance in a joint account to a child, the courts can consider a variety of circumstances. These may include whether the child was financially dependent on the parent, who paid the taxes on interest from account, the precise terms of the account documents and whether the child received any benefit from the account during the parent’s life time. The problem in all these cases is that the parent is no longer available to explain what his or her intentions were so the court’s decision will always be only an educated guess.

Parents can try to avoid conflict over a joint account by explaining their intentions to their

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children at the time the account is set up. However, this may not be sufficient. Conflict in families can arise very suddenly after a parent dies and memories become unreliable.

The best course of action is to prepare a properly documented estate plan. Use a Power of Attorney to allow a child to manage your assets rather than relying on a joint account. If you do set up joint accounts with one or more of your children, specify in your will whether or not you intend the account to form part of your estate or to go to the other account holder by survivorship. This approach may cost slightly more in legal fees and probate charges but it may save a far more costly lawsuit and a permanent rift in the family.

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