O'NEILCANNON
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TAX AND WEALTH ADVISOR ALERT: HOW JOINT ACCOUNTS CAN RUIN YOUR ESTATE PLAN

As individuals grow older, they are often inclined to add a child to their financial accounts to assist them with paying bills and managing assets. While this strategy is convenient, it can lead to financial abuse and can also derail estate plans.

A joint account is a financial account with one or more owners, who both have rights of survivorship. Upon the death of one owner, the balance of the account passes to the surviving owner without probate, regardless of whether the surviving owner contributed to the account or not. The balance of the account will not pass according to the deceased owner's estate plan and the surviving owner has no legal duty to abide by the deceased owner's estate plan. The surviving owner can legally liquidate the account and cannot be held liable for doing so.

If you mistakenly add a joint owner to your financial account, it can be extremely difficult to prove that the joint account was instead set up as a "convenience account" for the sole purpose of making it more "convenient" for the joint owner to pay your bills and manage your assets. To prove a joint account was a convenience account, the legal presumption that the surviving owner of the joint account should receive the balance of the account must be overturned. This proof relies heavily on factual circumstances and requires a showing of clear and convincing evidence that the original owner did not have a donative intent when initially creating the joint account.

Instead of adding an individual as a joint owner of your financial account, we recommend adding your agent under your financial power of attorney. A financial power of attorney allows a person to perform financial transactions on your behalf, without having any legal ownership over your financial accounts. More importantly, a financial power of attorney also terminates upon your death. In other words, when you pass away, the account will either pass to the beneficiary listed on your account or to your estate—as originally intended. If you already have a revocable trust in place, your revocable trust can be named as the beneficiary of the account and the account will then pass to your trust upon death, thus avoiding a probate proceeding.

It is important to note that while it is better to add an agent under a financial power of attorney to a financial account, a financial power of attorney can also be dangerous in the

hands of a bad actor, and it can be difficult to hold an agent accountable. It is vital to choose a trustworthy agent, such as a spouse or close family member. Avoid selecting an agent who has a history of financial trouble, drug, or gambling problems. Always consult with an estate planning attorney when establishing a financial power of attorney and adding an agent to financial accounts.

Here at O'Neil Cannon, our Estate and Succession Planning Group can create a comprehensive estate plan for you and assist you with properly retitling your bank accounts, setting up beneficiary designations, and adding your agent under your financial power of attorney as an authorized user of your accounts. Our Inheritance Litigation Group can also assist you in holding a bad actor liable if you believe that your loved one's joint account should be a considered a convenience account or if your loved one was taken advantage of by his or her agent under a financial power of attorney.