

The perils of joint ownership

My grandpa George was quite a character. He passed away years ago, but I can still remember his sense of humour. In his Will, he wrote the words: "I wish peace and affluence to all of my loved ones, and a piece of effluence to all of my enemies."

Given that grandpa worked for a waste-water treatment plant, we all knew what he was thinking when he wrote those words. And so, the last thing he did was to make us laugh. What you should avoid, however, is giving the last laugh to someone who, against your intentions, inherits some of your assets when you're gone. If you're not careful, joint ownership can cause this problem. Let me share three stories to help explain.

Second spouses Beth was married to Scott. It was Beth's second marriage. She had two adult children from her first marriage. Beth's intention was to leave her children all of her assets upon her death, with the exception of her registered retirement savings plan, which she wanted Scott to have.

Prior to her death, Beth had placed her non-registered investment accounts in joint names with Scott. She wanted to avoid probate taxes (fees) on those assets, which joint ownership with right of survivorship accomplishes. Her expectation was that, upon her death, her kids would receive those investments because her Will says so.

The problem? Beth's Will did not sever the joint ownership with Scott or override the right of survivorship that he possessed. At the time of Beth's death, the non-registered investments automatically passed to Scott. Today, those assets will be dealt with in accordance with Scott's Will, and who knows if Beth's kids will ever see those assets she intended them to have.

Predeceased children Now, consider Gerald. He transferred all his investments into joint names with his three adult children, to reduce probate fees. Recently, Gerald's son Jake predeceased him when he died in a car accident. Jake had two kids of his own; Gerald's grandchildren.

Now, Gerald's Will is very typical. It provides for the possibility of a child predeceasing him, and says that, since Jake predeceased Gerald, Jake's children are to receive Jake's share of Gerald's estate when Gerald eventually dies.

In this case, however, the investments that were held jointly with right of survivorship by Gerald's three kids will pass outside the Wills of Jake and Gerald to the other two surviving joint owners - Jake's siblings. The result? Jake's kids may not receive any share of those investments. They may be effectively disinherited.

One joint owner Finally, consider Claudio. Claudio has three children, and in order to save probate fees, he placed certain of his assets into joint names, with right of survivorship, with his son Matthew.

His intention was always that the kids should each receive an equal share of these assets after he's gone. The problem? When Claudio dies, those assets will pass outside of his Will to Matthew alone.

Hopefully, Matthew will share those assets with his siblings, but it's far from clear that he's required to do so. Barring any kind of clear evidence that Claudio intended to leave the assets to his children equally, the other two kids will have an uphill battle - likely in court trying to get their share of those assets.

The bottom line? Joint ownership is a tool that should be used only after careful analysis of the potential drawbacks.