

# THE ESTATE PLAN ADVISOR



Bob Redler  
Attorney at Law

785- 437-3250

511 W. Bertrand  
PO Box 26  
St. Marys, KS 66536

## “There’s Nothing Like the Security of Money in the Bank . . . I Think.”

Are our bank accounts truly secure?

Sure we have protection by the FDIC.

Sure we are 150 years beyond the history of Dodge City type bank robberies in Kansas.

Although banks are safe and insured, complex tax, creditor protection and other laws raise hidden dangers. Without careful planning in the way our accounts are titled, some or all of our hard earned savings may be lost.

Unfortunately, there is no universal right answer to the choice of how we should title our accounts -- which is why banks offer various

options. Yet the various forms of account ownership have such broad implications to the security of our money, its availability when we need it, the cost of passing it to our family when we die, and our estate plans, that each of us must make our choices based upon personal goals.

The purpose of this newsletter issue is to outline the benefits and detriments of the various account options offered by banks.

Since the ownership issues which apply to bank accounts are similar to Individual Investment Account issues, IRA ownership will also be reviewed.

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### ACCOUNT IN YOUR NAME ALONE

#### Advantages

Only you have access to funds in the account

#### Disadvantages

a] If you become disabled or unable to handle your financial affairs, no one will be able to use funds in the account to pay bills on your behalf (unless a court appoints a Conservator or you have given a Power of Attorney to another person)

b] When you die, all funds held in the account must pass through probate



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PLANNING SEMINAR

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Assets in the Family, Away  
from the IRS, Courts, and  
Unnecessary Expense and  
Delay”

This 50 min. mini-course is  
available online, without  
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[www.TheAttorney.US](http://www.TheAttorney.US)

“The Estate Plan Advisor” is designed to provide general legal principles. Since this newsletter cannot create an attorney-client relationship, or provide personal advice to you, the laws applicable to your individual situation and goals may differ.

## ACCOUNT IN JOINT NAMES OF HUSBAND AND WIFE

### Advantages

- a] Should you or your spouse become disabled, the other spouse has access to your account to pay bills
- b] When one of you passes away, probate of the account will not be necessary since the survivor is considered to already own the entire account
- c] Limited Medicaid benefit planning may be possible

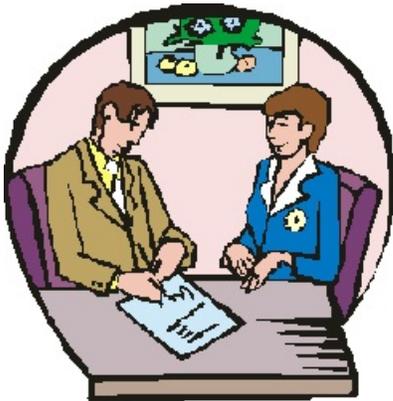
### Disadvantages

- a] Your account will always be subject to attachment (in whole or part) by your personal creditors and those of your spouse, regardless of who contributed the funds
- b] If both of you die simultaneously, the account may be split in half with each half subject to a separate probate proceeding
- c] When the surviving spouse dies, the funds held in the account must pass through probate
- d] If your combined estates are above the tax threshold, tax benefits may be lost

## ACCOUNT IN JOINT NAMES -- OTHER THAN HUSBAND AND WIFE (EXAMPLE USED: PARENT DEPOSITS FUNDS INTO A JOINT ACCOUNT WITH AN ADULT CHILD)

### Advantages

- a] Your child will have access to use money in the account for your benefit
- b] In the absence of complicating factors discussed under the "Disadvantages" column, all money held in the account will bypass the probate system and court involvement



### Disadvantages

- a] While you are still living, your account may be taken (in whole or part) by: creditors of your child; a divorce claim by your child's spouse; and a bankruptcy court
- b] If all your cash assets are divided among distinct accounts with several of your children, your estate may not have sufficient assets to pay creditors (the funeral home, hospital, mortgage, etc.). Creditors can then take their payment from any one child's account.
- c] Dividing assets among several children by establishing distinct joint accounts often results in an unequal distribution among the children. If the children then attempt to balance the accounts among themselves, they may incur adverse gift tax consequences
- d] If your child dies before you, the full account will revert to your sole ownership and be divided with your probate estate. If your plan was for your grandchildren to take your child's share (if your child dies first), a joint account may defeat this intent
- e] Parents who establish a joint account with a child sometimes find their child will take advantage of their ownership and "help themselves" to the money

