Multi-Party Accounts in Texas

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Multi-Party Accounts in Texas

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1. Introduction.

Multi-party accounts are the estate planner’s nemesis and the litigator’s friend. Estate planners hate them because they can be the undoing of a well-conceived plan. How frustrating can it be to see a perfectly good credit shelter trust plan go up in smoke because 75% of the marital assets are held with right of survivorship? On the other hand, litigators love them because, despite the efforts of the legislature and the courts alike, there appears to be no end to litigation over the rightful owner of money and property in these accounts.

Of course, it is myopic to view multi-party accounts just from the perspective of lawyers, whether the lawyers are “writers” or “fighters.” The real key, the thing that makes this a topic we still write about and discuss, is that clients love ‘em. Despite all our preaching and despite all the litigation and problems they cause, lay people create multi-party accounts all the time with little or no thought (or, at least, little or no understanding) of the consequences.

It is just and right, then, for us to take a closer look at multi-party accounts. This paper begins with an historical perspective. Next, it covers the current statutory framework in Texas regarding multi-party accounts. Next, it discusses recent case law developments, beginning with the leading case on survivorship issues, Stauffer v. Henderson, 801 S. W. 2d 858 (Tex. 1990). Finally, it examines the signature cards and account agreements used in the summer of 2000 by the five largest banks in Texas for quirks which might affect the creation of survivorship accounts.

The author wishes to thank Professor Thomas M. Featherston, Jr., of the Baylor University School of Law for his help on this paper. The author also wishes to thank Frost National Bank, Bank One, Texas, N. A., Bank of America, Chase Bank of Texas, N. A., and Wells Fargo Bank for providing their signature cards and account agreements for this paper. Finally, the author wishes to thank S. Joyce Crivellari and Glen Rives of Barnes & Karisch, P. C., for their help with this paper.
2. **An Historical Perspective.**

If two or more persons jointly own a piece of property and one of the joint owners dies, does the property pass according to the deceased owner’s will (or by intestacy if he or she has no will) or does the deceased owner’s interest in the property pass to the other co-owners? The form of ownership and applicable state law provides the answer to this question. In general, if title passes to the other co-owners, the property is subject to a “right of survivorship,” and title passes by “nontestamentary transfer” – free of the probate process.

At common law, a conveyance of land to two or more persons presumptively created a joint tenancy – with right of survivorship – rather than a tenancy in common – with no right of survivorship. Many states, including Texas, passed statutes either reversing the presumption or abolishing joint tenancies with right of survivorship entirely. Texas’s first statute on the subject – the forerunner to Section 46 of the Texas Probate Code – was enacted in 1848, and it opted for abolishing joint tenancy with right of survivorship rather than merely reversing the presumption. The Texas Supreme Court in 1889 announced: “The distinction which existed at common law between estates held by joint tenants, coparceners, and tenants in common, do not obtain in this state. The holders of such estates are tenants in common without regard to the manner in which such estates are acquired.” *Peterson v. Fowler*, 73 Tex. 524, 11 S. W. 534 (1889).

Then came *Chandler v. Kountze*, 130 S. W. 2d 327 (Tex. Civ App. – Galveston 1939, writ ref’d), in 1939, which permitted the creation of a joint tenancy with right of survivorship where the conveyance was expressly made to two persons “as joint tenants with right of survivorship.” The rationale of the *Chandler* case was that, while the legislature abolished joint tenancies with rights of survivorship that were created by operation of law, it did not prohibit parties to a contract from agreeing to create that form of ownership.

This result was codified into Section 46 of the new Texas Probate Code in 1955, which prohibited creation of joint tenancies with rights of survivorship by operation of law but permitted joint owners to agree in writing to create such estates.

Section 46 of the Probate Code proved to be inadequate in dealing with the explosive demand for multi-party survivorship accounts. There was much litigation over whether the parties to joint accounts intended to create survivorship rights and in fact did create survivorship rights. Finally, in 1979 the Texas Legislature enacted Chapter XI of the Texas Probate Code, entitled “Nontestamentary Transfers.” These statutes, which have been amended several times since 1979, established ownership rules for such accounts and provided “safe harbor” language for persons wishing to create survivorship accounts.

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Meanwhile, another quirk of Texas law was having a dramatic effect on the development of the law in this state regarding rights of survivorship. The most common type of joint ownership with right of survivorship in other states was between spouses. Joint tenancy with right of survivorship between spouses is called “tenancy by the entireties” in many states. Obviously, many spouses would like the property they hold jointly with their spouses to pass to the surviving spouse free of probate, so this form of ownership is quite attractive. For most of the 20th century, however, this type of ownership between spouses was effectively blocked in Texas because of our community property system. In the leading case of *Hilley v. Hilley*, 161 Tex. 569, 342 S. W. 2d 565 (1961), the Texas Supreme Court held that a husband and wife could not create a valid survivorship estate with community property unless they first partitioned the community property into separate property by written partition agreement.

The *Hilley* result did not sit well with the Texas legislature. There were increasing demands for effective right of survivorship ownership between spouses in Texas – especially with respect to bank and brokerage accounts – and constituents put pressure on their legislators to fix *Hilley*. In 1987, Section 15 of Article XVI of the Texas Constitution was amended to provide that “spouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse.” In 1989, Sections 451 – 462 of the Texas Probate Code were enacted (Part 3 of Chapter XI) to provide a statutory framework for survivorship agreements involving community property. Note, however, that agreements between spouses that their community property be held subject to a right of survivorship technically does not create “joint tenancy with right of survivorship” property; rather, it creates a Texas-only hybrid called “community property with right of survivorship.”

As will be discussed below, the statutory framework – Section 46 and Sections 436 – 462 of the Texas Probate Code – has made the law regarding multi-party accounts clearer in Texas, but it has not stopped the flood of litigation over such accounts.


    a. Section 46. Texas’s original statute regarding joint tenancies and rights of survivorship is still on the books. Section 46 of the Texas Probate Code is short and sweet and makes three basic points:

        i. Presumption: No Survivorship Right is Established. The first sentence of Section 46 reads:

        If two or more persons hold an interest in property jointly, and one joint owner dies before severance, the interest of the decedent in the joint estate shall not survive to the remaining joint owner or owners but shall pass by will or intestacy from the decedent as if the decedent’s interest had been severed.

        This is straightforward. If property is conveyed to two persons and the conveyance is
silent as to the form of ownership, title is taken not as joint tenants with right of survivorship but as tenants in common. It is important to remember this default rule – it takes something specific in the conveyance or agreement to create a right of survivorship, and if the specific language is not there, then there’s no right of survivorship.

ii. Survivorship May Be Created By Written Agreement. The second sentence of Section 46 reads:

The joint owners may agree in writing, however, that the interest of any joint owner who dies shall survive to the surviving joint owner or owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.

