

Mine is Better than Ours

“Mine is better than ours.” – Benjamin Franklin

I’m beginning to think that Benjamin Franklin must have been an estate lawyer. Not only did he appreciate the certainty of death and taxes, but he provided a succinct statement with respect to joint ownership of property: “Mine is better than ours.”

As an estate planning tool, I tend not to like joint ownership of property. I especially dislike joint bank accounts. Between spouses or partners in a marriage-like relationship, joint bank accounts are rarely a problem. Intergenerational joint bank accounts are almost always a bad idea.

Joint bank accounts are often used by elderly parents to facilitate the payment of bills by one of their children. Easy to establish and simple to use, joint bank accounts seem attractive. Plus, joint bank accounts can provide a means of avoiding probate if the estate is modest. As I wrote in an earlier article, people usually want to avoid probate, even if they don’t really understand what it is.

All too often the death of the parent triggers a dispute among the children about who gets the money from the joint account. These disputes invariably pose the question, “What was the person’s intent when the joint bank account was established?” Rarely is there any useful documentary evidence to be found and the person with the best knowledge of what was actually intended, is dead. Add in some grieving family members with starkly differing recollections about what the deceased parent really intended, and you’ve got the ingredients for an expensive litigious dispute.

All of this potential for dispute can easily be avoided. The parent needs only to execute an immediate enduring power of attorney. While its name is long, legalistic and a bit intimidating, the effect of the document is really quite simple. The document basically says, “You can do with my property whatever I can do, starting now, and you can keep on doing it, even if I can’t.” With a power of attorney, you retain ownership of your property and its ultimate destination is not open to dispute—it falls into your estate to be dealt with according to the terms of your will.

The Supreme Court recently released two decisions that aim to clear up some of the uncertainty around ownership of joint property. The essence of these decisions is that property owned jointly by a parent and an adult child falls into the estate of the deceased parent unless the child claiming entitlement can prove parental intent to confer full ownership at death. Proving intent is difficult, so many of the children who are surviving joint owners won’t bother to try. But door remains open for children who wish to assert rights of survivorship, so uncertainty has not been entirely eliminated.

I've been involved in several cases where ownership of joint property has been disputed. They are not easy to resolve. I doubt that any of the people who set up these joint accounts had any idea that a dispute would arise after they passed away. They probably thought that by keeping things simple they were doing their family a favour.

Joint ownership of property has its place. For example, if a parent has only one child and that child stands to inherit the entire estate, then joint ownership of property might be a solution. I say "might" because transferring property into joint ownership can have unintended consequences for tax and other purposes. As with most aspects of estate planning, it's best to consult someone who has knowledge in the area before acting.