

# Three Factors to Consider After the Death of a Joint Bank Account Owner

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We have all heard the expression about the “poor man’s will” being created by adding children or spouses as joint owners of one’s assets, including bank accounts.

The rationale is that this avoids the judicial probate process by having all of one’s assets pass outside of probate, according to the joint designation.

## Convenience Accounts

[As we discussed previously](#), joint accounts are also frequently used as a supposedly easier way to allow a trusted family member to handle the expenses of the other account holder. When this is the intent, the account is known as a “convenience account.”

It is not unusual for plans centered around a joint account designation to go off track, however. As to the account holder’s intent to avoid probate and have the account pass to the other joint owner, the result is rarely that simple, as the joint account designation can be attacked by a beneficiary who otherwise would have received some or all of the account, either under a will or by intestacy, after the account holder’s death. Litigation can, and frequently does, ensue regarding whether the deceased account holder truly intended for the assets in the joint account to pass to the other owner.

## “Poor Man’s Will”

In New Jersey, the starting point for any analysis of this issue is the Multi-Party Deposit Account Act, which provides that the amount remaining on the death of one account holder passes to the other owner unless there is clear and convincing evidence of a different intention at the time the account is created. In other words, the “poor man’s will” will go into effect unless it is shown, by the elevated standard of clear and convincing evidence, that a “poor man’s will” was not intended. Even if the party challenging the account fails to demonstrate a contrary intention, however, he or she may still challenge the joint designation if the two account holders shared a confidential relationship. In that case, the burden would be on the living joint owner to demonstrate that he or she did not exert undue influence over the deceased owner in creating the account and that the deceased account owner understood the effect of the joint designation.

While technically distinct, these inquiries overlap in many ways. Determining the intent of the deceased account holder at the time the account was created, for purposes of the Multi-Party Deposit Account Act, is similar to determining whether the deceased account holder understood the effect of the joint designation, under a confidential relationship/undue influence analysis. The critical distinction in any litigation, though, may be that the burden is on the challenger of the account under the Act, while it is on the beneficiary of the account under a confidential relationship/undue influence analysis.

## Three Factors to Consider

Thus, while joint designations may have some surface appeal, they often lead to the uncertainty and expenditure of legal fees they were intended to avoid. If a loved one has died, and you are in the position of trying to determine whether an account was a “true” joint account as opposed to a convenience account, here are three factors to consider.

1. **Source of funding of the account:** Who contributed the funds to the joint account? If the deceased owner was the sole source of funding, the account is more likely to be viewed as a convenience account, with the joint designation intended merely as a means to ensure the deceased owner’s expenses were paid while he or she was alive, rather than a true joint account.
2. **Use of the account:** Relatedly, how was the account used during the deceased owner’s life? Who made withdrawals or paid expenses from it? If the account was used solely for the deceased owner’s expenses, it is more likely to be viewed as a convenience account. The living joint owner’s use of the account, however, is strong evidence that the deceased owner considered the account to be a “true” joint account.
3. **Timing of funding of the account:** When was the account created (or when was the other owner added as a joint owner to an existing account)? If the account was created long before the deceased owner’s death, it is probably easier for the living owner to argue that the deceased owner knew what he or she was doing, was less susceptible to any influence, and had no need for the other owner to have access to the funds in the account so that the deceased owner’s bills could be paid. The reverse may be true if the account was created closer to death; although, as with any fact-sensitive analysis, different inferences might be drawn depending on the facts. E.g., perhaps the beneficiary can argue that the deceased owner created the joint account closer to death as a purposeful part of his or her estate planning.

## Conclusion

As discussed above, joint accounts can be useful, but careful consideration should go into the decision of whether to create one.

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