To overcome the presumption of no right of survivorship found in Section 46(a), the joint owners must agree in writing that the interest of a deceased joint owner will pass to the other joint owners by survivorship. Note that, while the agreement regarding survivorship must be in writing, the statute does not say whether or not all – or any – of the joint owners must sign the written instrument creating the survivorship right. In Chandler v. Kountze, 130 S. W. 2d 327 (Tex. Civ. App. 1939, writ ref’d), the acceptance of a deed by the co-owners as joint tenants with right of survivorship was held to create a survivorship right. In that case, the court does not make clear whether or not the grantees on the deeds (who accepted title as joint tenants with right of survivorship) signed the deeds; common practice at the time was that grantees did not sign deeds. Thus, Chandler may be some authority for the proposition that joint tenants need not sign the written instrument creating the right of survivorship, as long as a written instrument exists. However, the Chandler case was decided in 1939, before the adoption of Section 46 of the Probate Code and at a time when the predecessor statute made no provision for overriding the presumption against survivorship.

iii. Section 46 Does Not Apply to Community Property. Section 46(b) reads:

Subsection (a) does not apply to agreements between spouses regarding their community property. Agreement between spouses regarding rights of survivorship in community property are governed by Part 3 of Chapter XI of this code [§§451 – 462].

Thus, while Section 46 continues to offer an alternative – if antiquated and ambiguous – way to create survivorship rights between nonspouses and between spouses as to separate property, it is not available as an alternative to Sections 451 – 462 to create survivorship rights in community property.

b. Sections 436 – 449 (Chapter XI, Part 1). Originally enacted in 1979 and amended several times since then, Chapter XI, Part 1 of the Texas Probate Code provides a much
A more detailed and thorough treatment of the subject of multi-party accounts at financial institutions.

i. **Applicability: “Accounts” at “Financial Institutions.”** Part 1 of Chapter XI applies to accounts at financial institutions. An “account” is “a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.” Tex. Prob. Code Ann. §436(1). A “financial institution” is:

[A]n organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, credit unions, and brokerage firms that deal in the sales and purchases of stocks, bonds, and other types of securities.


While brokerage firms are considered “financial institutions,” the only accounts which are governed by Part 1 of Chapter XI are “contracts of deposit of funds.” Does this mean that these statutes apply to securities held in street name at a brokerage firm? The correct answer is probably not, because these are not “contracts of deposit of funds.” Rather, securities and accounts containing securities probably should be governed by Texas Probate Code §450, discussed below. However, one Texas case on the subject casts doubt on that outcome. The court in *In re Estate of Dillard*, 98 S. W. 3d 386 (Tex. App. – Amarillo 2003, writ denied) applied these bank account rules to a Merrill Lynch account without stating in the opinion whether or not this was a brokerage account and without discussing the issue of whether or not these rules apply to brokerage accounts. The opinion states that the decedent placed “more than a million dollars of property” in the account, 98 S. W. 3d at 398 (footnote 4), which is some indication that it was not a demand deposit account of the type described in Section 436(1). The author spoke to one of the attorneys who handled the Dillard case and was told that no one raised the issue that Part 1 of Chapter XI may not apply; rather, everyone assumed that the rules applied since “brokerage firms” are specifically mentioned in the definition of “financial institution” in Section 436(3). In 1997, the legislature enacted the “Uniform Transfer on Death Security Registration Act” that would have specifically addressed survivorship rights in securities. Despite the efforts of probate lawyers’ groups, the Governor signed the bill into law. After the bill became law but before the end of the 1997 legislative session, Governor Bush’s staff had a change of heart and, with the Governor’s backing, the uniform act was repealed before its effective date and “securities” and “accounts at financial institutions” were added to the list of permitted nontestamentary transfers in Section 450 of the Probate Code (discussed in more detail below). Therefore, conventional wisdom is that Part 1 of Chapter XI (Sections 436 – 449) do not govern securities held in brokerage accounts; rather, those arrangements are governed by Section 46 and/or Section 450.
ii. **Rules Govern Ownership, Not Withdrawal Rights.** Largely as a salve for financial institutions, and admittedly as a recognition of the reality of the situation, the provisions of Sections 438 – 440 of the Probate Code concerning beneficial ownership between parties to accounts, pay-on-death (P.O.D.) beneficiaries and their creditors “are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.” Tex. Prob. Code Ann. §437. Sections 437 – 449 are full of protections of financial institutions. For example, in *MBank Corpus Christi, N. A. v. Shiner*, 840 S. W. 2d 724 (Tex. App. – Corpus Christi 1992, no writ), the bank was held to be not liable to the estate for paying money on deposit in a non-survivorship account to a joint account holder after the death of the depositor.

As a result, conflicts regarding whether an account is a survivorship account or not almost always involve the surviving account holder and the estate of the deceased account holder and not financial institutions. This makes collectability of a judgment against a surviving account holder an issue, since the money at issue usually has been withdrawn from the financial institution before the litigation is commenced.

iii. **Right of Survivorship.** Section 439 is faithful to the presumption created in Section 46 that joint ownership of an account does not mean that the account is a survivorship account unless the parties otherwise expressly agree. Section 439 goes much further than Section 46, however, by setting forth the requirements for a survivorship agreement regarding multi-party accounts, by listing magic words or phrases which can be used to create such accounts and by providing for the nontestamentary transfer of funds held in pay-on-death (P. O. D.) and trust accounts.

1. **Requirements for Survivorship Agreement.** Under Section 439(a), an agreement to make an account a survivorship account must be:

   (a) In writing (same as Section 46); and

   (b) Signed by the party who dies (more specific than Section 46).

This means that an agreement signed by just one of the account holders can create a right of survivorship if the person who signs the agreement is the person who dies. In most cases, the written agreement which meets this requirement will be the signature card, the depository agreement with the bank, or some combination of the two. However, according to a 1995 court of appeals decision, any written agreement regarding the accounts may suffice, even if it is not in the bank’s custody. *Cweren v. Danziger*, 923 S. W. 2d 641 (Tex. App. – Houston [1st Dist.] 1995, no writ).

2. **Magic Words.** Section 439(a) provides the ultimate guidepost for financial institutions and their customers who wish to create survivorship accounts – it says
exactly what language is sufficient to create such an account:

Nothwithstanding any other law, an agreement is sufficient to confer an absolute right of survivorship on parties to a joint account under this subsection if the agreement states in substantially the following form: “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.”

