

INFORMATION REGARDING OWNERSHIP OF BANK ACCOUNTS AND REAL PROPERTY

Property can be owned in several different ways and before you can determine the legal effect, you have to determine how the bank account and/or real property is titled. I will go through the different ways that it can be titled and the effect of each.

1. Jane Doe – with only Jane as an authorized person to sign.
Effect: Jane is the only one that can access the account, close the account, etc., and upon her death the property would be distributed pursuant to her will or next of kin.
2. Jane Doe – with other individuals as authorized to sign.
Effect: The property is owned entirely by Jane, but anyone that is an authorized signor can make distributions from the account during Jane's life. Upon Jane's death, the property would go to the individuals designated in Jane's will or next of kin.

The major concern with an account such as this is even though there should be no checks written after Jane's death, in a large city the bank normally is unaware of the death until several days later and the checks could still be written after her death and cashed by whoever is an authorized signor.

3. Jane Doe *and* John Doe
Effect: The only way to access the account, change it, etc., is that if both Jane **and** John Doe both agree and make the changes. No one person can act without the other person.

Upon Jane's death, one-half would be owned by Jane's estate, and one-half would be owned by John Doe.

4. Jane Doe *or* John Doe
Effect: During Jane and John Doe's lifetime, either one of them can access the account, close the account, withdraw from the account, etc.

Upon Jane's death, one-half would go to Jane's estate and one-half would go to John Doe.

5. Jane Doe or John Doe, as joint tenants with right of survivorship (sometimes abbreviated JTROS)
Effect: During the lifetime, it is the right of either party to access the account, withdraw from the account, close the account, etc.

Upon the death of Jane, the entire bank account would go to John Doe.

6. Jane Doe, payable on death (POD) to John Doe
Effect: During Jane's lifetime, Jane is the only one that has any control over the account, but upon her death the account is automatically placed in the name of John Doe.

In real estate and securities transactions, it is often called a transfer on death or T.O.D.

7. John Doe acting in a fiduciary capacity e.g. John Doe, Trustee for Jane Doe or John Doe, Guardian of Jane Doe.
Effect: The account actually belongs to Jane even though it is titled in John's name. John can only use the account pursuant to the terms of the trust or as authorized by Probate Court in the case of a guardian. Upon Jane's death, the account assets go into Jane's estate.

There are several other complications that could arise:

(a). There could be a power of attorney. If there is a power of attorney, the person who is granted the power of attorney can do anything that the person granting the power of attorney could do. Usually, powers of attorneys do not permit self-dealing, but I have seen powers of attorney that have exceptions to this rule.

Additionally, when A gives a power of attorney to B, that power of attorney ceases upon A's death. B has no authority to act on behalf of A.

This rule also applies to a guardian of the estate.

The person holding the power of attorney or guardian may have to take some action to wind up the affairs of the decedent but these actions should not be done without consultation with the personal representative of the estate.

(b). If property is owned out-of-state, such as bonds, securities, etc., the law of that particular estate controls and it may be that the rules concerning joint ownership are different than what I have stated above.

(c). If a trust is involved, one must look at the trust document to determine the rights and obligations of the parties.

Probate Judge