

What bankruptcy means for joint account owners

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By **Karin Price Mueller/The Star-Ledger**

Q. My son, 40, is named on all of my accounts as either a joint owner or a beneficial owner. I think he may declare bankruptcy. What would that mean for these accounts?

— HJ

A. It's common for parents to name their adult children as joint account owners, but it can mean trouble. Your son's ownership and/or beneficiary interest in your accounts must be disclosed on his bankruptcy petition, said Illissa Churgin Hook, an attorney with Yablonsky & Assoc. in Wayne.

"Generally, your interest in the accounts would not be subject to seizure by a bankruptcy trustee because your son's bankruptcy estate will consist only of his legal or equitable interests in property," she said. "However, you may face an issue of what portion of the funds in each account is yours and what is your son's money."

Hook said the commencement of a bankruptcy case creates an estate which includes all legal or equitable interests of the debtor in property as of the start of the case. Your son's portion of any jointly owned accounts would be potentially exposed.

Hook said in a Chapter 7 bankruptcy, the trustee could seek the turnover of your son's share of any jointly owned accounts. But the bankruptcy code and state debtor/creditor laws provide certain exemptions. Depending on what your son's other assets are, he may be able to exempt a portion of his share of the cash in jointly held accounts from seizure by the trustee.

In a Chapter 13 bankruptcy, Hook said your son would try to retain control over his assets in exchange for completing a payment plan, and the value of your son's interest in any accounts is considered in the calculation.

For your own protection, your son shouldn't transfer his ownership interests to you for "no consideration," she said.

"Such a transfer could be deemed a fraudulent transfer, which could be undone by a trustee," she said. "The look back period for a fraudulent transfer in New Jersey is four years prior to the commencement of the bankruptcy case. Because you are a relative, the look back period for a preferential transfer is one year prior to commencement of the bankruptcy case."

If you can demonstrate that all the funds in the account were derived from you, or that there was adequate consideration for your son's transfer of his interest in an account to you, you may be able to successfully defend against a trustee's attempt to seize any interest.

To avoid such complications, parents can take different action when setting up an account.

You can make your child an authorized signer for withdrawals from an account without making the child a joint owner, said Marnie Aznar, a certified financial planner with Aznar Financial Advisors in Morris Plains.

"If you are considering setting up a jointly held account in order to ensure that the funds pass to your child upon death, you can instead set up the account to be payable on death to your child," she said.

E-mail your questions to askbiz@starledger.com.

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