[Emphasis added] One would think that this provision, enacted in 1987, would effectively end all disputes regarding survivorship of multi-party accounts, since financial institutions obviously would use this safe-harbor language in their account agreements. One would be wrong, however, as explained below.

iv. Pay-on-Death (P. O. D.) Accounts. Often a depositor does not wish to list someone as a co-owner, or joint tenant, of an account during the depositor’s lifetime, but nevertheless wants the funds remaining in the account to be paid to someone else as a non-testamentary transfer at his or her death. Section 439(b) expressly provides for this type of “pay-on-death,” or P. O. D., account. In order to be a valid P. O. D. account, the “original payee or payees” must sign a written agreement creating the P. O. D. status. Some Texas courts have applied the construction rules established in Stauffer v. Henderson, 801 S. W. 2d 858 (Tex. 1990), for joint accounts to P. O. D. account cases (see, e.g., Parker v. JP Morgan Chase Bank, 95 S. W. 3d 428 (Tex. App. – Houston [1st Dist.] 2002, no writ), but another court was more lenient in allowing extrinsic evidence in a P. O. D. case (see Cummings v. Cummings, 923 S. W. 2d 132 (Tex. App. – San Antonio 1996, writ denied).

v. Trust Accounts. Another way a depositor can provide for the non-testamentary transfer of amounts on deposit at the depositor’s death is by creating a “trust account.” These are really a sort of “poor-man’s” trust (often called “Totten trusts”) in which the depositor is the only one with signature authority on the account, but on the depositor’s death the assets in the account belong to a person listed as the beneficiary of the trust. Section 439(c) expressly provides for this type of account. To be a “trust account” under the definition found in Texas Probate Code §436(14), these four requirements must be met: (1) the account must be in the name of one or more parties as trustee for one or more beneficiaries; (2) the trust must be established by the form of the account and the deposit agreement with the financial institution; (3) there must be no subject of the trust other than the sums on deposit on account; and (4) the account must not be a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account. See Cweren v. Danziger, 923 S.W.2d 641, 644 (Tex.App.-Houston [1st Dist.] 1995, no writ); Isbell v. Williams, 705 S.W.2d 252, 255 (Tex.App.-Texarkana 1986, writ ref’d n.r.e.); Otto v. Klement, 656 S.W.2d 678, 682 (Tex.App.-Amarillo 1983, writ ref’d n.r.e.); and Stogner v. Richeson, 52 S. W. 3d 903, 906 (Tex. App. – Fort Worth 2001, writ denied).

vi. Convenience Accounts. In 1993, the legislature added Section 439A to
the Probate Code. This section permits a depositor to name a co-signer on his or her account without giving the co-signer ownership rights before or after the depositor’s death. In theory, this form of account could fill a much-needed void – a way for elderly persons to allow a loved one to help them pay bills and handle other bank transactions without intentionally or unintentionally giving the loved one any ownership interest. In practice, this type of account is unavailable at many banks.

In 2003, the Legislature amended the law regarding convenience accounts to make them even more attractive. First, the statute was amended to make clear that a depositor can name more than one convenience signer on the account and that a multi-party account (for example, an account in the name of a husband and wife) can name one or more convenience signers. Apparently, some banks to the requirement of Section 438A that “the” party could name “a” convenience signer literally and did not permit multiple account-holders and multiple convenience signers. The 2003 change makes it clear that depositors do not have to single out one convenience signer but may name more than one.

A second change in 2003 permits other types of persons with signing authority on multi-party accounts to pledge the account to secure their debts. However, convenience signers cannot pledge the account. Thus, an elderly person who makes his daughter a joint tenant with right of survivorship on his bank account could wake up to discover that the amounts on deposit in the account are pledged to secure the daughter’s debts to the bank, while the same person who makes his daughter a convenience signer faces no such fear.

vii. The Uniform Single-Party or Multiple-Party Account Form. The legislature promulgated a “uniform single-party or multiple-party account form” when it enacted Section 439A in 1993. This form, as amended in 2003, is set forth below. It gives easy-to-understand descriptions of each type of account:

**UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT SELECTION FORM NOTICE:**
The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts.

Select one of the following accounts by placing your initials next to the account selected:

___ (1) SINGLE-PARTY ACCOUNT WITHOUT "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the name of the party:

______________________________

___ (2) SINGLE-PARTY ACCOUNT WITH "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate.
Enter the name of the party:

__________________________________

Enter the name or names of the P.O.D. beneficiaries:

__________________________________
__________________________________
__________________________________

___ (3) MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the names of the parties:

__________________________________
__________________________________
__________________________________

___ (4) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties.

Enter the names of the parties:

__________________________________
__________________________________

___ (5) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND P.O.D. (PAYABLE ON DEATH) DESIGNATION. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

Enter the names of the parties:

__________________________________
__________________________________

Enter the name or names of the P.O.D. beneficiaries:

__________________________________
__________________________________
(6) CONVENIENCE ACCOUNT. The parties to the account own the account. One or more convenience signers to the account may make account transactions for a party. A convenience signer does not own the account. On the death of the last surviving party, ownership of the account passes as a part of the last surviving party's estate under the last surviving party's will or by intestacy. The financial institution may pay funds in the account to a convenience signer before the financial institution receives notice of the death of the last surviving party. The payment to a convenience signer does not affect the parties' ownership of the account.

Enter the names of the parties:
______________________________
______________________________

Enter the names of the convenience signers:
______________________________
______________________________

(7) TRUST ACCOUNT. The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

Enter the name or names of the trustees:
______________________________
______________________________

Enter the name or names of the beneficiaries:
______________________________

Note that the account titles and descriptions used in the statutory form in Section 439A are neutral as to community property or separate property. Rather than calling an account with two or more persons with survivorship rights a “joint tenancy with right of survivorship,” which spouses still theoretically cannot create because of the rule in Hilley v. Hilley, 161 Tex. 569, 342 S. W. 2d 565 (1961), or having a separate account for spouses with community property called “community property with right of survivorship” (see the discussion of Sections 451 – 462 below), the legislature wisely and simply sidestepped the issue by providing for the creation of a “multiple-party account with right of survivorship.” Thus, if the statutory form is used properly, a right of survivorship can be created between spouses with community property or between others with non-community property without any dispute over the “joint tenancy” nomenclature.
Section 439A(a) provides that deposit agreements containing provisions substantially the same as in the statutory form “establishes the type of account selected by a party.” Thus, if a bank uses the statutory form, the form and Section 439A establish the type of account, not Section 439(a). A deposit agreement that does not contain provisions substantially the same as the statutory form “is governed by the provisions of this chapter [Chapter XI of the Probate Code] applicable to the account that most nearly conforms to the depositor’s intent.” Tex. Prob. Code Ann. §439A(a).

Again, it is clear that the legislature is just begging financial institutions and their customers to use this form to assure that the customers’ intentions are clear regarding survivorship rights. To its credit, the Texas Bankers Association apparently recommends the use of this form for its member institutions. Unfortunately, as will be seen below, bank use of this form is far from universal, and multi-party account cases continue to end up in the courts.

viii. Account Ownership While All Account Holders Are Alive. Most disputes over ownership of funds in multi-party accounts arise after the death of one of the account holders. Section 438 addresses another important issue: who owns the money in multi-party accounts while all account holders are alive? Under this section:

(1) Joint Accounts. Money in joint accounts belongs to the parties (account holders) in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. Thus, in the typical case, if Aunt Suzy has contributed 100% of the money to an account on which niece Kate is also an account holder, during Aunt Suzy’s lifetime all of the money in the account belongs to her, regardless of whether or not the account is a survivorship account.

(2) P. O. D. Accounts. Money in a pay-on-death (P. O. D.) account belongs to the original payee (depositor) during the payee’s lifetime and not to the P. O. D. payee or payees. If there are two or more original payees (depositors), ownership rights during their lifetimes are governed by the rules applicable to joint accounts (described above).

