

How Much Do You Know About Joint Bank Accounts?

Almost all joint bank accounts have a survivorship feature. This means that following the death of one of the holders (or depositors) of a joint account, the account automatically passes to the other holder or holders. This is an easy method of estate planning and the reason for the popularity of such accounts. For example, a parent can open a joint and survivorship account with a child as the joint owner and know the child will have the account at the parent's death.

Q.: Who owns a joint and survivorship account before the death of a depositor?

A.: According to Ohio law, it is presumed that, during the lifetime of the parties to the account, the account belongs to all of them according to the contributions of each. If, however, there is clear and convincing evidence that a depositor actually intends the account to belong to another, the intent of the depositor will prevail.

Q.: Who owns the account after the death of the depositor when the depositor actually intended that account assets should be distributed to someone other than the joint account holder(s)?

A.: Ohio law presumes that after the death of the depositor, the assets in a joint and survivorship bank account go to the other holder(s). Historically, Ohio courts permitted an interested person to prove by clear and convincing evidence that the depositor actually intended the account to benefit someone other than the joint account holder(s). In such a case, the intent of the depositor would prevail.

In 1994, however, the Supreme Court of Ohio held that the way in which a bank account is opened is conclusive. The intention of the deceased depositor is determined by the form of account chosen: ownership of a joint account created in survivorship form will be automatically transferred to the survivor. Conversely, ownership of a joint account which does not provide for survivorship will not be transferred to the survivor, but will become part of the depositor's estate to the extent that the depositor contributed to the account. Only where there is evidence that the depositor did not freely intend to establish the

account (for example, evidence of fraud, duress, undue influence, or lack of mental capacity on the part of the depositor) will a court consider distributing the account assets in a way not consistent with the form of the account.

Q.: What are the implications of the 1994 Ohio Supreme Court decision?

A.: While the decision makes ownership of these accounts easier to determine, it also requires consumers to be knowledgeable about the legal effects of joint and survivorship accounts in order to avoid undesirable results. A survivorship bank account that is set up for convenience, such as, for example, naming one child as a joint party so that an elderly parent's bills can more easily be paid by the child, will be owned by that child alone upon the parent's death, even though the parent may have intended the account to be distributed among several children.

In such a case, the parent may be better served by other alternatives, such as the creation of a limited or general durable power of attorney, or the creation of a revocable trust.

Q.: What is being done to help people understand the legal consequences of setting up joint and survivorship accounts?

A.: In an effort to help consumers become aware of the legal effects of joint and survivorship accounts, some states have adopted legislation called the Uniform Multiple Person Accounts Act. This act has been adopted in some states, but it has not been adopted in Ohio. The provisions of this act require bankers to more completely disclose the legal consequences of joint and survivorship accounts.

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Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association. This article was prepared by H. Grant Stephenson, an attorney with the Columbus firm of Porter, Wright, Morris & Arthur.

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