Five Ways Joint Ownership Can Sabotage Your Clients' Estate Planning Efforts

By Danielle and Andy Mayoras

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Celebrities are not the only ones to make mistakes with their estate planning. It happens to people all across the country on a regular basis. The end result -- just like with the rich and famous -- often is an ugly and expensive family fight in court.

One of the most common estate planning mistakes that people make is joint ownership.

For the most part, we're not talking about when a husband and wife have joint bank accounts or the title to their home is held in both of their names. While not ideal for estate planning, this is quite common and can often be used without problems, except in many second-marriage situations or large estates that may suffer adverse tax consequences.

The area where we see significant problems, however, is when a parent adds a child's name to an asset, such as a bank account, investment, or real estate. This is often done to help with bill paying, as a will-substitute to avoid probate court (often called a "poor-man's will"), or simply to help an elderly loved one who needs assistance managing his or her assets.

This is a big no-no!

To help illustrate the problems that can arise with this, we'll discuss an elderly woman, Mom, and her son, Johnny. Let's say that Mom adds Johnny's name as a joint owner on her checking and savings accounts, brokerage account, and even the family home.

Maybe she's getting up in age and needs help, or perhaps she's heard the horror stories of probate court and thinks she's doing her family a favor.

Sounds innocent enough right? Not so fast.

Here are Trial & Heirs' Top Five Reasons To Beware Of Joint Ownership Between Generations:

1. Creditors: Johnny may someday have creditors, file for bankruptcy, or even get sued. When that happens, because he is a joint owner of Mom's accounts, the creditor or bankruptcy estate can try to claim some or all of the assets. Once Mom added Johnny's name, he had equal rights to the money and the assets so, all of the sudden, Mom needs to start worrying about Johnny's debts too.

2. Divorce: Uh oh! Johnny's wife just filed for divorce. Now what? What if she claims the joint assets as part of the marital estate during the divorce? What if Mom wants to sell her house or take out an equity line of credit?

In most states, wives have dower rights. This means that Johnny's divorcing wife has to sign off on the sale or mortgage, even though her name isn't on the real estate. She can hold the home hostage in exchange for money. Yes, we've seen this happen in our client practice.

3. Borrowing: What if Johnny is a little tight on money? It's pretty tempting to see Mom's savings account sitting there, with his name on it, and a trusting mother who may not be watching very carefully. “I’ll pay it back,” Johnny may say to himself. “She won’t even know it’s gone.” Is this what Mom envisioned when she added Johnny’s name to the accounts?

4. Doesn’t Have To Share: Sadly, Mom has passed away. Johnny’s three siblings want to sit down and talk about her estate, but Johnny says there is no estate, his name is on everything. What happens? Under the law, he gets to keep everything. He’s the surviving joint owner. It’s his property now, unless, of course, Johnny’s siblings sue to enforce Mom’s actual intent, which leads us to…

5. Family Fighting: Using joint ownership in this way often provokes a family court fight. If Johnny won’t share, his siblings can sue him and claim that Mom’s actual intent was not for him to keep the money, but she only added his name as a convenience.

The siblings have to prove what her actual intent was, and that’s not very easy to do.

Or maybe, Mom really did want Johnny to keep all the property, since he was the one there for her, taking care of her day in and day out. But do the siblings know that? They may *think* Mom wanted Johnny to share with them, even if she really didn’t.