(3) Trust Accounts. Money in a “trust account” belongs beneficially to the trustee during the trustee’s lifetime, unless a contrary intent is manifested by the terms of the account or deposit agreement or there is clear and convincing evidence of an irrevocable trust. If there is an irrevocable trust, the account belongs beneficially to the beneficiary. If there is no irrevocable trust but more than one “trustee,” then ownership rights during the “trustees’” lifetimes are governed by the rules applicable to joint accounts. This rule is a recognition that most depositors creating “Totten trust”-type accounts intend for themselves to be owners of the funds while they are alive even though the account is called a trust account.

What happens if there are multiple trustees of a trust account and only one of the trustees dies? That fact situation was presented in Stegall v. Oadra, 868 S. W. 2d 290 (Tex. 1993). There, a son put money in a “revocable trust” account with himself and his mother listed as
trustees and various other persons listed as beneficiaries. The son died. The court of appeals applied Section 438 to say that the money in the account belonged solely to the surviving trustee – the son’s mother – rather than to the son’s estate or the beneficiaries. The Supreme Court, however, held that the money did not survive to the mother (as surviving trustee) or to the beneficiaries (since one trustee remained alive); rather, the money passed as part of the son’s estate.

ix. Account Funds Available to Pay Claims Against Decedent’s Estate.

Just because funds in an account may pass from the decedent to a joint account holder or P. O. D. beneficiary does not mean that the funds are not subject to the creditors of the decedent. Section 442 of the Probate Code provides that the survivorship rights are not effective against the estate of a deceased account holder “to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient.” Note that the survivorship account assets are liable only if the other assets of the estate (presumably this means the probate estate) are insufficient. Thus, funds in survivorship accounts enjoy a privileged status with respect to creditors’ claims.

Section 442 provides that the joint account holder or P. O. D. beneficiary who receives payment from a multi-party account after the death of the deceased account holder is “liable to account” to the personal representative “for amounts the decedent owned beneficially immediately before his death” to the extent necessary to discharge the claims and allowances. As a protection to the joint account holder or P. O. D. beneficiary who has withdrawn funds, the personal representative is not permitted to institute a suit to assert this liability unless a creditor, the surviving spouse or a person acting for a minor child has made a “written demand” on the personal representative, and the personal representative must commence the suit no later than two years following the death of the decedent. It is unclear whether the “written demand” required by Section 442 must be a demand specifically to pursue the funds which passed by survivorship or merely a demand to be paid from the estate. There are no reported cases on this subject. Professor Thomas M. Featherston, Jr., of the Baylor University School of Law believes that the statute means a specific demand for survivorship funds, not just a claim or demand for allowance against the estate. Thus, one can imagine a personal representative telling a creditor that there are insufficient assets in the probate estate to pay all creditors’ claims, but there may be funds in survivorship accounts. The creditor presumably then would make a written demand that the personal representative pursue survivorship account assets, enabling the personal representative to bring the suit described in Section 442. The two-year deadline for suits of this type could present a problem in a complex estate, since the personal representative and creditors may not know if the probate estate will be insufficient to satisfy all claims until after the two-year period expires. Also, Section 442 fails to make clear what happens to any funds taken from a survivorship account which are in excess of creditors’ claims and allowances. Surely any excess funds should be returned to the joint account holder or P. O. D. beneficiary, but Section 442 does not make this clear.

The liability of nonprobate assets for claims against a decedent’s estate is a thorny issue.
Section 442 provides some clarity with respect to multi-party accounts, but there is no comprehensive treatment of the issue in Texas statutes, especially as to the liability of assets in revocable trusts for estate claims and allowances. Of course, if the same person or group of persons is the recipient of all probate and nonprobate assets in the same proportions, then the issue does not arise. On the other hand, if a decedent had a valid multi-party account with right of survivorship with one person, a revocable trust leaving trust property to a second person, a will leaving property to another person, and debts which may exceed the value of probate assets, the personal representative of the decedent’s estate may be faced with this prospect:

- First, all probate estate assets must be exhausted (since Section 442 permits resorting to survivorship assets only if “other assets of the estate are insufficient”).

- Second, assets in multi-party accounts which can be recovered under Section 442 must be exhausted (since there is no statute similar to Section 442 applicable to revocable trusts which gives the personal representative a right to go against trust assets, although clearly they are subject to the decedent’s debts).

- Third, creditors must be advised to pursue claims against the revocable trust or its beneficiaries directly since there is no statutory basis for the personal representative of a decedent’s estate to pursue revocable trust assets to satisfy claims.

Probate lawyer groups involved in the legislative process have considered a fix to this problem for some time, but none seems likely to be proposed in the 2001 legislative session.

For a further discussion of the liability of nonprobate assets such as survivorship property for a decedent’s debts, see Thomas M. Featherston, Jr., and Lynda S. Still, “Marital Liability in Texas . . . Till Death, Divorce, or Bankruptcy Do They Part,” 44 Baylor Law Review 1 (1992).

While the probate estate may have to be exhausted before creditors’ claims can affect funds in a survivorship account, those funds are liable for payment of the share of estate taxes apportioned to them under Tex. Prob. Code Ann. §322A, unless the deceased account holder overrides the statutory apportionment scheme by including a contrary provision in his or her will.

c. Section 450 (Chapter XI, Part 2). Section 450 of the Probate Code was enacted in 1979 at the same time as Sections 436 – 449, and it seems clear that Section 450 was intended to cover nontestamentary transfers other than multi-party accounts at financial institutions. Later amendments (discussed below) muddy the waters a bit.

i. Provisions Covered. Section 450 contains a laundry list of contract types (discussed below) and provides that any of the following nontestamentary disposition provisions are valid in those contract types:
In 1997, the legislature passed, and Governor Bush signed into law, the “Uniform Transfer on Death Security Registration Act.” The uniform act presented a number of problems regarding survivorship rights in securities and brokerage accounts. For example, some of the forms of ownership (such as tenancies by the entireties) were not recognized in Texas. Opposition from the probate bar (and in particular from Professor Stanley Johanson of the University of Texas School of Law) came too late to result in a veto of the uniform act, but the Governor’s staff was so moved by the opposition that the legislature, at the Governor’s urging, passed another bill repealing the uniform act before its effective date. The bill repealing the uniform act added “securities” and “accounts with financial institutions as defined in Part 1 of this chapter” to Section 450 as a quick fix to the problem which the proponents of the uniform act said needed fixing.

- Provisions that money or other benefits shall be paid after a decedent’s death to a person designated by the decedent in either the contract itself or a separate writing, including a will, executed at the same time as the contract or subsequently.

- Provisions that money due under the contract ceases to be payable in the event of the death of the promissor or promisee.

- Provisions that property shall pass to a person designated by the decedent in either the contract itself or a separate writing, including a will, executed at the same time as the contract or subsequently.

