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LAW CURRENTS An informational newsletter from
Richard A. Klass, Esq.

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Surprise!

On a recent day, "Jack" (not his real name) went to an ATM to withdraw money from his bank account. To his surprise, he could not. Upon contacting the bank's customer service department, he discovered that his bank account was restrained and could not be accessed. The bank's representative informed him that there was a judgment against the joint accountholder—a friend, we'll call him "Stan"—and this was the reason for the restraint on the account.

Jack remembered that many years ago, when he needed to travel to his home country for several months, he asked Stan if he could put Stan's name on the bank account in case Jack needed someone to pay his bills while traveling. Ultimately, Stan never used the account—never wrote a check, never made a deposit, and never made any withdrawals. Unfortunately, years later, a creditor of Stan got a judgment against Stan and now, Jack, the primary account holder of the bank account, was paying the price.

Joint bank accounts and Banking Law Section 675

According to New York Banking Law Section 675, a joint bank account is presumed to belong to each of the accountholders—meaning that each person (and his judgment creditors) may access the full amount of the account. Specifically, this section of law provides that, except for fraud or undue influence, the making of deposits into a joint account is evidence that the depositor intended the account to be a joint tenancy. The burden of proving otherwise is upon the person who challenges title, which, in this case, would be the primary accountholder.

Once restrained, a creditor of one accountholder may be able to obtain half or all of the money in the joint account, according to differing court opinions. (One opinion, *Ford Motor Credit Co. v. Astoria Federal*, 189 Misc.2d 475, holds the creditor is entitled to more than half of account, and another, *Mendel v. Chervanyou*, 147

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Misc.2d 1056, holds that it is not). In any event, in this situation, Jack had the problem where all of the money in the account belonged solely to him and Stan never used the account.

"Convenience" bank accounts

Luckily, there is another concept that applied to this situation. The law recognizes that a bank account may be established as a quasi-joint account, where a person is added merely as a "convenience" to the primary accountholder. This convenience is typically done in situations where there is an elderly parent or disabled person who cannot easily travel to the bank to handle his banking needs.

The account may actually be set up in this exact form from its inception (Banking Law Section 678 authorizes this type of account), or it may operate as one where there is sufficient proof that adding the other name to the account was just for the convenience of the accountholder. Where the account is initially set up as a convenience account, the bank will indicate the same and any deposits will not be presumed to belong to each of the accountholders but just the primary one. Also, upon death of the primary accountholder, the other person will not have a right of survivorship in the account, but the moneys will pass to whomever the primary accountholder has designated in his Will or heirs at law. Where the account is not designated as a convenience account from the onset, Banking Law Section 675 will allow a party to rebut or disprove the general presumption that it was a true joint account—evidence may include the wording written in on the account application or signature card, sources of deposits, usage of the account, and the circumstances in which the account was set up.

Jack's attorney searched the internet for "exempt property and accounts" for more information and found an article by Richard A. Klass on the subject of the Exempt Income Protection Act (EIPA).* After getting the run-around from the creditor's attorney for almost three weeks, Jack decided to retain **Richard A. Klass**, *Your Court Street Lawyer*.

Upon sending proof regarding the fact that the account belonged to the primary accountholder and that the debtor was on the account only for convenience purposes, along with a letter explaining the law and threatening to sue for attorney's fees, the creditor's attorney confirmed the next day that the account would be immediately released.

— Richard A. Klass, Esq.

* The article, entitled "Analysis of Exempt Income Protection Act," may be found at www.courtstreetlaw.com/articles/debt-collection-articles/Analysis-of-Exempt-Income-Protection-Act.html

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