

How to Choose an Executor By Carolyn Hart

It has become increasingly common for seniors to hold property jointly with the adult children or relatives. Unfortunately, many seniors are either unaware of the risks of such arrangements or too quick to discount those risks.

You might think that if you have a good relationship with your joint owner (such as a son, daughter or grandchild) then there is nothing to worry about - but life is long. Relationships can change and other things can come into play. Consider the following:

- Each joint account holder has the right to withdraw any and all funds from the account;
- In the event of a marital breakdown, the joint owner's spouse may acquire certain rights in the jointly held assets;
- If the joint owner has financial problems and/or declares bankruptcy, the jointly owned property may be exposed to claims by their creditors;
- Future events may change the relationship with the joint owner prompting that person to demand to sell the assets (for example the joint owner may marry a rogue or develop an expensive addiction)
- The joint owner may not share the assets with siblings after the senior's death resulting in bad feelings or even law suits.

Many joint property arrangements arise out of a desire to avoid estate administration tax, also known as probate tax. It is important to note that these taxes are relatively modest: 0.5% on the first \$50,000 in the estate and 1.5% for everything else. Although these taxes can add up, seniors should not put their financial security at risk simply to reduce the tax burden on their beneficiaries. Moreover, joint ownership may not effectively shield all assets from probate tax.

The courts presume that the balance in a bank account, which is jointly owned by a parent and adult child, is not meant to be a gift to the child on the death of the parent. That is unless there is clear and compelling evidence that the parent intended the funds to be a gift to that child alone. If there is no such evidence, the account becomes a "resulting trust". This means that the survivor holds the funds in trust for the estate and the account is included in the calculation of the value of the estate for tax purposes.

I encourage my clients to carefully consider all their options before entering into joint property arrangements and, if they conclude that joint property is the best option for them, to make their wishes known about how they would like joint property dealt with after their death. We have a simple declaration that we provide to clients so that they can document their wishes about the distribution of joint property after their death.