The first and third of these types of provisions are classic survivorship and beneficiary designation situations. The second applies to forgiveness (gift?) of debt upon the death of the maker or payee of a note.

**ii. Types of Contracts.** Section 450 applies to the following types of contracts:

[A]n insurance contract, insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, employees’ trust, retirement account, deferred compensation arrangement, custodial agreement, pension plan, trust agreement, conveyance of real or personal property, securities, accounts with financial institutions as defined in Part 1 of this chapter, or any other written instrument effective as a contract, gift, conveyance, or trust . . . .

Tex. Prob. Code Ann. §450(a). “Securities” and “accounts with financial institutions as defined in Part 1 of this chapter” (Sections 436 – 449, discussed above) were added to the list in 1997. In 1990, the Texas Supreme Court held that Section 439 was the exclusive means for creating a right of survivorship in joint accounts. *Stauffer v. Henderson*, 801 S. W. 2d 858, 862 (Tex. 1990). The inclusion of “accounts with financial institutions” in Section 450 means that funds in those accounts are potentially subject to that section as well as Section 439. Community property accounts held with right of survivorship are subject to Sections 451 – 462 (discussed below), so there is some confusion about which statutes apply.

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2 In 1997, the legislature passed, and Governor Bush signed into law, the “Uniform Transfer on Death Security Registration Act.” The uniform act presented a number of problems regarding survivorship rights in securities and brokerage accounts. For example, some of the forms of ownership (such as tenancies by the entireties) were not recognized in Texas. Opposition from the probate bar (and in particular from Professor Stanley Johanson of the University of Texas School of Law) came too late to result in a veto of the uniform act, but the Governor’s staff was so moved by the opposition that the legislature, at the Governor’s urging, passed another bill repealing the uniform act before its effective date. The bill repealing the uniform act added “securities” and “accounts with financial institutions” to Section 450 as a quick fix to the problem which the proponents of the uniform act said needed fixing.
If Section 450 applies to accounts in financial institutions, does it override some of the requirements of Section 439? For example, what about the requirement that the agreement be in writing and signed by the decedent—a requirement imposed by Section 439 but is missing in Section 450? Also, Section 450 does not use the magic words set forth in Section 439 and 439A—provisions that money “paid” (not “belong to” or “vest in”) to a person designated by the decedent after his death are valid under Section 450 but would seem to fall short of the statutory and case law standards otherwise applicable to such accounts.

While nontestamentary transfers by contract are permitted by Section 450, this section has been held to prohibit the nontestamentary transfer of a decedent’s entire estate. *Hibbler v. Knight*, 735 S. W. 2d 924 (Tex. App. – Houston [1st Dist.] 1987, writ ref’d n.r.e.).

d. Sections 451–462 (Chapter XI, Part 3). Because of the rule stated in *Hilley v. Hilley*, 161 Tex. 569, 342 S. W. 2d 565 (1961), spouses were unable to create survivorship accounts with community property until the constitution was amended in 1987 to permit community property with right of survivorship. In 1989, the legislature enacted Part 3 of Chapter XI (Sections 451–462) to provide a statutory framework for agreements by spouses to create survivorship rights with their community property.

i. Right of Survivorship in Community Property. The 1987 constitutional amendment read (in pertinent part): “[S]pouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of the spouse.” Tex. Constitution, Art. XVI, Sec. 15. When the legislature enacted Section 451 in 1989 to further enable the constitutional amendment, it addressed the potential problem of after-acquired property:

At any time, 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.

Tex. Prob. Code Ann. §451. Thus, under Section 451, if both spouses sign an account agreement at a financial institution for creation of a community property with right of survivorship account, then funds deposited in the account after its creation will be subject to the right of survivorship.

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3 *Hibbler* was an attempt by a husband and wife to provide for nontestamentary transfer of their entire marital estate. The subsequent enactment of Sections 451–462 and the related constitutional amendment regarding community property with right of survivorship may alter the result of this case.

4 Because of *Hilley*, banks sometimes had their customers do the Texas two-step—the signature card contained a partition agreement to make the amounts deposited separate property and then created a joint tenancy with right of survivorship. If effective, the Texas two-step may have created a survivorship account between spouses, but it had some side effects, some of which were undesirable, depending upon one’s point of view. For example, in a divorce proceeding the court could not order an unequal division of amounts in these accounts, since the court could not award one spouse’s separate property to the other. Occasionally one still runs into accounts purporting to use the Texas two-step. This type of account arrangement should be avoided, if possible.
ii. Agreement Formalities. Unfortunately, the legislature has given us yet another statute setting forth the requirements for creating a survivorship right with more and different requirements. Fortunately, Section 452 – which sets forth the requirements for spousal agreements to create rights of survivorship in community property (and not just in accounts at financial institutions) – gives Texans more magic words that supposedly assure creation of the right of survivorship, even if the magic words are not the same as the magic words in Sections 439 and 439A. Section 452 reads:

An agreement between spouses creating a right of survivorship in community property must be in writing and signed by both spouses. If an agreement in writing is signed by both spouses, the agreement shall be sufficient to create a right of survivorship in the community property described in the agreement if it includes any of the following phrases:

(1) “with right of survivorship”;

(2) “will become the property of the survivor”;

(3) “will vest in and belong to the surviving spouse”; or

(4) “shall pass to the surviving spouse.”

An agreement that otherwise meets the requirements of this part, however, shall be effective without including any of those phrases.

[Emphasis added].

Note that agreements to create a right of survivorship in community property must be signed by both spouses, not just the account holder who dies, as is the case with respect to non-community property multi-party accounts with rights of survivorship under Section 439.

iii. Ownership and Management Rights. Section 453 provides that the ownership and management of community property with right of survivorship during the lifetime of both spouses remains the same as it would have been had the right of survivorship not existed. Thus, the funds in a community property with right of survivorship account are subject to the rules applicable to all community property and are available to the court for equitable division upon divorce. Similarly, if the property in a particular account is the sole management community property of one spouse, that spouse’s sole management community property management rights are not affected simply because the account is held with right of survivorship.

iv. Revocation of Agreement. If the agreement creating the right of survivorship in community property contains provisions which set forth the manner in which the agreement may be revoked, then those revocation provisions control. If the agreement creating
the right of survivorship is silent, Section 455 provides that the agreement may be revoked either:

1. By a written instrument signed by both spouses; or

2. By a written instrument signed by one spouse and delivered to the other spouse.

In *Haas v. Voight*, 940 S. W. 2d 198 (Tex. App. – San Antonio 1996, no writ), the husband and wife had three accounts which were community property with right of survivorship accounts. The husband and his son signed new account agreements with respect to these accounts, naming themselves as joint tenants with right of survivorship. The court held that the community property with right of survivorship agreements for the accounts were not properly revoked because the wife had not signed the new account agreements (the revocation instrument).

