



Organize, Communicate, Prepare

Kansas Case Study 6

**The dangers of making someone, such as a child or friend,
a co-owner of a bank account as joint tenants with right of survivorship (JTWROS)
without exploring the potential consequences**

Mary is a widow with three children. In her will, Mary leaves her property equally to her three children. As Mary gets older, she is concerned that she may become ill and forget to pay her bills. She wants to give her youngest child, Jane, legal authority to write checks and make deposits in her account. She and Jane open a joint account with a right of survivorship. As Mary's health declines, she sells her house and her farm and deposits the sale proceeds in her bank account. Eventually, everything she owns is sold and the money is deposited in her bank account. To test your knowledge, take the quiz below, and select the best answer for each question.

1. Mary's bank account may be subject to the creditors of Jane, her youngest child.
 True
 False
 It depends
2. Jane could withdraw the entire amount in the bank account and deposit it in another account in her name only.
 True
 False
 It depends
3. At Mary's death, what will happen to the bank account she co-owns with Jane?
 A. It will be split equally between her children as directed by her will.
 B. Jane will get all of it.
 C. Jane will get all of it, but she will be required to share it with her brothers and sisters.
4. Instead of opening a joint account with right of survivorship with her daughter Jane, Mary had the following options:
 A. She could have opened a personal agency account naming Jane as her agent.
 B. She could have executed a durable power of attorney naming Jane as her agent.
 C. She could have signed a card at the bank giving Jane authority to make deposits and withdrawals from her account.
 D. All of the above.

Adapted for use in the Legally Secure Your Financial Future program; prepared originally for a national template program by [Carol A. Schwab](#), J.D., LL.M., former professor and Extension Specialist, NC State University. Adapted for Kansas use by Carol Young, Extension Specialist Financial Management, Shon Robben, Attorney, Arthur-Green, LL (10-15-08) [Copyright](#)

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Answers

See KSU publication 'Wills & Estate Planning-Maddux' for more detail about JTWROS.

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► **Note:** The following answers are based upon Kansas law as of January 2008. The laws in other states may be different. Laws are subject to change, so please ask your attorney for answers to specific questions.

1. Mary's bank account may be subject to the creditors of Jane, her youngest child.

Kansas answer: True

The bank account may be subject to Jane's creditors during her life. At her mother's death the account would pass to Jane, not subject to the probate process.

[Reference: Joint tenancy with right of survivorship is a form of ownership where the asset is owned by two or more people. P. 21.]

Accounts held JTWROS would be an asset not subject to the probate process.

[Reference: Assets that are not subject to the probate process are: 1. Property owned jointly with right of survivors where co-tenant survives. P. 19.]

As a sole owner, at Jane's death her creditors could seek payment from probate assets to the extent that her probate estate is insufficient.

[Reference: An estate needs to be probated if the estate includes any probate assets. Probate assets include: 1. any property the deceased owned as the sole owner. P. 19]

If Jane should die before her mother, as the surviving co-tenant her mother would maintain ownership of the account.

[Reference: If one of the joint tenants dies, the asset automatically becomes the property of the surviving joint tenant(s). p. 21]

2. Jane could withdraw the entire amount in the bank account and deposit it in another account in her name only.

Kansas answer: True

As a joint tenant, Jane can freely withdraw any amount from the bank account.

[Reference: Joint tenancy with right of survivorship is a form of ownership where the asset is owned by two or more people. P. 21]

3. At Mary's death, what will happen to the bank account she co-owns with Jane?

Kansas answer: B

Jane will get all of it. The survivorship language allows Jane to withdraw all the funds. However, unless the account is a "P.O.D" (payment on death) account, Mary's estate may be able to keep control of the account.

[Reference: If one of the joint tenants dies, the asset automatically becomes the property of the surviving joint tenant(s). p. 21]

Answer C 'could' be a valid answer also. There is case law in Kansas that if Mary puts Jane on her accounts *for convenience purposes only* that she must share those assets with her siblings. It would depend on the facts of the case and whether the children could show Jane was named *for convenience purposes only*.

4. Instead of opening a joint account with right of survivorship with her daughter Jane, Mary had the following options:

Kansas answer: D. All of the above.

- A. She could have opened a personal agency account naming Jane as her agent.
- B. She could have executed a durable power of attorney naming Jane as her agent.
- C. She could have signed a card at the bank giving Jane authority to make deposits and withdrawals from her account.

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