

PROPERTY OWNED BY MORE THAN ONE PERSON

A joint account is one owned in two or more names. If it is "with rights of survivorship" it passes automatically on death to the remaining account holders in equal shares or in shares they can prove they contributed. It does avoid probate. However, there are certain attributes that make it a poor probate-avoiding device.

One of these attributes is that all parties to the account can access it. Any one of them can withdraw any amount of money from the account at any time without the permission of any of the other parties even greater than his or her share. The joint account is subject to the claims of creditors of any of the joint tenants. If there is appreciation in the account, it is subject to being marital property in the case of a divorce. It may also unintentionally disinherit other family members. For example, a man with six children may be on an account with one of his children. When the man dies, the money all goes to the one child on the account and disinherits the other five.

One better way to handle a bank account and other assets is a durable financial power of attorney (FPOA). A FPOA can go into effect immediately upon creation or only when the creator or principal becomes incapacitated. It enables the chosen attorney-in-fact to act on behalf of the creator after the creator becomes incapacitated. The attorney-in-fact can be designated to have other powers than just over a bank account. A FPOA can be revoked at any time, for example, by a signed revocation filed in the register of deed's office. The assets do not avoid probate but they pass as the will prescribes or as Tennessee law dictates, if there is no will.

Adapted from: T.L. Takacs, Elder Law Practice In Tennessee (Lexis, 1998)