

## **Risks of Co-ownership**

Co-ownership of any asset, sometimes called joint tenancy, comes with risks. When you put your child's name on a bank account, you are making a current gift of the contents of that account to the child. First, your child could withdraw all of the money in the account and use it for personal purposes (such as a trip to Las Vegas).

Second, the money in the bank account could be used to pay the debts of the child. For example, if your child does not manage money well and has excessive charge card debt, the creditors may come and want to use your bank account to settle the debt.

Even if your child manages money very well, if the child were sued, money from your account might be used to pay damages. For example, if your child ran a red light and caused extensive damages, the injured party might successfully sue and garnish the contents of the account to help pay for the damages your child caused.

And if your child is married and later divorces, the child's spouse might claim a community property interest in the account.

## **May Defeat Estate Plan**

Sometimes seniors intend that the contents of a bank account or certificate of deposit be distributed equally among their heirs. But if a child is a co-owner of the account, that child will own the entire account on the senior's death and the account will *not* be divided among the heirs. For example, Ms. Martin has a certificate of deposit for \$20,000. She wants it to be divided equally among her four children. She even drafts a will which divides all her assets equally among her children. But for convenience, she puts her eldest daughter's name on the account as co-owner. When Ms. Martin passes away, the eldest daughter will be the sole owner of the certificate of deposit. The three younger children will not receive the share Ms. Martin wanted them to have.

### **Some Seniors Accept the Risk**

Despite the risks and shortcomings of co-ownership of a bank account, some seniors still put a child's name on the account. They say that liability is limited to the amount in the account, and they would like the child to have the contents of the account anyway. However, the same result can be achieved without the risks of co-ownership.

## **There's a Better Way**

The same convenience of having a child as a co-owner of a bank account can be achieved with less risk. A senior can give a child lifetime access to the bank account through a durable power of attorney, then have the account pass to whom the senior chooses through a beneficiary or "pay on death" designation.

A durable power of attorney allows you to assign your powers to someone else. "Durable" means the power continues even if you become incapacitated. If you execute a durable power of attorney, effective immediately, which authorizes your child to access your bank account, the child can manage the money for you. The benefit is that with the durable power of attorney the child does not *own* the account. The child is merely your agent, sort of like your right hand. The child's creditors and spouse have no access to your account.

By making a beneficiary designation on the account, you can direct the bank to pay it to specific people after your death. In New Mexico, this is called a "pay on death" or "POD" designation. You can have the bank pay the contents of the account to all of your children, or to a

friend or grandchild. The account need not automatically pass to the child you authorized to help you manage the account with the durable power of attorney.

### **But POD Accounts Still Do Not Pass Through Will**

An account with a pay on death beneficiary passes to the named beneficiary upon your death. If you have a conflicting provision in your will, the POD designation prevails. You should be sure to keep your POD designation consistent with your will or other estate planning tool.

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## **PUTTING A CHILD'S NAME ON YOUR BANK ACCOUNT – THERE'S A BETTER WAY**



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Seniors sometimes make a child co-owner of a bank account for convenience, so that the child can access the account on the senior's behalf if she is ever ill or out of town. Co-ownership is effective, but comes with risks. The same result can be accomplished with less risk by using a durable power of attorney and a beneficiary designation.