## ANY ACCOUNT WITH A POWER OF ATTORNEY OR AUTHORIZED SIGNATURE OVER THE ACCOUNT

### Advantages

- a] The person authorized as your "Attorney" (i.e. an "Attorney-in-Fact" not an "Attorney at Law") will have access to your account to use the funds on your behalf
- b] A comprehensive Power of Attorney (but not a bank authorized signature card) may allow Medicaid benefit planning if you become disabled

### Disadvantages

- a] The person authorized to withdraw funds may use your money for their own benefit
- b] The Power of Attorney will expire upon your death. Therefore, with one small exception, once you die, your designated Attorney (or person authorized to sign) cannot withdraw funds or write checks, even if the funds are intended to pay for your last expenses
- c] Medicaid planning through a Power of Attorney involves certain risks which can only be protected by a Power of Attorney document specifically designed to address Medicaid planning

## **“PAY ON DEATH” (POD) ACCOUNTS (IN ONE NAME ALONE OR AS A JOINT ACCOUNT)**

### **Advantages**

- a] Since your account agreement will specify that, upon your death (or upon the death of the surviving owner, if the account is jointly held) all funds in the account will be paid directly to specified beneficiaries, probate of money in the account will be avoided
- b] Since a POD beneficiary is not a joint owner, the beneficiary will have no claim or interest in the account until your death. This means:
  - i] you can change the beneficiary (although a change may not be allowed on a CD until it matures);
  - ii] creditors of the beneficiary cannot reach the funds before you die; and
  - iii] the funds will not be subject to divorce claims by the spouse of a beneficiary as long as you are living
- c] One account can have multiple beneficiaries and contingent beneficiaries. Therefore, a parent need not be concerned about establishing equally funded joint accounts with several children. A single account can be opened in your name with the designation that the account be equally split among all your living children when you die. In addition, if you desire, the account can be a joint account with your spouse, with the account to pass entirely to the surviving spouse, then be divided among your children after the surviving spouse dies.
- d] After you pass away, if a creditor attaches the account, the funds paid to the creditor will be equally allocated to each beneficiary, not taken from one beneficiary alone
- e] A trust can be named as the beneficiary of POD account to provide the flexibility and benefits available from a trust while maintaining personal ownership of the account during an individual's lifetime. This is one way to avoid possible Medicaid penalties for transfers to a trust within five years before Medicaid is needed

### **Disadvantages**

- a] After your death, SRS may insist upon delay before payment to beneficiaries until it is determined that reimbursement of Medicaid funds will not be required
- b] If all your cash assets are held in POD accounts, your estate may not have sufficient assets to pay funeral, medical, probate or other expenses
- c] If a minor child is named as the POD beneficiary, a court will appoint a Conservator to control the funds rather than the trustee whom you selected under your Will or Living Trust
- d] A POD designation will not allow access to the account by anyone other than you (or the joint owner). Therefore, if you desire that someone else be able to pay your bills in the event of your disability, a separate power of attorney or authorized signature card must be signed
- e] If the POD account is jointly owned, many of the disadvantages of joint ownership discussed above will apply to the account



## **ACCOUNT IN THE NAME OF A LIVING TRUST**

### **Advantages**

- a] Probate will be avoided on all funds in the account
- b] Virtually all the problems and dangers of joint accounts can be avoided
- c] All or virtually all the problems and dangers of POD accounts can be avoided
- d] The trust account will have all the benefits of: joint accounts, POD accounts; and accounts over which another person has Power of Attorney
- e] Estate tax advantages available through a trust will apply to the account
- f] Medicaid benefit planning may be possible
- g] The arrangement will allow the flexibility and other benefits available through a trust

