

JOINT ACCOUNT LITIGATION IN TEXAS

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Introduction

- There are many reasons that parties may want to create joint accounts.
- There are many different kinds of accounts: accounts with or without rights of survivorship, P.O.D. accounts, trust accounts, CDs, etc.
- Because these accounts allow multiple parties to withdraw funds and can divert the funds contained in them to beneficiaries outside of a payee's probate estate, this is a common area for litigation.

Introduction

- This presentation will address common issues that arise in account litigation:
- Ownership of funds in accounts;
- What is necessary to create rights of survivorship;
- Burden to establish such an account;
- Lost account documents;
- Banks' Rights and Defenses;
- Claims against banks for improperly setting up accounts.

Ownership of Funds

- Generally, any party to a joint account has the authority to withdraw or encumber the account.
- Third parties can rely on the party's authority.
- Disputes can arise between parties to an account regarding the right to withdraw money from the account.
- A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.
- Unauthorized withdrawal can be a crime.

Ownership Of Funds

- In *Nipp v. Broumley*, the case involved whether an estate or the son of the decedent owned funds that were in CDs that the son withdrew days before the decedent's death. 285 S.W.3d 552 (Tex. App.—Waco 2009, no pet.).
- The mother had deposited all of the funds in the CDs.
- The court reversed the trial court's judgment awarding the funds to the son and rendered that the funds from the CDs were the property of the estate because the son was not able to present sufficient evidence of a gift from the mother to the son.

Rights of Survivorship

- Parties can own property in either joint tenancy or in tenancy in common.
- A joint tenancy carries rights of survivorship, whereas tenancy in common does not.
- The parties to a joint account may make a valid and enforceable written agreement that funds deposited by either of them will belong to the survivor.
- Individual account payee can create P.O.D. or trust account beneficiary.
- But, there has historically been “considerable confusion” regarding the effect of particular agreements.

Rights of Survivorship

- To assist with the confusion regarding survivorship accounts, the Texas Legislature has enacted statutes that dictate the type of language that is required to create survivorship rights.
- Statutory requirements for the creation of a right of survivorship to an account are that there be (1) a written agreement, (2) signed by the decedent, (3) which makes his interest “survive” to the other party.

Rights of Survivorship

- An agreement confers a right of survivorship if the agreement states that on the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate.
- Similar language for P.O.D. and Trust accounts.
- A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

Rights of Survivorship

- In 1993, the Texas Legislature created a “Uniform Single-Party or Multiple-Party Account Form.” Texas Estate Code Section 113.052.
- The statute provides form language to establish particular types of accounts, but it also states that a financial institution may vary the format of the form and “make disclosures in the account agreement or in any other form which adequately discloses the information provided in this section.”

Rights of Survivorship

- *Stauffer v. Henderson*, 801 S.W.2d 858 (Tex.1990).
- Section 439 provides the exclusive means for creating a right of survivorship in joint accounts.
- There is a necessity of a written agreement signed by the decedent to create a right of survivorship.
- If the agreement is unambiguous and complete, parol evidence is inadmissible to establish the intent of the parties.

Rights of Survivorship

- What if account is ambiguous?
- One court has interpreted the *Henderson* opinion as abrogating all basic contract principles, the language of an account agreement either does or does not create a right of survivorship as a matter of law, and that a determination of ambiguity is not allowed.

Rights of Survivorship

- Other courts seem to allow extrinsic evidence in to interpret an ambiguous account agreement.
- One court limited its holding to situations where the intent to create a survivorship account is unambiguous, but what funds are subject to the survivorship agreement is ambiguous.

Rights of Survivorship

- An account signature card, being a type of contract, must be “read, considered, and construed in its entirety in keeping with the general principles of contract interpretation.”
- Courts must read all parts of a contract together.
- For example, one court scrutinized an account signature card on which a box was checked for a “Multiple-Party Account-With Survivorship,” and where the definition for this term was provided on a second page, the court held the combined language from the two pages established a joint account including a right of survivorship.