Section 455 also provides that the agreement may be revoked with respect to specific property by disposition of that property by one or both of the spouses, if the disposition is not inconsistent with the specific terms of the agreement and applicable law. Thus, if the agreement between the spouses is silent on this subject and a spouse disposes of his sole management community property in a manner which is permitted by Texas law (presumably this means not in violation of the fraud on the community principle), then the disposition of the property terminates the right of survivorship as to the disposed property. Similarly, if both spouses dispose of joint management community property, the disposition terminates the right of survivorship with respect to the disposed property.

v. *Proof of Survivorship Agreement.* Because Sections 451 – 462 deal with agreements creating community property with right of survivorship in all types of property and not just multi-party bank accounts, the statutes contain a procedure to prove the existence of the survivorship agreement for purpose of establishing title to survivorship property. These procedures are set forth in Sections 456 – 459 of the Probate Code. This usually is not a factor with respect to multi-party accounts, since the surviving spouse usually gains possession of the funds without the need to resort to the courts. Section 456 provides that agreements creating community property with right of survivorship arrangements are effective without an adjudication, so rarely will such issue need to be adjudicated with respect to bank accounts.

vi. *Rights of Creditors.* Section 461 makes an ambitious attempt to explain the rights of creditors in community property with right of survivorship property. First, it attempts to differentiate property in multi-party accounts in financial institutions from other property, saying that Part 1 of Chapter XI (Sections 436 – 449, and principally Section 442) governs property in multiple-party accounts.

Second, with respect to other community property held subject to a right of survivorship
Section 442, governing multiple-party accounts (presumably including community property with right of survivorship accounts) provides in pertinent part: “No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration . . . if other assets of the estate are insufficient.” [Emphasis added; see fuller discussion of Section 442, above]

Section 461, governing community property with right of survivorship which is not held in multiple-party accounts, on the other hand, provides in pertinent part: “The surviving spouse shall be liable to account to the deceased spouse’s personal representative for the property received by the surviving spouse pursuant to a right of survivorship to the extent necessary to discharge such liabilities.” [Emphasis added]

Third, like Section 442 (with respect to multiple-party accounts), Section 461 provides that a personal representative cannot pursue community property with right of survivorship in the hands of the surviving spouse to pay the decedent’s liabilities “unless the personal representative has received a written demand by a creditor,” but unlike Section 442, Section 461 does not appear to require the exhaustion of the decedent’s probate estate before any survivorship property can be touched. 5 Suits to recover community property which passed by right of survivorship must be commenced within two years.

vii. Protection of Third Parties. Section 460 contains provisions intended to protect third parties who buy, sell or otherwise deal with community property subject to a right of survivorship without knowledge of the right of survivorship. These provisions generally affect non-multi-party account property more than multi-party account property.


In 1990, the Texas Supreme Court set out to issue the definitive decision on right of survivorship accounts which, together with Chapter XI of the Probate Code, would settle the right of survivorship issue once and for all. In Stauffer v. Henderson, 801 S. W. 2d 858 (Tex. 1990), Justice Hecht carefully recited the history of right of survivorship in Texas and stated what seemed to be simple straightforward rules.

Unfortunately, the Supreme Court’s attempt to inoculate Texans from the litigation bug regarding survivorship accounts didn’t take. Since the Stauffer case, there have been at least a dozen more reported cases on the subject.

In this section, this paper examines the Stauffer decision and the cases which have been decided since then on this narrow issue: did the depositors successfully create a multiple-party

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5 Section 442, governing multiple-party accounts (presumably including community property with right of survivorship accounts) provides in pertinent part: “No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration . . . if other assets of the estate are insufficient.” [Emphasis added; see fuller discussion of Section 442, above]
account with right of survivorship (meaning that the property in the account passed to the survivor), or not (meaning that the property in the account passed to the estate of the deceased account holder).

**a. Stauffer v. Henderson.** The *Stauffer* case followed these legislative developments:

- The 1979 enactment of Chapter XI of the Probate Code (Sections 436 – 450), including Section 439 dealing specifically with rights of survivorship in joint accounts.

- The 1987 amendments to Section 439, adding the “magic words” to create a right of survivorship in a joint account.

Writing for the majority, Justice Hecht clearly believed that the time had come to bring some certainty to the frequent disputes over survivorship rights in multi-party accounts. After tracing the history of joint accounts in Texas, Justice Hecht announced these simple rules:

**i. Section 439 Is Exclusive.** Section 439 is the exclusive means for creating a right of survivorship in joint accounts. The *Stauffer* court concluded that “the Legislature has replaced the various legal theories which have been used to determine the existence of a right of survivorship in a joint account with section 439.” 801 S. W. 2d at 863. Thus, even though Section 46 may otherwise seem to apply to multi-party accounts, *Stauffer* says it doesn’t.

**ii. There Must Be a Written Agreement Signed by the Decedent.** Justice Hecht stated that Section 439 of the Texas Probate Code was derived from Section 6-104(a) of the Uniform Probate Code, which reads:

> Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent **unless there is clear and convincing evidence of a different intention at the time the account is created.**

[Emphasis added] Justice Hecht noted that, in adopting Section 439, the Texas legislature dropped the italicized UPC language quoted above in favor of “**if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties.**” He concludes that, for proving survivorship, the Texas legislature “has determined that clear and convincing evidence is not enough, and that a written agreement signed by the decedent is required.” 801 S. W. 2d at 863.

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*Stauffer* preceded the 1997 amendment to Section 450, which added “accounts at financial institutions” to the laundry list of contract rights subject to that section’s rules about nontestamentary transfers. This may affect *Stauffer’s* exclusivity ruling.
iii. **Extrinsic Evidence is Not Admissible.** Prior to *Stauffer*, many Texas courts permitted the introduction of extrinsic evidence regarding the depositor’s intent with respect to a joint account in order to prove survivorship status. These courts sometimes said that there was a rebuttable presumption that the depositor intended to create a right of survivorship.

*Stauffer* unequivocally holds that Section 439 allows neither extrinsic evidence nor a rebuttable presumption to create a right of survivorship which is not established by a written agreement signed by the deceased joint account party. 801 S. W. 2d at 865. If a right of survivorship is established, it must be established within the four corners of the written agreement itself – outside testimony about what the depositor intended is not admissible.

Based on these standards, the Supreme Court concluded that the account in *Stauffer* did not create a right of survivorship, since the account agreement said the property was “payable to” or “may be withdrawn by” the surviving party, rather than the “vest in” or “belong to” language of Section 439. Authorizing payment of funds to the survivor at the other party’s death does not create a right of survivorship. 801 S. W. 2d at 865-6.

b. **Cases Since Stauffer.** Attached as Appendix A is a chart summarizing the survivorship cases in Texas since 1990, starting with *Stauffer v. Henderson.* It is easier to digest these cases in tabular format since there are so many of them and they are decided on such similar issues. A quick study of this chart will give the reader a good idea where the courts are on this frequently litigated subject.

While it is somewhat dangerous to assume that one can glean trends and general rules from a dozen or so cases such as those on Appendix A, it nevertheless is fun to try. Here are some of the author’s conclusions about these cases:

- The trend is toward finding that a right of survivorship exists. Prior to 1994, the majority of cases mentioned in Appendix A founding no right of survivorship. From 1994 forward, the majority of cases found a right of survivorship to exist. The author believes that this is an indication that banks are increasingly getting it right (so that their signature cards and account agreements are working better), rather than a change in the courts’ attitude toward these accounts.

