

Titling Accounts

What is a Survivorship Account?

Texas law provides that when an account or other asset is registered as "joint tenants with right of survivorship" or gives other indications of a survivorship right, your Will does not control passage of the property. Rather, upon the account owner's death, the survivor(s) will take the account or property by "right of survivorship."

To What Kind of Accounts Do Survivorship Rights Apply?

In Texas, it is uncommon for survivorship rights to apply to real estate. These rights typically apply to bank accounts, brokerage accounts, stock certificates, or other accounts that are registered in your names (or with other individuals) in the form of "joint tenants with right of survivorship." Survivorship rights will also arise if an account is registered as "community property with rights of survivorship;" if an account is registered in your name as "trustee" for another; if the account is marked "pay on death" (or "POD") to another party; if the account is marked "transfer on death" (or "TOD") to another party; or for federal savings bonds, if the bonds are held in joint names.

Why Should Survivorship Accounts be Avoided?

It is very important that your Will govern the passage of your assets, and that they not pass outside of your estate plan; otherwise, adverse property and tax consequences could result. Especially if your Will establishes trusts for your family members, you will want to make sure that the funds in your accounts pass to those trusts, and not outright to the person whose name is on the survivorship account.

Are All Joint Accounts Survivorship Accounts?

Some accounts that are registered in two or more names are not survivorship accounts. They are "co-tenant" or "convenience" accounts. They do not have a survivorship feature, so they do not become the property of the survivor. Instead, when one owner dies, his or her interest in the account passes under his or her Will. Since the account holder's Will controls his or her non-survivorship joint accounts, the account owner avoids the problems of survivorship accounts. In fact, many people add one or more family members as signers on accounts so that the accounts can be accessed in the event of the owner's disability. These accounts, if properly styled as convenience accounts, do not give rise to the problems associated with survivorship accounts.

Can I Tell By Looking at the Account Statement?

Many times bank or brokerage statements will indicate survivorship language on their account statements. They often list two names, followed by the designation "JTWROS," "CPWROS," "Jt. w/ Surv.," "Jt. Ten." or with some other indication of survivorship. However, not all survivorship accounts are so clearly labeled. Survivorship is governed by the account agreement or signature cards that were signed when the account was opened (or when someone's name was added to the account). The terms of the account agreement or signature card, and not the name listed on the account statement, establishes survivorship.

Why Are So Many Accounts Set Up

Savings and loan institutions, banks, and brokerage companies furnish these "right-of-survivorship" accounts thinking that they are convenient for their clients. Survivorship

- this Way?* accounts provide a simple way for people to provide access to their accounts upon the depositor's death. Unfortunately, many people establish these accounts without realizing the impact they have on an individual's estate planning matters.
- Are Bank Accounts "Frozen" at Death?* Some people fear that upon their death, their financial assets will be "frozen," and therefore unavailable to family members. This is not the case in Texas. Banks are authorized to continue to honor checks drawn on, and withdrawals made from, accounts by any signer on the account, even if the account holder is deceased. Therefore, it is **not** necessary to use a survivorship feature on an account to maintain access to the account after death. Convenience or co-tenant accounts accomplish the same result without interference with your estate plan.
- When is it OK to Use Survivorship Accounts?* For people of modest means, who have no estate tax or other trust planning in their Wills, survivorship accounts are often fine. Many people have household checking accounts or other accounts with relatively small balances that are intended to pass outright to the surviving account holder. Survivorship language on these accounts generally does not cause a problem, so long as the account holder understands that the account will pass outright to the survivor, and not under the account holder's Will. In most other cases, survivorship accounts should be avoided.
- How do I Avoid Survivorship Accounts?* You should make certain that none of your accounts or other assets are registered in the form of "joint tenants with right of survivorship," "JTWROS," "CPWROS," "POD," "TOD" or as "Trustee." **Instead, a married couple's accounts simply should be registered as "community property" (without rights of survivorship), if that form of registration is available. If the community property form of registration is not offered, the account may be registered as "tenants in common," or in your individual (or combined) names without any indication of a survivorship right.**
- Do We Have to Sign New Account Agreements?* It is preferable that you change the title ownership on accounts currently held with right of survivorship by signing new account agreements. But, as an alternative, you may want to consider sending to each applicable financial institution the sample form letter attached. Delivery of this notice will terminate the survivorship arrangement. If you choose to do so, you should obtain some sort of written receipt (for example, a receipt signed by a financial institution representative, or a certified mail return receipt) so you can prove delivery.

To: _____

Re: Account Number _____
Styled " _____ "

Dear Sir or Madam:

Section 113.157 of the Texas Estates Code allows any party to an account to contact a financial institution to advise them that the account is not to be held in the form of joint tenants with right of survivorship. For estate planning purposes, it is important that the referenced account not include any right of survivorship; rather, on the death of either one of us, we intend that his or her interest in the account should pass to his or her estate, not to the survivor.

Therefore, this letter constitutes notice and a written order to you that the referenced account shall ***not*** pass by right of survivorship to the survivor of us (or to anyone else) upon the death of the first of us to die. Please immediately update your records to reflect this change.

[Husband]

[Wife]