

Insights

Want to Change a Joint Account? Put it in Writing!

May 26, 2021

By: Micah J. Nichols and William J. Barkimer

Recently, the Indiana Court of Appeals issued an opinion that offers some guidance on how to properly change a joint account with rights of survivorship while living.

In *Solomon v. Lindsey*, 163 N.E.3d 302 (Ind. Ct. App. 2020), Paul Martin ("Martin") opened an account with Rydex Series Trust. On the account application itself, it listed Martin as owner and his daughter, Lia Lindsey ("Lindsey"), as joint owner and provided that "joint accounts will be registered as 'joint tenants with right of survivorship' unless otherwise specified." The account was signed by both Martin and Lindsey. Further, on all account statements, it listed Martin and Lindsey, as joint tenants with rights of survivorship.

On July 6, 2018, Julianne Solomon (Martin's wife) ("Solomon") initiated a call with Rydex Series Trust (now Guggenheim Investments ("Guggenheim")), during which she requested that all funds in the joint account be withdrawn and the account closed. Martin indicated his assent to this transaction and authorized Solomon to speak on his behalf. The representative at Guggenheim confirmed the transaction and Guggenheim issued a check for the balance of the account and closed the account on July 9, 2018. On that same day, Martin died.

Solomon was appointed personal representative of Martin's estate and cashed the check from Guggenheim, which was deposited in the estate account. Lindsey filed a complaint to recover the property transfer to the estate, arguing that the funds in the joint account belonged to her by operation of law. Lindsey filed a motion for summary judgment and the trial court granted her request, basing its decision on Martin not following the proper statutory procedure to close and/or change a joint account with rights of survivorship. Solomon appealed, but the Indiana Court of Appeals affirmed the trial court.

The trial court found, and the Indiana Court of Appeals affirmed, that a joint account with rights of survivorship existed between Martin and Lindsey based on the evidence in the application and the statements and a further handwritten note from Martin to Lindsey. Further, since the account was a joint account with rights of survivorship, Martin was required to follow certain statutory steps to change the form of such account. Authorizing a withdrawal and approving the closing of a joint account over telephone alone was not sufficient. Rather, Ind. Code § 32-17-11-19 provides that the form of ownership of a joint account may only be altered by a signed, written order given to the financial institution during an individual's lifetime. The simple fact that Martin did not communicate to

Guggenheim in writing that his intent had changed caused the joint account with rights of survivorship to remain intact. Thus, Lindsey received the funds in the Guggenheim account by operation of law upon Martin's death.

In sum, if an individual wishes to change the form of a joint account with rights of survivorship, this should be done in writing and sent directly to the financial institution during that individual's lifetime. Such individual should not rely on just a telephone conversation alone to change the form of a joint account with rights of survivorship. Further, it would be wise for a financial institution (and best practices) to request a written order/instruction from a customer in accordance with Ind. Code § 32-17-11-19 to confirm a customer's intent, especially if such financial institution will take directions on banking transactions by telephone. *Solomon v. Lindsey* is a good example of the importance of following proper procedure to change ownership and/or title on certain assets. Failure to follow proper procedures could create unintentional consequences.

If you need to discuss the titling and ownership of assets when planning your estate and want to ensure your intent is made clear upon your death, feel free to contact **Micah J. Nichols** or **William J. Barkimer**.

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