

Titling Accounts
(for Married Couples)

***Why Is Account
Titling Important?***

It is very important that your Wills govern the distribution of your assets upon your deaths. If your Wills establish trusts for the surviving spouse or other family members, only assets that pass under your Wills will pass to those trusts. Likewise, if your Wills include tax planning, only assets that pass under your Wills will be available for tax planning purposes. *Survivorship Accounts pass completely outside your Wills at death.* By referring to "survivorship accounts," we mean joint accounts that are titled to include a "right of survivorship" (these accounts are sometimes abbreviated "JTWROS," "Joint with ROS," or "JT TEN"). The right of survivorship designation may appear only in the original signature card or account agreement that established the account [in the "fine print"] and not in the account statements. Therefore, your survivorship accounts [except for a modest-sized checking account] should be retitled as non-survivorship accounts. Otherwise, the trust, tax planning and other benefits of your Wills may be impaired or even lost. In addition, Pay on Death ("POD") and Transfer on Death ("TOD") designations result in the funds or assets in an account with that designation being distributed outside your Wills. Therefore, again, if you want those assets and accounts to be distributed according to your estate plan in your Wills, do not use POD and TOD designations on your accounts.

***What Is a
Survivorship
Account?***

As already noted, the term "survivorship account" generally refers to an account or other asset that has "rights of survivorship." Under Texas law, when an account or other asset is registered or titled as "joint tenants with right of survivorship" (JTWROS) or gives other effective indications of a survivorship right, your Will does not control passage of the funds or assets in that account upon your death. Rather, upon your death, the account passes by "right of survivorship" to the persons named as the "survivors" on the account and *not* to the persons (or to the trusts created for the persons) named in your Will.

***To What Kind of
Accounts Do
Survivorship
Rights Apply?***

These rights typically apply to: (i) bank accounts, brokerage accounts, stock certificates, or other accounts that are registered in both of your names (or in your name(s) with one or more other individuals) as "joint tenants with right of survivorship"; and (ii) all federal savings bonds held in two or more joint names with "or" between the names. Survivorship issues also apply to: (a) accounts registered as "community property with rights of survivorship"; (b) accounts registered in your name(s) as "trustee" for one or more named individuals; and (c) accounts marked "pay on death" ("POD") or "transfer on death" ("TOD") to another party. In Texas, it is uncommon for survivorship rights to apply to real estate.

***Are All Joint
Accounts
Survivorship
Accounts?***

Some accounts that are registered in two or more names are not survivorship accounts. They are "co-tenant" "tenants in common" 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 interest in non-survivorship joint accounts, these accounts avoid the problems caused by 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 We 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.* More importantly, survivorship is governed by the account agreement or signature card that was signed when the account was opened (or when someone's name was added to the account), *not* the description of the account in the account statement. *The only way to be sure a joint account is not a survivorship account is to obtain and review a copy of the account agreement or signature card.*

Why Are So Many Accounts Set up this Way?

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

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 what Texas law provides, but it does happen.* Under clear Texas law, banks are authorized to continue to honor checks drawn on, and withdrawals made from, accounts by any signer on the account, even if the other account holder is deceased. Texas law does not necessarily apply to brokerage accounts holding securities, however. Therefore, with respect to bank accounts holding cash, it is **not** technically necessary to include a survivorship feature on an account to maintain access to the account after death. Convenience or co-tenant accounts accomplish the same result without interfering with your estate plan. Because of the risk of an account being "frozen" on death, however, if providing immediate access for your family members to a certain amount of funds is important, then it is all right to have one account of a modest size with a right of survivorship or a POD or TOD arrangement. Just be sure that you don't cause any "gift tax problems" for your family members by naming just one, and not all, persons in the same degree of relationship to you as the surviving joint tenant(s) or POD or TOD beneficiaries. (The relevant gift tax issues are beyond the scope of this FAQ; however, there are newsletters on the law firm's website that explain the gift tax issues in more detail.)

When Is it OK to Use Survivorship Accounts?

For people of modest means who either have no Wills or else have Wills that contain no estate tax or trust planning, survivorship accounts are often fine. Survivorship accounts between a husband and wife are also OK where the estate plan is a "disclaimer plan" (in which the Wills provide that everything passes outright to the surviving spouse, except that if the survivor makes a disclaimer, the disclaimed assets pass to a Disclaimer Trust for the survivor). In addition, many couples have household checking accounts or other accounts that are intended to pass outright to the surviving spouse, and persons who want to make a specific cash gift may put the cash, etc. in a POD or other survivorship account. So long as the dollar amounts are relatively small,

survivorship provisions in these situations generally do not cause a problem; however, the account holder must understand that the account will pass outright to the person(s) named in the survivorship provision (if he or she survives), and not to the person(s) named in the account holder's Will (including the Executor, who may need the funds to pay estate debts, taxes and expenses). In most other cases, survivorship accounts should be avoided.

How Do We Avoid Survivorship Accounts and How Should We Title 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" for another individual. Instead, a married couple's joint community property accounts should simply 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 (or if the property is not community property), the account may be registered as "Tenants in Common." Sometimes neither form of titling is available. Another acceptable form of title for joint accounts is listing both names but negating any survivorship rights (such as, "Joint Tenants Without Right of Survivorship").

Do We Have to Sign New Account Agreements?

It is preferable that you change the title 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 should terminate most survivorship and POD arrangements (per Texas law). 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. *Note: The notice will not work for accounts registered in your name(s) as "trustee" for one or more named individuals; to revise those accounts you must sign new account agreements.*

SUMMARY

DO NOT USE (if doing tax or trust planning)*	OK TO USE
1. Joint Tenants With Right of Survivorship (JTWROS), 2. Community Property With Right of Survivorship (CPWROS), 3. Joint Tenants (Jt. Ten.), 4. Pay On Death (POD), 5. Transfer on Death (TOD), 6. [Your Name(s)] as "Trustee for" one or more person(s) as beneficiary/ies	1. Community Property, 2. Tenants in Common (TIC), 3. Joint Tenants <u>Without</u> Right of Survivorship, 4. Multi-Party Account <u>Without</u> Right of Survivorship, 5. Individual account (<i>without</i> POD or TOD beneficiary), 6. A "plain vanilla" (old fashioned) joint account (<i>without</i> a right of survivorship)

* It is all right to have a modest-sized account styled as JTWROS or set up with a POD or TOD arrangement. Having a modest-sized account pass outside your Will won't "ruin" your entire estate plan.

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 and/or POD/TOD provisions; 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.

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

[Husband]

[Wife]