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FROZEN UPON DEATH: PLANNING FOR BANK ACCOUNTS

By Carina Lyn Roselli, Esq.

EXPERIENCING YOUR DEATH will be one of the most difficult times in your loved ones' lives. The experience becomes significantly more difficult if you didn't plan to avoid your bank accounts becoming "frozen" upon your death. If one or more of your bank accounts were the primary source for paying joint or household expenses, your loved ones will be mourning your loss while trying to figure out how to pay the mortgage and keep the lights on, too.

When you die, the law immediately applies strict rules for access to any part of your property to ensure everything you owned at the time of your death is accounted for and secured until properly administered through the probate process under court supervision. This includes your individually owned bank accounts. Unless you owned very little at the time of your death, the probate process can be long and tedious, generally 6 to 12 months in Virginia, but it can extend well beyond that. Your bank accounts could be frozen throughout the entire process, making access to them impossible.

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This frozen bank account situation occurs most commonly when all bills are paid out of a single account that lists only one spouse or significant other as the account owner. When that account owner dies, the bank account becomes part of their probate estate and freezes.

True Story

While working on my own parents' estate plan, I instructed them to contact their banks to find out whether their accounts were Pay-On-Death (POD) accounts (further discussed below). When my mother asked the bank about her and my father's main "joint" account, she discovered her name WAS NOT ON THE ACCOUNT! How could this possibly be? This was the bank account they paid all of their "joint" bills out of, and it was the account her own pension paid direct deposit into!

The bank account was in fact, not a "joint" account in the legal sense; it was an individually owned account owned by my father. Apparently, it was accidentally set up solely in my father's name (so dad says, anyway), and it had been sitting this way for several years. If my father had died before we discovered this, my mother would have been locked out of their primary bill-paying account and refused access to her own pension income. She would have had no way of paying for pretty much anything!

Avoiding Frozen Bank Accounts

Even though the grief of death cannot be avoided, you can employ several

strategies to reduce the chances of your loved ones being frozen out of your bank accounts upon your death:

Pay-On-Death Accounts

Set up your bank accounts as Pay-On-Death (POD) accounts and ensure one or more death beneficiaries are named to receive the funds upon your death. Your significant other can gain ownership of the account simply by presenting identification and your death certificate to the bank. Keep in mind, however, this method "pays" the contents of your account to the death beneficiary—they don't just gain access, they inherit your money. If you don't have a significant other, think through who you would name as beneficiary or whether a different method providing only access to your accounts is more appropriate for you.

Jointly Owned Accounts

If you have a significant other with whom you would happily share a bank account with, then set up a jointly owned account to eliminate the possibility of one of you being locked out of the account upon the other's death. Because you both "own" the account, the account and all of its contents will remain with the surviving owner. This is generally referred to as a "right of survivorship" and is typical of joint accounts. (For our current purposes, avoid "joint accounts without right of survivorship" also known as "tenants in common" accounts, which apply different access and ownership rules.)

Revocable Living Trusts

Creating a Trust and putting ("funding") your bank account into that Trust is one of the most effective methods to prevent that account from being frozen. Using a Trust allows you to retain sole control of the account during your lifetime and give your named successor Trustee seamless, immediate access to it upon your death or incapacity, to use the funds per the terms you set out in the Trust (as well as legal limitations). Alternatively, naming the Trust as the POD beneficiary would pay the account's contents to the Trust where the successor Trustee would then similarly access and use the funds (solving the above POD beneficiary inherits concern).

What to Do Next?

If you're not sure whether your significant other might be unduly frozen out of your bank accounts upon your death, ask yourself:

Who owns the accounts in question? What kind of accounts are they or would you like them to be? POD? Have you identified and formally named POD beneficiaries? Jointly owned? How is the bank account currently titled? Do you have a Revocable Living Trust? If so, have you properly put your bank account in it?

Not sure? Need help? I'm happy to guide you through the process. Visit www.clrlaw.pro to contact me or book an appointment so we can get started.



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