

PROS AND CONS OF JOINT OWNERSHIP AND TRANSFER ON DEATH DESIGNATIONS OF BANK AND BROKERAGE ACCOUNTS

The most common form of ownership for bank and brokerage accounts is joint tenants with rights of survivorship (“JTWROS”), whether between spouses or other family members. This means that, for a married couple, when one spouse dies, the asset passes to the other spouse automatically. The advantage is that the account avoids probate and the surviving spouse has immediate access to the money after the first spouse dies. Most banks and brokerage houses encourage the accounts to be registered as JTWROS or Transfer on Death (“TOD”) without knowing how your estate plan has been designed since they are focused on ensuring that the surviving owner can access the account at death of the first spouse.

While JTWROS or TOD is certainly appealing as it allows for instant transfer of the account to the beneficiary, there are some serious unintended consequences which could affect your estate plan. First, joint ownership and TOD override your Will and trusts and the money passes to the joint owner or TOD beneficiary regardless of the terms of the estate planning documents. For example, if a Will provides that the estate should pass equally to three children but the parent owns a joint account with one child, the child who is joint on the account will receive the account proceeds and it will not be divided equally with the siblings.

Second, Wills and trusts that were drafted for estates that exceed federal and/or state estate tax exemptions will fail to achieve their goals if the accounts are owned JTWROS or TOD. Estate plans that were designed to maximize the use of state estate tax exemptions were drafted to create a “credit shelter trust” (also known as a “bypass trust” or Fund “B” trust) for the benefit of the surviving spouse. In order to fund the “credit shelter trust”, assets must be held in each spouse’s sole name or in their respective Revocable Trusts. If assets are instead owned as JTWROS or TOD, the joint ownership or TOD will override the Wills and trusts and result in the “credit shelter trust” not being funded and the deceased spouse’s state estate tax exemption being wasted.

Having too many assets owned as JTWROS is a common problem, but it is critical to avoid in order to ensure that the estate plan is a success. Day-to-day checking accounts should stay in joint name since the funds are usually insignificant and the surviving spouse should be able to pay bills immediately after the first spouse dies. Also, moving checking accounts to one spouse’s sole name will interfere with direct deposits and automatic bill payments.

We have encountered a number of situations lately where we have designed a tax efficient estate plan and recommended that assets be moved from joint name so that they are owned equally between each spouse’s Revocable Trust, but in the client’s final months, the local bank recommended retitling assets to JTWROS. While the banker was well intentioned to help pass the account easily, it undermined the estate plan and resulted in additional estate taxes and unintended results.

Please reach out to us before you open brokerage accounts with significant value or purchase real estate so that we can ensure that the asset ownership is consistent with the estate plan.

Please feel free to reach out to the estate planning partners at Danziger & Markhoff LLP, Michael Markhoff, Harris Markhoff or Christopher Miehl, with any of your questions. You can reach us by phone in our office or via email at mmarkhoff@dmlawyers.com, hmarkhoff@dmlawyers.com and cmiehl@dmlawyers.com