Rights of Survivorship

- Moreover, when the signature card incorporates a deposit agreement, that agreement is also a part of the deposit contract between the parties.
- If an account signature card references and incorporates another document, that document must also be reviewed to determine whether appropriate rights of survivorship language exists.

Rights of Survivorship

- Where a decedent fails to sign the required deposit agreement, the decedent never creates a survivorship account.
- Even if the decedent signs the signature card, if she does not sign in a space provided next to the survivorship option, the account will not be a survivorship account.
- But a party does not need to sign a new account agreement every time an account is renewed.

Rights of Survivorship

- What constitutes a signature is not a very strict test.
- Absent the appropriate language and a signature, the funds in an account will not transfer to the surviving member of the account, but will transfer to the original payee's probate estate.

Rights of Survivorship

- Agent under power of attorney historically could create new accounts.
- New power of attorney act provisions now allow an agent to change beneficiary designations and survivorship effect on certain conditions.

Rights of Survivorship

- To revoke a survivorship account, a party needs to execute a subsequent written agreement or dispose of the assets covered by the agreement.
- To amend the agreement (add new party or beneficiary), the original payee must sign a change order.

Rights of Survivorship: Spouses

- Estate Code provides that spouses may agree between themselves that all or part of their community property, then existing or to be acquired, becomes the property of the surviving spouse on the death of a spouse.
- *Holmes v. Beatty*, 290 S.W.3d 852, 855 (Tex. 2009): the Court found that a “Joint (WROS),” “joint tenancy,” or “JT TEN” designation on an account was sufficient to create rights of survivorship in community property.

Rights of Survivorship: Burden of Proof

- Funds in an account that were owned by a decedent are presumed to be assets of the decedent's estate, and a party asserting a right to funds from an account has the burden to prove otherwise by producing a valid and enforceable agreement.
- Preponderance of the evidence standard
- But lost document may require clear and convincing evidence standard

Payment of Funds

- Bank should follow account agreement and pay funds to surviving party or POD beneficiary.
- Potential liability for paying decedent's estate representative.
- Exception: Texas Estate Code Section 113.252.

Lost Documents

- The rule excluding extrinsic evidence to prove the rights of survivorship effect of a bank agreement may not apply where the agreement is a lost document.
- In *Bank of America, N.A. v. Haag*, a depositor created a trust account for his son's education, but the signature card was lost. 37 S.W.3d 55, 58 (Tex. App.—San Antonio 2000, no writ).

Lost Documents

- Later, his son withdrew all of the money in the account without the depositor's permission.
- The depositor testified that he signed a signature card and testified to its contents, i.e., he was the only one on the signature card and that his son was not allowed to withdraw the money.
- The trial court awarded judgment to the depositor and against the bank.

Lost Documents

- The court stated: “When a written, signed contract is lost or destroyed such that the party seeking to prove or enforce the agreement is unable to produce the written agreement in court, the existence and terms of the written contract may be shown by clear and convincing parol evidence.”
- Based on the plaintiff’s testimony, the court affirmed the judgment.
- Important: Parol evidence must prove up the necessary language in, and signature of, a survivorship account agreement. Missing documents are an exception to the statute of frauds for real estate transactions.

Banks Right To Offset

- Banks have a right to offset and apply a depositor's general deposit to an indebtedness the depositor owes the bank on another account.
- True for joint accounts as well.
- Trust accounts add an additional wrinkle to this analysis.
- If the account is a revocable, tentative trust, the bank can reach the funds in the account.

Safe Harbor Provision

- A financial institution is not required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.
- Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded.
- Payment by a bank discharges the bank from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors.

