



WILLS

Matter

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WHEN IS A GIFT NOT A GIFT?

We are frequently asked by Clients whether they should make their (adult) child a joint-account holder of their bank account, or put their child on title to their property as a 'joint tenant'.

Under joint-ownership, upon the death of the parent the beneficial title to the asset would automatically pass to the child, by virtue of the right of survivorship.

Clients often want to use joint-ownership for a number of reasons, such as saving probate fees and to allow the child to assist the parent in managing their money.

In many cases it is not advisable to use joint ownership, because of the increased hassles of administration, the fact that the asset is now exposed to claims of the child's creditors (such as an ex-spouse in divorce proceedings), and potential income tax consequences.

Furthermore, not all parents who use joint-ownership have the same intentions, and unless intentions are documented clearly, misunderstandings and unintended legal consequences often occur.

For example, consider Mrs. Munroe, who transfers her bank account into the name of herself and her adult daughter Monica. Is Mrs. Munroe intending to 'gift' the account such that Monica may treat it as her own and use or spend it during Mrs. Munroe's lifetime? Does Mrs. Munroe actually want Monica to hold Monica's interest in the account 'in trust' for Mrs. Munroe during her lifetime, and only upon Mrs. Munroe death would Monica be entitled to take whatever is left for her own use? Or perhaps Mrs. Munroe wants Monica to split the property amongst her siblings after Mrs. Munroe's death?

Whatever Mrs. Munroe's intention, recent court decisions in British Columbia have illustrated the importance of having her lawyer 'paper' the transaction properly, to accurately record her intentions.

As you can see, there are many legal implications for using 'joint' property ownership. We recommend that you discuss this option with an experienced Estate Planning lawyer to determine whether it is appropriate, and to ensure that the transaction is 'papered' properly and that your intentions are accurately recorded.

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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