LEGAL
EASE

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

November 2, 2004

Some joint bank accounts are risky

Most married couples have joint assets, that is, property that is titled in both of their names. This "property" can be anything from the family home to a simple bank account. Joint bank accounts are very common for couples, whether married or not, so that either party can access the funds easily. If one of the couple dies, the other party has instant and complete access to the funds needed to keep the household going.

However, there is a trend for parents to create joint bank accounts with adult children. The parent or parents want someone to be able to pay their bills if they are unable, and they want the funds to go to the children directly when they die, attempting to avoid probate and death taxes. While these are laudable and important goals, joint bank accounts in this context are almost always a risky step.

In many cases, the parents did not set out to create a joint account with a son or daughter. A bank officer may have suggested such an account to a parent who expresses concern about being able to pay the bills in the event of a health crisis, or even due to advanced age. The account owner may think that he or she is only giving the caregiver child the ability to use the account to help the parent, when in actuality, they are giving that child partial ownership of the account. If there are other children, the child whose name is on the account automatically receives the money at the parent's death, disinheriting the other children. Furthermore, while the parent is alive, that child can withdraw funds without the parent's consent. A parent's heartfelt conviction that a child would never steal from them is no barrier to reality…it happens.

This failure to understand the ramifications of creating a joint account between a parent and a child can result in many problems. The parent can no longer say the money in the account belongs to him or her alone. That could mean that the parent could be liable for the child's debts. If a child, who is a joint owner, has an unexpected catastrophic illness with high medical bills, is responsible for severely injuring someone in an auto accident, or gets a divorce, the parent could lose money in the joint account (or other jointly titled property such as CD's) to the creditor, injured party, or divorce court. By making the money freely available to the child, it is also potentially available to the child's divorcing spouse or creditors. If the child predeceases the parent, the parent could be responsible for inheritance tax on his or her own money. There are other adverse tax consequences beyond the scope of this article. Finally, if the parent needs long term nursing home care, the money in a joint account is not protected. All of it is available to pay for the nursing home, not half as many people think.

The bottom line is that it is rarely advisable for a parent to add a child's name to an account of any sort (i.e. checking accounts, stocks, bonds, CD's, etc.). A well drafted Power of Attorney document will accomplish the parent's goal of having someone to pay the bills if he or she becomes disabled. Some banks will require a signature card to be completed, in addition to reviewing the Power of Attorney document. However, make sure that you are not creating a joint account by doing so. Your hard earned money should remain *your* money for your lifetime. Consult your attorney before you take any steps to re-title your assets. Keep your estate plan as your estate plan by using caution regarding joint accounts with someone other than a spouse.