Other Potential Defenses

- A financial institution may also assert:
- Statute of repose in Texas Business & Commerce Code § 4.406;
- Commercially reasonable security procedure defense under Texas Business & Commerce Code § 4A.202;
- Employer's responsibility for fraudulent indorsement by employee under Business and Commerce Code § 3.405; and
- Customer's failure to use ordinary care under Business and Commerce Code § 3.406.

Claims Against Bank

- **Breach of Contract:** Whether a bank has breached a depository agreement is controlled by the language of the depository agreement.
- For example, account agreements normally state that the bank has the right to withhold payment of funds from the accounts if it has oral or written notice of a claim against the accounts.

Claims Against Bank For Not Paying Funds

- There are other potential claims that may be asserted:
- Negligence
- Tortious Interference with Inheritance
- Conversion
- Breach of Fiduciary Duty
- Aiding and Abetting, Knowing Participation, and Conspiracy to Breach Fiduciary Duty
- Money Had and Received/Unjust Enrichment
- Bad Faith

Liability For Improperly Creating Accounts

- In *A.G. Edwards & Sons Inc. v. Maria Alicia Beyer*, the Court held that a customer can potentially raise a claim against a financial institution for failing to create a JTROS account.
- After a bank representative recommended that a father and daughter create a new JTROS account, they delivered all of the documentation necessary to create such an account.

Liability For Improperly Creating Accounts

- The Bank lost the documentation and the father fell into a coma and died before new documents could be signed.
- The Bank paid the funds, which it held in an older account that was not a JTROS account, to the father's estate.
- The daughter sued the Bank for conversion, negligence, fraud, breach of contract, and breach of fiduciary duty.
- The jury found for the daughter and awarded her damages and attorney's fees, and the Bank appealed.

Liability For Improperly Creating Accounts

- The Texas Supreme Court stated: “Section 439(a) does not govern [the daughter’s] claim against [the bank]. [The Bank’s] failure to take sufficient steps to create the JTWROS account necessary to establish [the daughter’s] right of survivorship is a breach of a separate duty owed to [the daughter].”
- The Court did not specify what “duty” it was referring to but allowed extrinsic evidence of the bank's failure to create the account.

Liability For Improperly Creating Accounts

- In *Clark v. Wells Fargo Bank, N.A.*, the court of appeals held that a bank did not tortiously interfere with inheritance rights or act with negligence with respect to CDs.
- The court distinguished *A.G. Edwards* because the claimants did not have any contractual relationship with the bank: “There is no evidence that they ever participated in the opening of the CDs or, as in *Beyer*, jointly executed any documents with Williams that would have given them any rights to the funds at issue.”

Liability For Improperly Creating Accounts

- In *Koonce v. First Victoria Nat'l Bank*, the court of appeals reversed a summary judgment in part and found that there was a fact issue as to whether a bank breached a contractual duty to set up a POD account where a document was signed and executed.
- Court, however, denied negligence and DTPA claims.

Investment Account Issues

- Self-directed accounts create limited duties: duties to safe-keep funds and to transfer upon direction by account holder.
- Texas courts enforce account agreements.
- Discretionary accounts create fiduciary duties.

Investment Account Issues

- In *Anton v. Merrill Lynch*, 36 S.W.3d 251, (Tex. App.—Austin 2001, pet. denied), the court described these duties as:
- (1) manage the account in a manner directly comporting with the needs and objectives of the customer as stated in the authorization papers or as apparent from the customer's investment and trading history; (2) keep informed regarding the changes in the market which affect his customer's interest and act responsively to protect those interests; (3) keep his customer informed as to each completed transaction; and (4) explain forthrightly the practical impact and potential risks of the course of dealing in which the broker is engaged.

Slayer Rule

- History of slayer rule.
- Statutory and common law basis.
- Financial institutions should be aware and freeze accounts until issues can be resolved.

Conclusion

- Joint accounts can spawn many different types of disputes and litigation.
- These accounts often create disputes between family members with banks in the middle.
- I hope that this presentation was helpful in pointing out many of the important issues that arise in this area.