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Estate Planning | Wills & Trusts

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## Issues to Be Considered Regarding Joint Accounts

Joint accounts are often used as a simple way to give a caretaker access to the account to pay the bills of someone who is unable to do so. It seems simple enough—mom cannot make trips to the bank or keep up with paying her bills, so she will add her daughter on the account so that the daughter can make withdrawals and deposits and write checks on mom's behalf. However, there are significant issues that must be considered before the decision to add a joint account owner is made. Several such issues arose in a New Jersey case<sup>1</sup>, providing a great example of why a joint owner should not be added without extensive thought and consideration.

The account owner, Josephine, had lost her husband in 1995, so she decided to add her daughter, Annette, as a joint owner on the account so that Annette could help pay Josephine's bills. Josephine claimed that she did not intend to make a gift of the account to Annette. In 2010, Annette filed for bankruptcy and, since she owned the joint account, the bank froze the assets in the account. To make matters worse, Josephine had sold her house five days earlier and had deposited the funds, \$381,272, into the joint account.

The bank filed a motion to dismiss the case, contending that, based on New Jersey law<sup>2</sup>, there is a presumption that assets in joint accounts are equally owned by both parties. After several months of litigation, the court ruled that the presumption of equal ownership only exists if there is no proof that one party contributed more than the other, therefore denying the bank's motion to dismiss.

However, if Josephine had understood the consequences of adding Annette as a joint owner on the account, the frustration and costs of litigation could have easily been avoided. It is also unlikely that Josephine would have achieved the same favorable result in an Illinois court because, under Illinois law, donative intent is presumed when a joint account owner is added unless there is evidence of a contrary intent at the time the account was opened.<sup>3</sup> In other words, unless the primary owner indicates that he or she does not intend to make a gift of the account assets to the joint owner, it will be assumed that a gift was intended.

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In addition to the possibility of incurring the liabilities of the joint owner, abuse and inheritance issues can make adding a joint owner an extremely regrettable decision. I will discuss these issues below, but in order to obtain advice that is specific to your needs and intentions, it is important to speak directly with an experienced estate planning attorney.

### ***Liability***

As we saw in Josephine's case above, one joint account owner can end up paying the price for the liabilities of the other. Although there may be evidence that the primary owner contributed most of the assets and/or did not intend to make a gift of the funds to the joint owner, the delay in accessing the account and the cost of litigation is best avoided by understanding these issues and considering the alternatives before making the decision to add a joint owner.

### ***Abuse***

While it can be assumed that any joint owner that is added is a trusted relative or friend, the potential for abuse exists when an individual is granted access to another person's assets. The primary owner should understand that the joint owner has access to all of the assets of the account, not just those that are being used for the benefit of the primary owner. Additionally, the primary owner should be certain that the joint owner is trustworthy and will not abuse his or her rights as an account owner.

### ***Inheritance***

In Illinois, a joint account includes a right of survivorship, which means that when one owner passes away, the surviving owner will own all of the assets of the account. This right of survivorship supersedes a Will or Trust document in providing for the disposition of the asset. A common issue arises when a parent adds one child to an account to assist in paying bills, like Josephine did with Annette, but other children are not added. When the parent passes away, the child who is a joint owner acquires the entire account. The issue becomes whether the parent (a) intended to gift the account assets to one child and leave the other children out, or (b) incorrectly assumed that the account assets would pass to his or her estate, to be distributed as provided in his or her Will or Trust. By speaking to an experienced estate planning attorney prior to making such decisions, family disputes and the costs of litigation can be avoided.

### ***Alternative to a Joint Account***

A fairly simple alternative to a joint account is to have a Property Power of Attorney prepared to give your agent the authority to access your accounts for the purposes provided in the document. Not only does the Property Power of Attorney limit the purposes for which your account may be accessed, but it

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provides guidance to the bank regarding your intentions and avoids the inheritance issues discussed above since a Power of Attorney is only effective during the creator's life. A Property Power of Attorney can either be effective upon signing to give the agent immediate access or can include a "springing" clause, which states that it shall only be effective upon the principal's incapacity.

If Josephine had received proper counsel and prepared a Power of Attorney to allow Annette to access her accounts rather than adding her as a joint owner, a lot of her difficulties could have been avoided.

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1. *Coiro v. Wachovia Bank*, 11-cv-3587.
  2. New Jersey Multiple Party Deposit Account Act, N.J.S.A. 17:161-1 to -17.
  3. Illinois Joint Tenancy Act, 765 ILCS 1005.
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Manish C. Bhatia is an Illinois attorney focusing his practice in the area of Estate Planning. Manish has focused his education and practice on Tax Planning, Estate Planning and Business Succession Planning since the first year of law school. He has also added Asset Protection, Elder Law and Nonprofit Organizations/Charitable Giving to his fields of practice. Manish is also a member of the Chicago Bar Association, the Asian American Bar Association of Chicago and the Indian American Bar Association.

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