

Titling Accounts
(for Unmarried Persons)

Why Is Account Titling Important?

It is very important that your Will govern the distribution of your assets upon your death. If your Will establishes trusts for family members, only assets that pass under your Will will pass to those trusts. Likewise, if your Will includes tax planning, only assets that pass under your Will will be available for tax planning purposes. *Survivorship Accounts pass outside of your Will. Therefore, your survivorship accounts should be retitled as non-survivorship accounts; otherwise, the trust, tax planning and other benefits of your Will may be impaired or even lost.*

What Is a Survivorship Account?

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 as "joint tenants with right of survivorship" or gives other effective indications of a survivorship right, your Will does not control passage of the property. Rather, upon your death, the account or property passes by "right of survivorship" to the persons named in the survivorship provision, *not* 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 two or more joint names as "joint tenants with right of survivorship"; and (ii) all federal savings bonds held in two or more joint names. Survivorship issues also apply to: (a) accounts registered in your name as "trustee" for one or more named individuals; and (b) 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" 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, these accounts avoid 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," "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 cards that were signed when the account was opened (or when someone's name was added to the account), not the description of the account on the 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 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 other 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 interfering with your estate plan.

When Is it OK to Use Survivorship Accounts?

For people of modest means who either have no Will or else have a Will that contains no estate tax or trust planning, survivorship accounts are often fine. In addition, many people have household checking accounts or other accounts that are intended to pass outright to the surviving account holder, 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), not the person(s) named in the account holder's Will (including the Executor, who may need the funds to pay estate debts). In most other cases, survivorship accounts should be avoided.

How Do I Avoid Survivorship Accounts and How Should I Title My 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," "POD," "TOD" or as "Trustee" for another individual. Instead, your accounts should simply be registered as "Tenants in Common" or as "Joint Tenants Without Right of Survivorship," or in your individual name without any indication of a survivorship right. If you want another person to help you with your account, that person can be added to your account as a "co-signer" and the account can be labeled a "convenience account" (but it should not have a survivorship feature).

Do I 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 most survivorship and POD arrangements. 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 as "trustee" for one or more named individuals; to revise those accounts you must sign new account agreements.*

SUMMARY

DO NOT USE (if creating trusts and/or doing tax planning in your Will and/or if you want your Will to control the disposition of the account upon your death)	OK TO USE
<ol style="list-style-type: none"> 1. Joint Tenants With Right of Survivorship (JTWROS), 2. Joint Tenants (Jt. Ten.), 3. Pay On Death (POD), 4. Transfer on Death (TOD), 5. [Your Name] as "Trustee for" one or more person(s) as beneficiary/ies 	<ol style="list-style-type: none"> 1. Individual account (<i>without</i> POD or TOD) <p>If someone else will be on the account also, use</p> <ol style="list-style-type: none"> 2. Joint Tenants <u>Without</u> Right of Survivorship, or 3. Multi-Party Account <u>Without</u> Right of Survivorship, or 4. Tenants in Common (TIC), or 5. A "convenience account" with someone as a "co-signer" on your account or with someone listed on your account as your agent under a Durable Power of Attorney (but <i>without</i> right of survivorship)

(Date)

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 or multi-party with right of survivorship. For estate planning purposes, it is important that the referenced account not include any right of survivorship. Rather, on my death, I intend that my interest in the account should pass as part of my estate (pursuant to my Will).

Therefore, this letter constitutes notice and a written order to you that the referenced account shall ***not*** pass to the surviving party upon my death pursuant to a right of survivorship. Please immediately update your records to reflect this change.

[your name]