LEGAL EASE

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Joint Accounts and Wills Can be Tricky

A will, a legal document setting forth the wishes of a person with regard to the transfer of property after their death, is only one way to transfer assets at death. There are will "substitutes," which allow assets to be transferred at death "outside" of the will. One example of a will substitute is when assets are titled with a "right of survivorship." This means that when one of the co-owners dies, the surviving co-owner automatically becomes the owner of the asset, regardless of the wishes expressed in the decedent's will.

In Pennsylvania, the Multiple-Party Accounts Act (the "Act") applies to bank accounts that are jointly titled (titled in more than one name), or titled "in trust for" someone. The Act presumes a "right of survivorship." As explained in the Act, a "joint account" is an account payable on death to one or more parties, and a "trust account" is an account in the name of a person (e.g. the decedent) as trustee for one or more beneficiaries. Thus, the presumption of a "right of survivorship" makes sense; therefore, any amount remaining on deposit upon the death of a party to a joint account generally belongs to the surviving party or parties, and not to the estate of the decedent.

Note that the general presumption of a "right of survivorship" in a joint account may be overcome where there is "clear and convincing evidence" of a different distributional intent at the time the account is created. An example of "clear and convincing evidence" could be where the joint account is established to be a "convenience account," meaning a joint account created in joint names only so that one joint owner may write checks conveniently on behalf of another joint owner, the "true" owner of the joint account. Accordingly, "convenience accounts" do not pass to the surviving co-owner, but are included in the estate of the deceased person.

An interesting twist of which readers should be aware, however, involves a Pennsylvania decedent named Amelia J. Piet. After executing a will that would have provided for a different disposition, Ms. Piet re-titled certain accounts to become jointly owned, or titled in more than her name alone. Because of the Act, one would presume that those accounts, once re-titled, would automatically pass to the surviving co-owner, even though Ms. Piet's earlier Will provided otherwise. In a decision entered in April 2008, however, the Pennsylvania Superior Court ruled that the joint accounts did <u>not</u> pass to the surviving joint owner, because the accounts were made joint <u>after</u> the execution of the will. In short, the Superior Court ruled that Ms. Piet's Will, executed prior to the re-titling of the accounts, trounced the later joint registration of those accounts. In the words of the court, it would not "blindly adhere" to the presumption of the Act, because to do so would "frustrate" what the court concluded Ms. Piet presumably intended when she made her Will.

Although the *Piet* case was not appealed, in another case involving a Pennsylvania decedent named Alice G. Novosielski, the Pennsylvania Superior Court again ruled similarly, following the earlier *Piet* case. This matter is on appeal to the Pennsylvania Supreme Court. Until there is definitive guidance on the issue, joint account holders should document their intentions in creating joint accounts, especially if a will exists which disposes of assets differently. The advice of an attorney or other professional should be sought.