

# REAL ESTATE LAW



## “A Bank Account Owned by Husband and Wife is Immune from Collection by a Creditor of Only One Spouse”

Once a husband and wife are married in the State of Florida the law recognizes a separate and distinct entity for property owned by husband and wife. Real and personal property owned by both husband and wife is recognized as owned by tenancy by entireties. This distinction is important in Florida because a creditor of only one spouse cannot pierce and obtain payment from assets owned by both husband and wife.

Most often, a husband and wife will open a checking account and savings account with a local bank. The signature card often allows either the husband or wife to withdraw funds from the account. You should designate any checking account owned by husband and wife as tenancy by entireties. However, failure to so designate the account does not defeat the immunity from creditors.

Collection attorneys often argue that an account designated not as tenancy by entireties but as a joint checking account is subject to collection.

Florida courts hold that even a joint account is afforded protections. The courts look at the intent of the husband and wife at the time of opening the account to determine whether or not the account is protected as an estate by entireties. The Gibson v. Marr, 395 So.2d 1278 (Fla. 4<sup>th</sup> DCA 1981); Roger Dean Chevrolet, Inc. v. Fischer, 217 So.2d 855 (Fla. 4<sup>th</sup> DCA 1969). The courts look at extrinsic facts including whether or not both the husband and wife “owned” the account, and whether the money to create the account came from assets or earnings from the couple after they were married, and whether or not the monies in the account are used to pay the expenses of the household.

These arguments should be marshaled if a creditor of one spouse garnishes the bank account of the husband and wife. You should contact an attorney familiar with collections and exemptions afforded the husband and wife to protect your rights.



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