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# Estates by the Entireties -- Bank Accounts

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## ESTATES BY THE ENTIRETIES—BANK ACCOUNTS

Deceased, possessed of two bank accounts, each in the joint names of himself and his wife, withdrew from one account the entire amount and redeposited it in his own name. A line was drawn through his wife's name in the second account. The widow sued the executors for the funds in both accounts. The County Court and the Circuit Court, on appeal, allowed her contention that both accounts were estates by the entireties. *Held*, the withdrawal of the first account by the husband destroyed the entireties estate, but the act of the husband did not destroy the latter account. *In re Estate of Lyons*, Supreme Court of Florida No. 25911, March 9, 1955.

The doctrine of tenancy by the entireties in bank accounts is, of course, not applicable in those jurisdictions which do not recognize estates by the entireties,[1] or in those not recognizing such entireties in personalty.[2] Even where estates by the entireties are recognized in personalty, some jurisdictions make a further distinction with regard to bank accounts, since the deposit may be withdrawn during the lives of the spouses;[3] hence, the method of destruction does not conform to the essentials of an estate by the entireties.[4] Those jurisdictions not making this distinction assume from the marital relationship and the deposit of money in both names, that a tenancy by the entireties has been created,[5] or that a contract is created entitling each spouse to the enjoyment of the whole estate.[6] If only one party has deposited the money in the name of both it may be considered with donative intent[7], thus, when a deposit stands in the names of husband *and* wife as tenants by the entireties, the money may be paid to either one of them,[8] for each spouse is considered the agent for the other.[9] The withdrawal by one spouse of a part of the deposit, for other than joint use, is equivalent to an offer to the other to destroy the estate, which may be accepted by the other.[10]

Florida recognizes an estate by the entireties in a joint bank account in the names of husband and wife.[11] The rights of the parties are determined as of the date of the joint deposit,[12] in accordance with the intent of the parties to create an estate by the entireties as determined

1. Arthur v. Arthur, 115 Neb. 781, 215 N.W. 117 (1927); Gleason v. Squires, 39 Ohio App. 88, 176 N. E. 593 (1931).
2. Appeal of Garland, 126 Me. 84, 136 Atl. 459 (1927); Smith v. Smith, 190 N. C. 764, 130 S. E. 614 (1925).
3. Murphy v. Michigan Trust Co., 221 Mich. 243, 190 N. W. 698 (1922).
4. Holman v. Mays, 154 Ore. 241, 59 P.2d 392 (1936).
5. *In re* Berkowitz' Estate, 344 Pa. 481, 26 A.2d 296 (1942).
6. Bishop v. Bishops' Executrix, 293 Ky. 652, 170 S.W.2d 1 (1943).
7. First Trust Co. of Lincoln v. Hammond, 140 Neb. 330, 299 N. W. 496 (1941).
8. Berhalter v. Berhalter, 315 Pa. 225, 173 Atl. 172 (1934).
9. Madden v. Gosytonyi Sav. and Trust Co., 331 Pa. 476, 200 Atl. 624 (1938).
10. See note 8 *supra*.
11. Bailey v. Smith, 89 Fla. 303, 103 So. 833 (1925).
12. Hunt v. Covington, 145 Fla. 706, 200 So. 76 (1941); Richardson v. Grill, 138 Fla. 787, 190 So. 255 (1939).

from the nature and terms of the transactions.[13] Merely depositing money in the name of husband and wife, and signing signature cards authorizing either, both or survivor, to sign checks on account has, in itself, been held to create an estate by the entireties.[14]

When a bank account is deemed to be a tenancy by the entireties, there is an immediate agency created and either mate may act for both.[15] Either party may then have the use of all or part of the balance at any time, and upon the death of one, the balance, if any, goes to the survivor.[16] The character of the estate will not change because one spouse reduces a part of the personalty to his possession and control.[17] It may be seen that an estate by the entireties as to bank accounts has decidedly different characteristics than those associated with the historic conception of such estates in that, normally, neither spouse can effectively terminate or encumber the estate without the joinder of the other.[18]

In the instant case, one bank account was completely withdrawn by the husband and reopened in his name alone. The court held this procedure effectively destroyed the entireties, and such is the weight of authority.[19] In the other account the husband had his wife's name stricken, but did not reduce the funds to possession. This act was held to be insufficient to destroy the entireties. The case is in harmony with the general law previously noted.[19] Added to the Florida law on the subject of dissolution is the requirement that the entireties will not terminate, when not mutually assented to, until the proceeds are remanded to the physical possession of one of the spouses. The case aptly illustrates the difficulty of applying the doctrine of tenancies by the entireties to a bank account which, in the nature of things, may fluctuate with amazing rapidity. Since it is fundamental that a tenancy by the entireties may be destroyed only by the joint action of both parties, the doctrine in so far as applicable to bank accounts is anomolous. It seems a joint tenancy with a right of survivorship would serve the interests of married persons as well as a tenancy by the entireties; thus conceptualistic notions in regard to characteristics of entireties estates and joint tenancies would be more in accord.

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13. Bailey v. Smith, 89 Fla. 303, 103 So. 833 (1925).
14. Hagerty v. Hagerty, 52 So.2d 432 (Fla. 1951).
15. *Ibid.* The court stated they followed the reasoning of the Pennsylvania court in the *Madden* case, see note 9 *supra*, to the effect "that when an account was payable on the order of the husband or his wife, there was an immediate expression of authority, of agency [of either] to act for both." *Id.* at 434.
16. *Ibid.*
17. Merrill v. Adkins, 131 Fla. 478, 180 So. 41 (1938).
18. To the effect neither party can effectively terminate or encumber the estate without assent of the other, see Cooper v. Maynard, 156 Fla. 534, 23 So.2d 734 (1945) (a lease for entireties estate must be executed by husband and wife); Rader v. First National Bank in Palm Beach, 42 So.2d 1 (Fla. 1949) (dictum indicates assent of a spouse is needed to alien estates by the entireties in a common bank account).
19. See notes 15, 16 and 17 *supra, but see* note 18.