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YOUR VIEWS

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Pitfalls of joint UK accounts

MY HUSBAND AND I HAVE A CHEQUE ACCOUNT and a savings account in the United Kingdom, having lived there for a period and bought a property, from which we now receive rent. Both accounts are in my husband's name and are left to me in his will, but we have been told they should be in both our names, to avoid complications if he were to die suddenly. But what would happen if we died at the same time? Would our heirs be able to access the accounts, or should the accounts be in their names as well?

Name withheld

Oliver Phipps, a practising solicitor in England and a member of the Fiduciary Institute of Southern Africa, replies: When you are married, in a civil partnership or cohabiting with a partner, it makes sense to have your UK bank accounts in the names of both parties. On the death of one of the parties, the accounts pass into the surviving party's name automatically. If the accounts are in the name of the deceased alone, the executor of the estate has to conduct a court procedure (known as probate) to obtain the authority to administer the account.

Sometimes people attempt to avoid probate by placing bank accounts in the UK in other names as well, but there are pitfalls in this strategy. The following example illustrates the problems that can arise. Gabriel and Lisa are married and have two children: Marc, who enjoys the high life, and Janet, who is in a rocky marriage. Gabriel and Lisa want their estates to go to their children equally when they die and believe it would be good estate planning to add both names to their joint bank account in the UK. That way, when both have died, the account will pass automatically into the names of the children. The potential problems associated with this kind of planning are:

■ Once the account has been placed in the children's names, unless all the parties are required to sign on the account, one or both of the children can withdraw money at will. For example, Marc could "borrow" funds to fuel his lifestyle without his parents' knowledge.

■ Janet's marriage might break up and her husband might argue that she owns a share in the bank account, which could then be brought into the divorce proceedings.

■ If Marc's playboy lifestyle ends in bankruptcy, his creditors could claim his share of the account.

■ Putting the children's names on the account might have adverse tax consequences in South Africa for Gabriel and Lisa, because the South African Revenue Service might view this as a donation of part of the value in the bank account.

■ If Gabriel and Lisa try to protect the account by putting it in Janet's name alone, on the understanding that the funds will be divided equally with Marc when they die, they risk the understanding not being honoured and putting Marc in the position of having to recover his share through litigation.

The following example shows how the English courts might approach a dispute over the ownership of a joint account: Bernice is a single parent who lives in South Africa and has a bank account in the UK. She has two children: Johann, who is studying in England, and Grant, who is working in South Africa. Bernice adds Johann's name to the account so that he can withdraw a limited amount of money to pay for his studies. Subsequently, Bernice dies, leaving her estate to Johann and Grant equally. The joint bank account in England passes into the sole name of Johann, who then argues that he should be the sole beneficiary of the account, because he is now the legal owner. Grant argues that he should be entitled to an equal share of the account, and is forced to litigate the matter in England.

Where one person places an account in joint names, English common law makes the presumption that the provider of the funds does not intend to make a gift of them, unless the co-account-holder is a spouse, civil partner or cohabitee. In Bernice's case, there would be a presumption that the funds were part of her estate. So despite the joint account now being in the sole name of Johann, he would be considered to be holding the funds as a nominee for Bernice's estate, unless there was evidence that Bernice had intended to gift the entire account to him. In the absence of such evidence – a clause in the will, for example – the English courts would be likely to decide that the joint account should pass in accordance with the will, interpreted in accordance with the law of Bernice's country of residence (South Africa). These examples illustrate the importance of obtaining professional advice when it comes to estate planning. Note that these particular issues may also be applicable to jointly owned investments registered in the UK.