- The cases pretty universally hold that extrinsic evidence is not admissible, so weird facts surrounding the execution of the agreement generally do not help or hurt either party. There is some slippage on this point, however, as it seems the courts simply cannot refrain from looking beyond the four corners of the

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7 Some cases decided the survivorship issue with respect to more than one account. Where the court’s decision hinged on different facts associated with the various accounts, the various accounts are listed on Appendix A separately, meaning that there are multiple entries on Appendix A for some cases. Note that Appendix A does not include “trust account and P. O. D. cases.”
instrument in some cases. A couple of the cases did permit evidence that the card was changed after the decedent signed it, and in those cases the right of survivorship was found not to exist. Two cases permitted extrinsic evidence as to which accounts were subject to a survivorship agreement contained on a signature card, even though extrinsic evidence was not admissible to establish whether the depositor intended for the signature card to create a survivorship account. Also, a P. O. D. case (which is not included in Appendix A because it was not a right of survivorship case) left the door open for extrinsic evidence to prove the depositor’s intent where both the “individual account” and “P. O. D” boxes were checked. Cummings v. Cummings, 923 S. W. 2d 132 (Tex. App. – San Antonio 1996, writ denied).

Most of the cases since Stauffer permit the language creating the survivorship right to be included on the signature card itself or elsewhere in the bank’s account agreement without a detailed analysis of the “incorporation by reference” issue. An exception is McNeme v. Hart, 860 S. W. 2d 536 (Tex. App. – Waco 1993, no writ), which was first decided in the estate’s favor (in other words, that no right of survivorship existed) based solely on the signature card but then was decided in favor of survivorship on rehearing when the bank raised the incorporation by reference issue in an amicus brief. McNeme was a no writ case. Incorporation by reference was not an issue in Stauffer nor in any of the survivorship cases on which the Supreme Court has denied writ since Stauffer. The Supreme Court may not permit incorporation by reference for Section 439 purposes when and if it ever addresses the issue. The safe way for banks to assure that their agreements create valid rights of survivorship are (1) to include the Section 439 “magic words” on the signature card itself or (2) use the statutory account form of Section 439A.


10 The argument against incorporation by reference is as follows: Stauffer says that, under Tex. Prob. Code § 439, “the necessity of a written agreement signed by the decedent . . . is emphatic.” 801 S. W. 2d at 863. Shaw v. Shaw, 835 S. W. 2d 232 (Tex. App. – Waco 1992, writ denied), interprets Stauffer to mean that Section 439 has “abrogated all basic contract principles such that only the statute controls the interpretation of a survivorship agreement relating to a multi-party account.” 835 S. W. 2d at 234. Thus, while incorporation by reference may work under general contract principles, it may not work for Section 439 purposes. In addition, many signature cards attempt to incorporate by reference future versions of account rules and regulations. If the account agreement in effect at the time the account holder signed the agreement was insufficient to create a survivorship right, does a subsequent unsigned amendment to the account agreement rescue the right of survivorship? Probably not. Just because a depositor’s signature on a signature card may bind him or her to a future version of a bank’s account brochure does not mean that the future version is incorporated by reference for purposes of Section 439’s requirement of a written agreement signed by the decedent.
In general, “Joint – With Survivorship” is not sufficient on its own to create a survivorship right, but “Joint tenants with the right of survivorship” is.

The burden of establishing the survivorship right falls on the party seeking survivorship, not on the party asserting that no survivorship right exists.

Failure to check any box on a signature card is almost certain to result in a determination that no right of survivorship exists. Similarly, checking more than one conflicting box on a signature card is almost certain to result in a determination that no right of survivorship exists.  

Most of the cases involve financial institutions which did not use the magic words provided in Section 439(a) or the legislatively-approved account form provided in Section 439A. If banks would simply follow the statutory language, most of these cases would go away (except cases where there are errors or questions related to which boxes on the card are checked, if any).

While the failure of certain banks to have adequate signature cards and account agreements caused much of the litigation in this area since 1990, in only four cases was the bank a named party, and the bank faced possible liability in only three of those cases. If banks were held liable because of the insufficiency of their account documents, perhaps more banks would have adequate documents, reducing the amount of this litigation.

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11 But see Cummings v. Cummings, 923 S. W. 2d 132 (Tex. App. – San Antonio 1996, writ denied), where the court appeared to leave the door open for extrinsic evidence in a P. O. D. case where conflicting boxes were checked. This is not a right of survivorship case, however.

12 Arline v. Omnibank, N. A., 894 S. W. 2d 76 (Tex. App. – Houston [14th Dist.] 1995, no writ) (bank issued cashier’s check to administrator’s estate and then dishonored the check); Evans v. First National Bank of Bellville, 946 S. W. 2d 367 (Tex. App. – Houston [14th Dist.] 1997, writ denied) (bank had depositor sign a signature card with survivorship language, but the signature card did not express refer to certificates of deposit in question); Pressler v. Lytle State Bank, 982 S. W. 2d 561 (Tex. App. – San Antonio 1998, no writ) (bank filed a declaratory judgment action regarding disputed account); and Parker v. JP Morgan Chase Bank, 95 S. W. 3d 428 (Tex. App. – Houston [1st Dist.] 2002, no writ) (bank told P. O. D. beneficiary that it would pay when she brought a death certificate, then paid to the depositor’s independent executor before P. O. D. beneficiary returned with death certificate, then sued independent executor to get the money back, and then realized that the depositor had not signed the P. O. D. account agreement).

13 Section 439A(c) provides: “A financial institution shall be deemed to have adequately disclosed the information provided in this section if the financial institution uses the form set forth in Subsection (b) of this section [the Uniform Single-Party or Multiple-Party Account Form].” However, Section 439A appears to provide no adverse consequence for bank which has not “adequately disclosed” the information, and there are no cases under Section 439A for failure to meet its requirements.
5. **Selected Practical Problems with Multi-Party Accounts.**

There are more problems with multiple-party bank accounts than simply trying to determine if the account meets the survivorship standard under Texas law. Here are a few:

a. **Bank Signature Cards and Account Agreements are Confusing.** Signature cards and account agreements vary from bank to bank. Savvy estate planning lawyers like the author have trouble making sense of these agreements (as will be demonstrated below), so it is unlikely that most lay persons fully understand the importance of the account terms. It is likely, therefore, that many account agreements fail to reflect the true, informed intent of the account holders with respect to the survivorship issue. Even the banks recognize this, and some go so far as to make the account holders indemnify them from liability for failing to get it right. See, e. g., Chase Bank of Texas, N. A.’s signature card on Appendix E, page 1 (discussed below).

b. **The Underfunded Credit Shelter Trust.** Until Congress repeals the federal estate and gift tax, the bread-and-butter estate tax planning technique for married couples with estates worth more than the applicable exclusion amount will be the credit shelter trust, or “bypass trust.” The trick is to put a portion of the property of the first spouse to die (usually by means of a formula gift clause, which makes the amount of the gift equal the unused applicable exclusion amount) into a trust so that it will not be included in the surviving spouse’s estate. In the typical case, the estate planning attorney will put one of these trusts in each spouse’s will so that when the first spouse dies the trust will be created.

