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## ELDER LAW MINUTE

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Nino Grancaric ("Nino") died in 2006. He was survived by his life partner of 30 years, Arlene Scheurer ("Arlene"). Arlene owned two businesses, and Nino served as their manager for many years.

In order to save for the couple's retirement and to protect her assets from business-related liability, Arlene deposited money into a joint bank account in the names of Nino and Cheryl Macri ("Cheryl"), Arlene's sister.

Shortly after his death, Dinko Grancaric ("Dinko"), Nino's brother, petitioned for Letters of Administration. Arlene petitioned the Surrogate's Court of Rensselaer County, New York, to admit Nino's Will, in which she was named beneficiary. Probate was denied because the Will was not properly executed. Dinko then petitioned the Court to recover the assets in joint bank accounts. The Surrogate's Court held in favor of Cheryl who opposed Dinko's motion. Dinko appealed.

The New York Appellate Division held that *[w]hen a bank account is opened in two names...and survivorship language appears on a joint bank account's signature card, a statutory presumption arises that the parties intended to create a joint account with rights of survivorship*. In order to overcome the presumption, Dinko had the burden of proving by clear and convincing evidence that due to fraud, undue influence or lack of capacity, that the accounts were never intended to be with rights of survivorship.

Dinko argued that the accounts were opened for the convenience of Arlene, and were not intended to be survivorship accounts. The Court recognized that a joint account may remain the sole property of the depositor where the joint account was opened as a matter of convenience for that depositor and no joint tenancy was intended. However, in this case the accounts were opened for the convenience of Arlene who was not a co-tenant. Judgment for Cheryl was affirmed. 2012 Slip Op 00169 [91 AD3rd 1104].

Many senior clients open joint bank accounts so that one of their children can pay bills and help manage the funds. The Grancaric case illustrates the presumption of the survivorship intent which is not easy to overcome. Therefore, if the depositor does not want the account to go directly to the cotenant, he should list the child as attorney-in-fact on the account rather than co-tenant.