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Hazards of Intergenerational Joint Ownership

By Abbe I. Herbst

The reasons why a parent adds a child's name to a bank or brokerage account are usually well intentioned. They may include concern about the parent's ability to handle finances due to the ravages of age or illness, or a desire to ensure that funds for the funeral will be readily available upon death. But the consequences that may flow from such a decision, including the rights of creditors of the child to seize the property, disharmony among the other children, adverse gift tax implications and possible estate tax issues if the child predeceases the parent, can make this a very poor choice.

Creditor Problems

The child whose name has been added to the account may have problems with creditors or with a former spouse, or may be sued and have a judgment entered against him or her. The parent's asset may be put at risk because the child, having an ownership interest in the joint account, may be deemed to own an asset that the creditor can reach.

A child having his or her own financial problems may be tempted to "borrow" from the joint account. The child might do so without the parent's knowledge. Perhaps there is an intention to repay, perhaps not. If the amount borrowed is significant enough and is not repaid with interest, there can be serious interest-free loan tax implications to the parent, who will be considered to have made a gift and who will also be taxed on the imputed interest income that should have been charged on the loan.

A Source of Discord Within the Family

In most cases, joint ownership between parent and child is for convenience only, and upon the death of the parent the asset is returned to the estate, to be distributed in accordance with the will. But this is not always true. The child may have appropriated a substantial portion of the account for himself or herself during the parent's life, leaving only a fraction of what should have been in the account at the parent's death. Or, the child may say that it was indeed the parent's intention that ownership of the joint account pass to the child upon death, perhaps in recognition of the care that the child furnished to the parent, so that there is no need to share the account with others. Whatever the case, surely the parent would not want the children to bicker and sue each other over the asset.

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Making matters worse, if the parent's will directs that estate taxes on all assets included in the parent's estate, whether passing outside of the will (as in the case of a joint asset) or under the will, be paid from the probate assets, the surviving owner of the joint account will reap a further windfall, because the estate taxes on the joint account will be paid from the other assets of the parent's estate.

Gift and Estate Tax Problems

In some states, merely creating the joint account can result in a gift from the parent to the child, triggering a need to file a federal gift return if the value of the gift exceeds $13,000. In other states, there is no gift on creation, but a gift occurs if the child withdraws more than the amount that he or she contributed to the account.

Upon the death of a joint owner, the presumption for estate tax purposes is that the decedent furnished all the consideration for the joint account and so, unless proven otherwise, the

who's who

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entire account will be included in his or her estate for estate tax purposes. This does not present a problem if the parent dies before the child. But if it is the child who dies first, then the child's estate must incur the additional expenses associated with proving to the tax authorities that the source of the account was the parent, and that the account should not be taxed in the child's estate.

What's A Parent To Do?

One alternative to joint ownership is to leave the asset in the name of the parent, and use a durable general power of attorney, granted to the child, which will enable the child to conduct transactions in the account during the parent's lifetime. Upon the death of the parent, the child's authority ceases, and there is no question that the asset belongs to the parent's estate. Of course, there is nothing to prevent the child, acting under the power of attorney, from abusing the power in some of the ways discussed earlier in this article. If the parent has serious concerns about such abuses, the instrument can appoint more than one agent and require the agents to act together, or the power of attorney can appoint a monitor to review all transactions made using the power of attorney.

Some states, such as New York, recognize a "for convenience only" type of account, in which another person is authorized to conduct transactions involving the account, but has no survivorship rights to it.

An account that is registered in the name of the parent "payable on death to" or "in trust for" the child will pass to the child upon the death of the parent. Only if it is coupled with a power of attorney running to the child will the child be permitted to deal with the account during the parent's lifetime. If the child were to predecease the parent, there would not be any questions of inclusion in the child's estate; the account would pass under the parent's will.

A revocable trust is another alternative to be considered. Almost anyone (including the parent) could be the trustee of the trust. The trustee would be subject to a fiduciary duty to administer the trust for the benefit of the parent, and the trust could continue after the death of the parent.

Helpful Tip: *If it is the intention of the parent to create a true joint account with right of survivorship, so that the child will succeed to the account upon the parent's death, a letter to the other children, explaining such intention, may avoid disharmony and accusations between that child and the other children upon the death of the parent.*