

Women and the law

Let me tell you how very much I am enjoying receiving your "estate" questions. Please continue. Send them to Mary Lynn Kirby at 120 Howard Lane, Fayetteville, GA 30215.

Now, the question I will address today is probably one of THE most pertinent questions I could have possibly come up with, and I honestly did not. It's from Carol:

"I have two children - one is a joint owner on my savings account. The will states that everything is divided equally between my two children. Which document prevails?"

Carol states that she is getting different answers to her question.

I am not a "litigator," yet I have been involved in five different lawsuits over this very issue. Please, be well advised on this one very important issue, so your family does not become my (or anyone else's) next case.

Know the ramifications of titling assets jointly. Putting another person's name on an asset with JTROS (by this I mean a bank account, CD, stock or

even real property) presumes under Georgia law that you want that person to receive that asset at the time of your death. (By the way, they can also have full access during your life). If you do want the survivor to receive

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this asset, then:
 • Have the asset held "jointly with right of survivorship"; and

• Put a provision in your will that clarifies that you want joint property to go to the joint holder. (The signature card you sign at the bank most likely specifically states that the survivor on the card will be entitled to the account at the time of first person's death) and;

• In an abundance of caution, write a statement of your intent and sign it and put it in with your estate documents that you want this person to have the asset at the time of your death.

Your intent is very critical in determining who gets this account if there is a question after your death of

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whether you wanted to "gift" this account, or whether you set the account up merely for the "convenience" of having another person be able to sign checks on that account.

In all likelihood, however, you may be setting up an account merely for the "convenience" of having one child have the ability to sign on an account and you are not intending that account to be a "gift" to that child. If this is your intent, make the account a "power of attorney" account. Your child can sign on this account during your lifetime, but at your death, the asset will be distributed according to your will. You will have to ask specifically for this type of account and not every financial institution will have such an account available.

If you do want to have a small account that a child will have access to immediately upon your death, then set up one small account jointly with that child (this will be titled in the child's name at your death, which will give the child the ability to immediately pay bills until the will is probated); however, your larger "investment" accounts should be set up with only your name (or the POA account previously mentioned) if you want the asset to go according to your will.

Incidentally, many people think that titling property jointly is a panacea for not having a will. There are several other drawbacks to jointly titling property, but that's a story for another month.

—*lvo*

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