### **Disadvantages**

- a] Many trusts are deficient and may create serious problems for beneficiaries
- b] Preparation of a good trust is more expensive than a Will
- c] Even well prepared trusts will not fulfill all goals if the person (or couple) who had the trust created does not keep all assets in the trust
- d] Assets transferred into a trust within five years before the need for Medicaid arises may result in a loss or partial loss of benefits
- e] Unless an attorney prepares a “Certification of Trust” specifying successor trustees, and the person (or couple) who created the trust submits the Certification to the bank while still living, there may be a slight delay in access to the account when trustees change
- f] Although trustees are usually family members, a dishonest trustee may take your money

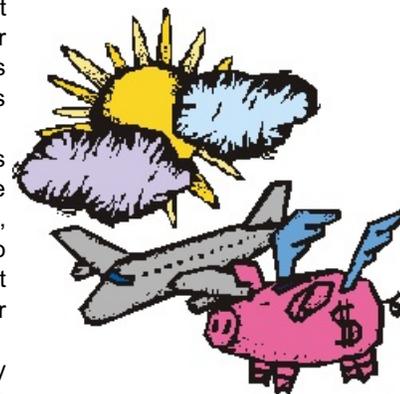
# INDIVIDUAL RETIREMENT ACCOUNTS

## Advantages

- a) Income tax advantages are available for both you and, if planned carefully, your beneficiaries
- a) If a Designated Beneficiary (DB) is named, distribution of the account can spread out over the life expectancy of the DB. This extended payout period provides tax and investment advantages)
- b) If your spouse is the DB, the IRA can be "rolled over" or converted into an IRA owned by your spouse. Your spouse may then designate a child (or children) as the new DB. Since the new DB will (presumptively) be younger than your spouse, when your spouse passes away, the payout period will be increased to meet the longer life expectancy of the new DB.
- c) You can arrange that, upon your death, the IRA will be split into as many separate shares as you have beneficiaries, with each beneficiary entitled to withdraw the IRA funds over his or her life expectancy

## Disadvantages

- a) If a Designated Beneficiary (DB) is not named, the account will be payable to your estate and must have all its funds withdrawn within a period that may be as short as 5 years
- b) A person with a large IRA, or one who has an estate which may be subject to estate tax, requires careful estate tax planning, and may best be able to allocate assets to avoid taxes only by use of a living trust which follows recent IRS Private Letter Rulings
- c) If a living trust is named as the beneficiary of the IRA, the mandate that all funds must be withdrawn within as little as five years will apply unless the trust is specially designed to accommodate the IRA



## CONFLICT WITH ESTATE PLAN

Although the selection of title designations for bank accounts, and the selection of beneficiary designations for an IRA can be done at any time, these choices should always be made in the context of your overall estate plan.

Most people do not have a Will or Trust. They are at the mercy of state statutes which provide an estate plan for those who neglect to plan for themselves. For example, if you are married and have children, the statutes will say that (depending upon the amount in your estate), approximately one-half your assets will be distributed to your spouse, and the other half to your children. This rule applies whether your children are five years old or fifty years old.

Since I began practicing law and preparing estate plans for clients twenty seven years ago, none of my clients have ever asked that their estate be distributed to their spouse and children the way the state would mandate. I doubt you would want this state plan either.

Of course, you can avoid the state plan with a Will, Trust, pay-

on-death accounts, proper beneficiary designations, and other methods, but the question to ask is: are they coordinated? Does your Will say that assets are to be divided equally among your children, but you have money invested in joint accounts or pay-on-death accounts which divide things differently?



Have you attempted to avoid probate by using pay-on-death accounts and IRA beneficiary designations, but never realized that these designations will not allow you to avoid estate taxes (which apply when the total assets in an estate, including life insurance, are greater than \$1,000,000). Did you know that a Trust can help you legally avoid these taxes?

Are all your accounts arranged in a manner which avoids probate, but probate will still be required for your securities, real estate, cars, personal effects or collections?

If you do not have a coordinated estate plan in place, remember that there is no charge for an initial consultation to discuss preparation of your Will or Trust. Just call us at 785-437-3250.