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ESTATE PLANNING & INHERITANCE PROTECTION

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Memo to Financial Institution to Add Agent Using Durable Power of Attorney

1. Objective

Please update the customer's personal accounts as follows:

A. Use a Single Party account with customer as sole owner

B. Name customer's trusted relative or friend as agent under durable power of attorney

2. Process

Either plan below should work fine for your purposes although Plan A is slightly better from an estate planning perspective.

Plan A- Submit a copy of the the customer's financial durable power of attorney to your legal department for review and approval. The document is intended to be all-inclusive and will include specific provisions regarding bank and investment accounts.

Plan B- Assist the customer with preparation of a *limited* durable power of attorney using your financial institution's proprietary form.

Please review the following information:

- **Tax Identification Number.** The account should use the social security number of the customer for income tax reporting, not the social security number of the agent.
- **Beneficiary Designation.** In some cases, it may be appropriate to name the agent as death beneficiary using your financial institution's proprietary pay-on-death or transfer-on-death form. However, this should only be done if the customer intends to name the agent as sole beneficiary of the customer's estate and there are no reasons to protect or restrict the inheritance. This is a matter of legal counsel. If the customer is unsure whether to name a beneficiary, please suggest the customer get legal counsel prior to naming a beneficiary.
- **Online banking.** Please make sure that both customer and agent have access to online banking and receive copies of monthly or quarterly statements.

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3. Explanation

This is a better approach than, for example, naming a child as joint owner because joint ownership between parent and child leads to the following problems:

1. Exposes the parent's assets to the child's creditors. If the child is sued, the child must disclose the joint account to the court and plaintiff's attorney. The burden falls on the child to convince a court that the child contributed nothing and that the account really belongs to the parent. Similarly, the account would be a reportable asset if the child filed for bankruptcy.
2. Eliminates the fiduciary duty a child would otherwise have. A child as joint owner has no fiduciary duty to manage the account in the best interest of the parent. By naming the child as an agent or trustee, the fiduciary duty is maintained so that misuse of funds by the child remains a crime punishable by law.
3. Parent loses full control of the account. Although intended to facilitate a child helping the parent, a controlling child or the jealousy of other siblings could spoil the arrangement. Similarly, if the child needs money, there is nothing to prevent the child from taking it without permission.
4. Assumes the child will behave like a Saint. The parent can only hope the child "does the right thing" and uses the joint account to pay estate bills and then shares it with other beneficiaries as directed in the parent's estate planning documents. The child's attorney would be correct under the law to counsel the child otherwise.
5. Creates potential eligibility penalties upon application for ALTCS. The parent must report gifts made within the prior 5 years when applying for nursing home benefits through the ALTCS program. Naming a child as joint owner may be interpreted as a gift that triggers a penalty and delays the start of benefits.

Therefore, I suggest you refrain from advising any customer to name a child as joint owner of an account unless the customer specifically requests it. Your suggestion may constitute unauthorized practice of law and create potential liability for your employer. For more information about this and other related estate planning topics, please explore the many articles on my law firm website.

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