Willson & Pechacek, P.L.C. Newsletter

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Adding Co-Owner to Financial Accounts: Understand the Risks

By Jamie L. Cox.

Some people add another person's name to an account for convenience—for example, you may want your adult child to write checks to help you out when you are busy, traveling, or not feeling well. Or you might want to give a family member easy access to the account after your death with the understanding that the funds will be used for your funeral expenses or other purposes.

Legally, the person whose name you add to the account becomes the outright owner of the funds. By law, co-owners of an account have equal rights to withdraw 100% of the deposits and to close the account. The account will not need to go through probate of your estate before it can be transferred to the survivor.

If you and your spouse open a joint account together, then it is unlikely that anyone would argue that you did not intend for the survivor to own the funds in the account. But if you add someone other than your spouse as a co-owner, then it may not be as clear what you want to happen to the account after your death. Unless there is something in writing, it is difficult to enforce the terms of any understanding the two of you had about how the money should be used.

If other relatives think you had something else in mind, then they may be angry if the surviving owner uses the money for personal purposes instead of paying expenses or sharing the money with other family members. This could lead to litigation based on fraud, interference with inheritance, lack of mental capacity, undue influence, or some other ground.

Another, perhaps better way to give a trusted person limited access to your account on an as-needed basis without granting ownership rights, is to grant a power of attorney to the person. A power of attorney is the written authorization for someone to act on your behalf during your lifetime in financial affairs or other personal matters. Powers of attorney can be broad, allowing unlimited access, or narrow, limiting access to accounts.

In summary, if you own an account jointly with someone else, then after you die, the surviving co-owner will automatically become the account's sole owner. Do not make someone a co-owner on your account unless you want them to inherit the money with no strings attached.

If you have any questions about how to protect your rights related to financial accounts, then please contact your attorney at your earliest opportunity for assistance.

Can a Single Horse Create a Farm Tenancy?

By Paul S. Wilson

The Iowa Supreme Court was recently called upon to answer an interesting question for Iowa landowners and farm tenants: whether a farm tenant's decision to graze a single horse on a property is enough to establish a farm tenancy under the Iowa Code. The case is entitled *Porter v. Harden*, and was released on March 10, 2017.

The Hardens had rented a six-acre parcel from the Porters for about twenty-four years. The dispute began when the Hardens filed an unsuccessful lawsuit against the Porters claiming that they had an oral agreement to purchase the property. After this lawsuit ended, the Porters served the Hardens with a thirty-day notice of termination of their lease.

The Hardens claimed that they had a farm tenancy, and the Porters had failed to comply with the rules for ending a farm tenancy under Iowa Code Chapter 562. Under this chapter, termination of a farm tenancy requires written notice on or before September 1 for termination the following March 1, which the Porters had failed to do.

The Hardens' basis for their claim of a farm tenancy was the fact that they owned a single 38-year-old mare, which they kept on the rented parcel of land. Further supporting their claim, the Iowa Code's definition of "livestock" specifically includes "an animal belonging to the equine species." At trial, the district court concluded that "the keeping of one 38-year-old horse does not make this a farm tenancy." The Hardens appealed.

The Iowa Court of Appeals, relying on the statutory definition of "livestock," decided that the Hardens had created a farm tenancy, and the Porters had failed to comply with Chapter 562.

On further review, the Iowa Supreme Court determined that the trial court was correct—a single horse is insufficient to create a farm tenancy. In doing so, however, the Court may have created a gray area for future litigants.

The Court reasoned that it would be absurd to conclude that the legislature intended to allow a person to create a farm tenancy by keeping a single elderly horse on his property. The Court concluded, based on its interpretation of legislative intent, that to create a farm tenancy, the land must be "mostly or primarily" devoted to crops or livestock. The Court declined to articulate a test to determine if land is "mostly or primarily" used for agriculture.

The Court, however, commented that neither "a city-dweller who keeps a few chickens" nor someone with "a small vegetable garden" would be a farm tenant under its reasoning. But the Court could not preclude that a single horse *could* create a farm tenancy—if the land was "devoted to maintaining a champion stallion," for example.

Most farm tenants and landlords in Iowa have nothing to worry about. If a tenant rents many acres of rural land for the large-scale production of corn, soybeans, hay, or cattle, for example, it is safe to rely on your protections and obligations under Iowa Code Chapter 562.

The Court may have created a gray area, however, between pasturing a single 38-year-old mare and someone with a large-scale crop or livestock operation. The following scenarios may fall in this gray area:

- A tenant who cultivates a half-acre of rented land to produce sweet corn and other vegetables for her own consumption and to sell at a roadside stand;
- A tenant who rents a rural farmstead and raises a dozen chickens to produce eggs for his own consumption and to sell at a farmers' market;
- A tenant who rents a rural acreage and keeps several horses, a few goats, and a couple pigs, all of which her daughter raises and shows once a year at the county fair through her school's 4-H program.

If you are a landlord or a tenant who may fall into one of these gray areas, and are not sure whether you may have farm tenancy or should have a farm lease, feel free to contact one of our lawyers.

Equifax: The "Crown Jewel" Hack

By Frank W. Pechacek, Jr.

Credit reporting company Equifax states 143 million Americans (1.1 million Iowans and 700,000 Nebraskans) had their critical personal information exposed: Social Security numbers, birthdates, address histories, legal names, mortgage balances, Court judgments, driver's license and credit card numbers, and more. Equifax discovered the illegal hack July 29, 2017 but failed to warn consumers until September 10, 2017, six weeks later.

What to do:

- Call Equifax at 1-866-447-7559 for information about you.
- Go to equifaxsecurity2017.com/enroll to see if you were affected by the hack.
- Place a credit freeze on your files with the major credit bureaus: Equifax, TransUnion, and Experian. This makes it impossible for others to open new accounts and bank cards in your name and will also lock you out from opening new accounts, until you lift the freeze.
- Check your credit reports at annualcreditreport.com every four to six months.
- Set up a fraud alert on your files. Creditors must call you directly, for your approval, before allowing an account to be opened in your name.
- Request a change of your Social Security Number with the Social Security Administration.
- Equifax has promised free credit monitoring and identity theft protection services for one year. Be sure you request the free service and not the paid service.
- Actively monitor your bank and investment statements. Immediately dispute any suspicious activity.

Equifax executives who sold $1.8 million of company stock within days of the hack discovery (and long before notifying the public) are under scrutiny by authorities.

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Iowa's Final Disposition Act

By Lee Rankin

A seldom considered component of an estate plan is declaring a designee to handle your final disposition.

Under Iowa's Final Disposition Act, you may designate someone to have the sole responsibility and discretion for determining the final disposition of your remains, along with any funeral arrangements. While it is important to note that this Declaration of a Designee is an appointment of an adult individual, the document itself does not allow for any directives or instructions to your designee.

If you die without a Declaration of Designee (as is the case for most people), the right to control final disposition of the decedent's remains is in the following order: (a) the surviving spouse of the decedent, if not legally separated from the decedent, then (b) the adult surviving children. In the case of any disagreement among the children, a simple majority decide, (c) parents of the decedent. After the parents, the decision would go to the adult grandchildren, then siblings, and then on to more remote relatives.

Even though a Declaration of Designee is not often used, it can prove to be quite useful in providing direction at an emotional time. If you would like to know more about a Declaration of Designee, please give us a call!