

**“SENIORS BEWARE”**  
By Joseph A. Bollhofer, Esq.

Recently the folks at Our Town forwarded to me a letter they received from a gentleman identifying himself as “a senior citizen, over 75”. The letter was entitled “Seniors Beware.” The writer requested that the letter be published to help others, because he had “learned the hard way.”

He identified himself as having been the head of various organizations, including a village, a school board and a chamber of commerce (none local). The thrust of his letter was that he did not use a lawyer and believes he misplaced his trust in certain people. He also states that he was taking medication that he now believes impaired his ability to understand the consequences of what he did.

Apparently, his biggest regret is having agreed to place his money in an account with someone else, which was labeled “JTROS.” Those letters stand for “joint tenancy (with) right of survivorship” (JTWROS). The writer correctly states that upon his death, the joint tenant (joint owner) “gets your money regardless of what [is] in your Will.”

The writer states that he was told that creating this account was for his own convenience. He is in court trying to reverse the creation of the account. He also states that he does not have the right to use the money “without the co-signer’s written approval”. Although in a typical JTWROS account either joint tenant can use all of the money and close the account without the other tenant’s knowledge or consent, the Banking Law in New York states that if one of the joint tenants notifies the bank in writing not to pay any money from the account to the other, the bank is required to hold the money unless and until both joint tenants sign written instructions for payment. Either this gentleman’s account was set up requiring two signatures, or the other joint tenant changed it to require two. Clearly, this was not what he intended.

The banking laws also state that when the “JTWROS” account is created, it is presumed that it was the intention of the depositors to create the joint tenancy rights described above. Someone challenging the presumption would have the burden of proof to overcome that presumption. This is almost always very difficult and complex, especially if the account has been open for a while. Even if the writer is successful in court, it is likely to be a long, expensive lesson.

Identifying whether someone has the mental capacity to do something, and determining how to proceed if he or she does not, can be a complex undertaking. It can also be an ethical “tightrope walk” for an attorney. However, having an attorney that you know has an obligation to you, and to no one else, is the first step.

This is not intended to be a legal discussion of the laws of mental capacity. However, I hope that I am doing the writer a service by telling his story and honoring his request to “help others” by publishing this information.

And now, just a little more information about how two or more people may own something together:

As stated above, “JTWROS” means that when one tenant dies, the other(s) receive the whole account. This same rule applies with regard to ownership of real estate. Conversely, when real estate is owned by persons as “tenants in common” (or if the deed does not state the form of ownership) and one dies, that person’s share goes to the beneficiaries of his estate, rather than to the other owners. There are separate rules for married persons, which are at least as protective as the “JTWROS” rules.

A “JTWROS” account is very different from a “payable on death” (POD) account, also known as a “Totten Trust” account and a “transfer on death” (TOD) account. The POD account is completely owned by the account holder who establishes it, and the named beneficiary of the account has no ownership right until after the death of the account holder. Although this type of account passes outside of a Will, if the account holder makes a specific bequest of that same account in a Will, it will override the beneficiary designation of the POD account.

Different still is a “convenience account,” in which the authorized convenience signer only is authorized to withdraw any money or write any checks for the benefit of the account holder. The convenience signer does not inherit the money after the death of the account holder unless the convenience signer is also named as the beneficiary on the account.

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***Editor’s Note:***

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