

JOINT BANK ACCOUNTS

By Attorney Michael H. Wald

The joint checking or savings account is one of today's "givens" for most couples. These accounts are frequently set up before marriage, so that the couple can begin putting money away for the big day.

Likewise, friends and people involved in business ventures also set up joint accounts as a matter of convenience. But sometimes convenience can give way to complication due to some of the situations we'll discuss here.

The Texas laws on joint accounts was updated in 1979, yet there still is a lot of misunderstanding about them.

Basically a joint account is a shared fund, payable to either of two (or more) parties. The accounts can range from checking, savings and CD's to any other similar account with a state or federal bank.

Usually the account is the property of both people, and specifically, each person owns a portion of it, determined by how much he or she has put into the account net of what he or she has withdrawn from it. It is not split down the middle, unless that's how it has been deposited.

Banks are not bound to check up on someone who is rightfully taking money out of a joint account, unless the other party has notified the bank, asking them to withhold payment to the other party for some reason.

Creditors of a person with a joint account can only claim that part of the account that is owned by the person. If the bank is the creditor, it can seek half the account, if no proof of contributions exist

that show the other person contributing more.

At the time of death, a person with a joint account does not automatically receive the dead person's share -- it goes to whoever it has been willed to. The language here must be very specific in order to insure that the deceased's share of the account will go to the right people. The mere fact that the account was a joint account, though, does not entitle the surviving account holder to claim the whole account under Texas law.

In order for this to be the case, at least in Texas, a survivorship clause must specifically detail this arrangement. Merely saying "pay to either of the account holders or upon the death of one to the survivor" is not sufficiently explicit, according to a recent Dallas court case. This case approved the language, "this account is held by the depositors as joint tenants with the rights of survivorship," as sufficient.

The subject of joint accounts gets particularly confusing when community property is placed into a joint account. That is, roughly speaking, property acquired by husband and wife after marriage. The current state of the law on the subject is unclear. It does appear, however, that in order to have a valid joint account with rights of survivorship when community property is involved, the property may first be required to be "partitioned," which means that the husband and wife would have to enter into an agreement before opening the account to designate which part of the money put into the account is the separate property of each spouse.

The law relating to joint accounts in Texas is different than the law on this subject in many other states, and, therefore, is a source of confusion for many people who have migrated here. It's a particularly sad situation when a person opens such an account believing that it means one thing and then finds out it means another, usually after the death of his or her joint account holder.

There are some advantages to such accounts. They do not pass through the probate process, and, therefore, the money in such an account will avoid a protracted will contest, if there is one. Also, such an account gives several people the right to withdraw funds from a common account and is, as a result, often a considerable convenience.

Disadvantages are plentiful, too. As we stated above, if such accounts are funded with community property, the law is unsettled as to whether a survivorship agreement will be effective. It is possible for one of the account holders to withdraw all or part of the funds on deposit before the death of the account holder who actually contributed the funds. This may be contrary to the expectations of parties when they opened the account. Since these accounts may not actually go to the survivor, individuals opening such accounts may be distributing their property in a way that was not intended; and the deceased account holder would never know that his or her wishes were not carried out.

If you are planning on opening such an account, this is area where you would be highly advised to consult a legal expert, especially if you are opening the account with your spouse. The forms used by the banks for such accounts are frequently confusing and not effective to carry out the desires intended by joint account holders opening a new account.

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