Three Reasons Why Joint Accounts May Be a Poor Estate Plan

Many people, especially seniors, see joint ownership of investment and bank accounts as a cheap and easy way to avoid probate since joint property passes automatically to the joint owner at death. Joint ownership can also be an easy way to plan for incapacity since the joint owner of accounts can pay bills and manage investments if the primary owner falls ill or suffers from dementia. These are all true benefits of joint ownership, but three potential drawbacks exist as well:

1. **Risk.** Joint owners of accounts have complete access and the ability to use the funds for their own purposes. Many elder law attorneys have seen children who are caring for their parents take money in payment without first making sure the amount is accepted by all the children. In addition, the funds are available to the creditors of all joint owners and could be considered as belonging to all joint owners should they apply for public benefits or financial aid.
2. **Inequity.** If a senior has one or more children on certain accounts, but not all children, at her death some children may end up inheriting more than the others. While the senior may expect that all of the children will share equally, and often they do in such circumstances, there’s no guarantee. People with several children can maintain accounts with each, but they will have to constantly work to make sure the accounts are all at the same level, and there are no guarantees that this constant attention will work, especially if funds need to be drawn down to pay for care.
3. **The Unexpected.** A system based on joint accounts can really fail if a child passes away before the parent.

> Then it may be necessary to seek conservatorship to manage the funds or they may ultimately pass to the surviving siblings with nothing or only a small portion going to the deceased child's family. For example, a mother put her house in joint ownership with her son to avoid probate and Medicaid's estate recovery claim. When the son died unexpectedly, the daughter-in-law was left high and dry despite having devoted the prior six years to caring for her husband's mother.

Joint accounts do work well in two situations. First, when a senior has just one child and wants everything to go to him or her, joint accounts can be a simple way to provide for succession and asset management. It has some of the risks described above, but for many clients the risks are outweighed by the convenience of joint accounts.

Second, it can be useful to put one or more children on one's checking account to pay customary bills and to have access to funds in the event of incapacity or death. Since these working accounts usually do not consist of the bulk of a client's estate, the risks listed above are relatively minor.

For the rest of a senior's assets, wills, trusts and durable powers of attorney are much better planning tools. They do not put the senior's assets at risk. They provide that the estate will be distributed as the senior wishes without constantly rejiggering account values or in the event of a child's incapacity or death. And they provide for asset management in the event of the senior's incapacity.