

## Elder Law Guys: Whose name should be on your bank account?

It seems so simple — opening a bank account. The actual process is probably easier than ever due to better technology and customer service. (Heck, we can remember the days when you got a free toaster.)

Unfortunately, the legal treatment of bank account ownership has many variables.

While the average account may not be one's most valuable asset, it is frequently a sticking point when an owner dies because the client's specific situation was not addressed when the account was established. The result? Unintended death taxes or unnecessary probate may result.

Let's face it, how many people ask their lawyer before they open a bank account?

But when a person engages in proper estate planning, the ownership issue is important to address and modify if necessary. Let's examine two common examples

**Joint ownership:** This is a common form of ownership where two or more people are "joint owners." Usually, this is for a married couple.

It is important for a married couple to have the account titled with "survivorship." If one person dies, the remaining spouse assumes complete title to the account immediately without the necessity of probate or further action. In addition, there are no Pennsylvania Inheritance taxes due between spouses. Pretty simple and efficient.

Unfortunately, and mostly out of convenience, the surviving spouse typically adds one or more of the surviving spouses' children to the account in one form or another. This is helpful in allowing a child who may be assisting an elderly parent with financial matters to have access to the account and to inherit the funds upon the parent's death.

**Account with a power of attorney:** However, many adult children are added to a parent's bank account not as a survivorship owner (see above — avoid probate) but are instead added as an agent under a power of attorney document.

This can either be a bank form power of attorney, which only applies to accounts at that specific bank, or it can be under a broad Power of Attorney document prepared by an attorney which can cover all of the assets owned by the parent.

The problem with adding an adult child to the bank account as an agent under the power of attorney is that the document, by operation of law, ceases to be valid upon death of the parent.

Thus, the adult child has no access to the bank account after the parent's death until a personal representative is appointed by the Register of Wills, which usually puts the account into the court-supervised probate process.

This can cause delays, increase legal fees and court costs, and be generally annoying when the family anticipated having one or more of the adult children on the bank account to be able to simply close out the account after death.

While there are procedures in Pennsylvania to access small bank accounts to pay funeral bills, there is still a process when the amount in the account exceeds the limits of this process or the funeral is prepaid prior to death.

Another problem involves the claim of the state if the decedent was receiving Medicaid benefits to pay for nursing care. The debt owed to the state increases rapidly with the high costs of care, but Pennsylvania can only be repaid at death from the probate estate of the decedent.

So, avoid probate and generally nothing is repaid to the state at death and the Medicaid claim is written off. Some Medicaid recipients are allowed to keep up to \$8,000 in their bank accounts and still qualify for Medicaid.

Improper bank ownership (account titling) could subject these funds to forfeiture to the state at death if probate of the account is necessary because the state's claim has priority over the decedent's beneficiaries.

Another gotcha scenario involves a married couple adding their adult child to their joint bank account while both parents are living.

As stated above, when the first parent dies, no Pennsylvania Inheritance tax is due between spouses. However, if one or more adult children are co-owners on any bank accounts, an inheritance tax will be due on each adult child's proportionate share of ownership.

It is irrelevant to the Pennsylvania Department of Revenue that the children's names were on the account for convenience.

So, consider these tips when setting up a bank account.

- Marital status.
- Stage in life (are adult children handling finances?)
- What does the rest of the person's estate plan look like? (Is there a trust involved, Power of Attorney?), and,
- What is the primary purpose for adding another's name to the account?

The goal should be to properly title bank accounts to coincide with the flow of the overall estate plan and make modifications as necessary as life changes. And, ask for a new toaster regardless!