

THE DANGER OF ADDING CHILDREN TO BANK ACCOUNTS

How do you know the right thing to do in order to protect your assets or attempt to avoid probate?

To the unwary, a relatively simple, often used, and inexpensive technique is to merely add your child's name to a bank account. This involves going to the bank and completing a signature card. With this common technique or creating a joint account, the funds are then subject to rights of unlimited (not just half) withdrawal by either of the account holders and automatically becomes the property of the surviving account holder when one of them dies. An alternative would be to add the child as a death beneficiary on the account. This is normally called a POD or payable on death account. In this arrangement, the funds are not available to your child during your lifetime, but rather, pass to your child upon your death. In some cases, a bank will allow more than one beneficiary to be listed.

Unfortunately, these types of accounts do not protect assets from long-term care expenses. Since the assets are still available to you, and you have the right to withdraw the funds and are required to report their interest on your tax return, these assets are essentially still owned by you. This is, however, an effective tactic if your goal is simply to avoid the probate process.

There is danger though, if after you add your child's name to the account as a joint owner, and other issues arise. For example, if your child is sued that account becomes exposed to the child's creditors to satisfy debts (and not just ½ of the account). Other problems could arise if the child dies before the parent, develops marital problems, or becomes disabled himself. In these circumstances, there will be an issue as to whether those assets are truly yours, or available to your child, and a governmental agency or creditor of your child may attempt to attach those assets or cause them to be "accessible assets."

In some cases, a trustee in bankruptcy may also attempt to cause those assets, or at least half of them, to be available to the creditors of your child since his name is on the account, despite the fact that the funds actually belong to you.

When it comes to applying for Medicaid to pay for nursing home expenses, the addition of another person's name to your account as a way of trying to shelter assets will not work and the entire account will be treated as yours, or, the addition of the child's name could be treated as if you made a gift and then a Medicaid penalty period of ineligibility could be assessed.

In assessing your estate planning and asset protection goals, it is critical that you understand the ramifications of merely adding your child's name to your account.