BERWITZ & DiTATA LLP

Attorneys and Counselors at Law

310 Old Country Road Suite 101
Garden City, New York 11530
Telephone (516) 747-3200 ● Facsimile (516) 747-3727

Lawrence N. Berwitz Maureen R. DiTata

Hidden Pitfalls of Joint Ownership

It is not uncommon for an elder parent to add an adult child's name to his or her checking or savings account, or to any other asset, thereby making the child a joint owner. While this is often done for convenience purposes, it can have serious, unexpected and undesirable consequences. Since the child legally owns the asset, creditors of the child can levy against it and, if the child becomes involved in a divorce, the child's spouse may attack the owner- ship interest in the asset as marital property. At a minimum, the existence of the account will have to be disclosed in the matrimonial action.

When you name a child as a joint owner on your account, you empower the child, during your lifetime, to withdraw money - as much as 100% of it! At your death, the child will automatically become the sole owner of the account, thus effectively "disinheriting" other children. While the full value of the joint asset will be part of your taxable estate, it will not pass under the terms of your Will. Therefore, if you want your assets to be equally divided among your children after your death, and for any tax burden to be equally shared, naming a child as a joint owner is a mistake. Naming all of your children as joint owners is a bigger mistake! That increases the possibility that your assets will be at risk in the event that a child divorces or suffers bankruptcy or creditor issues. Moreover, if a child dies, that child's children do not inherit.

The majority of married couples own their assets jointly, with right of survivorship. This means that when the first dies, the second owns everything. Owning assets in this manner may be convenient while both parties are alive because it gives each of them easy access to accounts. Unfortunately, however, if the combined value of the couple's estate, including real property, life insurance, investments, stocks, bonds, mutual funds, annuities and retirement accounts, exceeds $1 million, owning assets jointly can result in adverse tax consequences. Instead, where the couple's combined assets exceed $1 million, it is advisable to take advantage of each spouse's credit against estate tax.

Additionally, owning assets jointly may have adverse capital gains tax consequences. When assets are sold, a capital gains tax is assessed on the difference between the cost basis of the asset and its sales price. For example, the cost basis of your home is the amount that you paid when you purchased it together with the cost of capital improvements. If you sell your house, you will owe a tax based on the difference

between what you paid for your home and the sales price. However, assets included in your estate receive a new, “stepped-up” cost basis at the time of death. If the assets are then sold at this higher value, there is no gain, and thus no capital gains tax due. However, assets held jointly receive only a partial “step-up” in basis, on the decedent’s share. If the decedent owns the asset alone, the basis of the entire asset will be “stepped-up.”

Simply put, owning assets jointly may conflict with estate planning. The goal of giving access to another person “just in case” can be accomplished without exposing those assets to the risks discussed above. Now is the time to review your estate plan, including the manner in which your accounts are titled, to ensure that your wishes are accomplished. Give Berwitz & DiTata LLP a call.