Assets which pass by right of survivorship pass immediately upon death to the survivor and are not subject to the decedent’s will. This means that survivorship assets generally are unavailable to place in a bypass trust. If the couple holds a significant amount of their marital property as community property with right of survivorship or as joint tenants with right of survivorship, there may be insufficient assets to fully fund the bypass trust. Even if there are sufficient other assets, the existence of the survivorship accounts may make it necessary to place undesirable assets into the bypass trust, since the cash in the survivorship accounts is unavailable.

Clients with bypass trusts in their wills should be told to avoid survivorship property, except for relatively minor or insignificant accounts. These clients are not going to be able to avoid probate anyway, so there is no reason for them to have the bulk of their investment assets in survivorship form.

c. **The Caregiver Problem.** Single elderly persons often wish for a caregiver to be able to write checks, make deposits and otherwise deal with their bank accounts. These

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Sometimes it is possible to salvage the situation by using a disclaimer. If the husband and wife are the only joint tenants, if the will provides that disclaimed property passes into the bypass trust, and if a favorable ruling can be obtained from the IRS to permit the disclaimers of the survivorship property (the IRS often issues private letter rulings to this effect), then the survivorship property may be maneuvered into the bypass trust.
caregivers usually are relatives – a son or nephew who lives close by, for example – and usually are beneficiaries under the elderly persons’ wills (or heirs under the intestacy laws). Occasionally they are unrelated to the elderly person.

In the vast majority of cases, the caregiver is given access to the account so that he or she may act as an agent for the elderly person. Only occasionally does the elderly person wish to make a gift of the money in the account to the caregiver. Unfortunately, in the typical case the only documentation of this agency arrangement is the signature card and account agreement at the bank, and these documents usually are silent as to the nature of the relationship between the elderly person and the caregiver. The signature card and account agreement is completed by an officer at a bank, who becomes the de facto estate planner when he or she fills out the card: If the signature card creates a valid right of survivorship, the caregiver is entitled to the money in the account when the elderly person dies. If, on the other hand, he or she fills out the card so that a survivorship account is not created, the elderly person’s will (or the intestacy laws) determines who gets the money in the account at death. Does the way in which the card is filled out accurately reflect the elderly person’s intentions? One can only hope so, since extrinsic evidence of intent is inadmissible in a dispute over the money left in the account at death.

Accepting the benefit of being named a party to a survivorship account can create a fiduciary relationship, meaning that the conduct of the party will be judged by the high equitable standards imposed on fiduciaries. Texas Bank and Trust Co. v. Moore, 595 S. W. 2d 502, 508-9 (Tex. 1980). Therefore, even if the account agreement properly creates a survivorship right favoring the caregiver, the actions of the caregiver, including his or her actions related to the creation of the survivorship right, is subject to greater scrutiny. Unfortunately, fiduciary litigation tends to be messy and expensive, and in many cases the amount in controversy does not warrant the cost of litigation. Caregiver abuse of survivorship accounts and powers of attorney can lead to criminal liability as well. See, e. g., Porter v. State of Texas, 2000 Westlaw 863092 (Tex. App. – San Antonio 2000, unpublished opinion).

Texas law provides a simple solution to this problem: the elderly person can set up a “convenience account” under Section 438A of the Texas Probate Code. This means that the caregiver’s name is on the account just “for the convenience” of the elderly person, and no ownership interest or survivorship right is created. Unfortunately, many banks do not offer convenience accounts. Of the five biggest banks in Texas, only Frost National Bank offers a convenience account (see below). Thus, even if the elderly person knew what he or she wanted and asked his or her bank expressly for a convenience account, he or she would be frustrated. At most banks, the next best thing is a “tenants in common” account. This type of account connotes ownership rights (although, under Texas law, while both account holders are alive, ownership of funds on deposit is based on the account holders’ relative contributions to the account, so if the caregiver puts none of his or her money in the account, then he or she should own none of the account) and can create a problem for the elderly person if the caregiver has creditor problems and the creditor attempts to seize assets in the account. (If the caregiver owes money to the bank which issued the account, the bank may have the right to offset money from the tenants in
With very few exceptions, survivorship accounts for caregivers should be avoided, and convenience accounts (or, if a convenience account is unavailable, a tenants in common account) should be used. From the elderly person’s perspective, it is better to include a provision benefitting the caregiver in a will than to rely on the survivorship account. If a survivorship account is used, the account balance will fluctuate, varying the size of the gift. If a survivorship account is used, the caregiver has a disincentive to use the money in the account to take care of the elderly person. Including a gift in a will (if one is intended) fixes the amount of the gift and takes away the caregiver’s self-interest in avoiding use of the money in the account. From the caregiver’s perspective, being a party on a survivorship account can cause others to question his or her actions and intentions. Often the caregiver will say that he or she plans to give the other estate beneficiaries their proportionate share of the money which passes by survivorship. This can result in gift tax liability for the caregiver, however. From the perspective of other persons interested in the elderly person’s estate (the daughter that lives in another state, for example), discouraging the use of survivorship accounts can make it possible to avoid ill will and suspicions with the caregiver at a time when everyone’s focus should be on celebrating the life of the elderly loved one.

d. The Guardianship/Power of Attorney Problem. The person appointed guardian of the estate for an incapacitated person or the agent on a power of attorney of a clearly incapacitated person can face very difficult choices if the incapacitated person holds funds in one or more survivorship accounts.

Assume, for example, that the guardian discovers upon his or her appointment that the incapacitated person has a joint tenancy with right of survivorship account naming someone as joint tenant:

- Assume that there are suspicious facts surrounding the creation of the survivorship account. Should the guardian challenge the survivorship status? Does the guardian have a duty to challenge the survivorship status? Or should the guardian leave the fight over the validity of the survivorship account to be fought after the death of the incapacitated person?

- Does the court supervising the guardianship have the power to undo a survivorship designation?

- Does the guardian have a duty to take control of and manage the funds in the survivorship account? If so, how does he or she do that? Surely the other joint tenant cannot be allowed to retain withdrawal rights on the survivorship account while the guardianship is pending.

- If the incapacitated person has funds in both survivorship and nonsurvivorship accounts.
accounts, which funds should the guardian expend for the care of the ward? If the guardian spends survivorship funds, this reduces the property passing to the joint tenant by survivorship. If the guardian spends nonsurvivorship funds, this increases the property passing to the joint tenant by survivorship.

All of these issues affect the decisions of an agent under a power of attorney as well as a guardian. If a statutory durable power of attorney was used, and if the principal authorized “banking and other financial institution transactions” on the power of attorney, then Tex. Prob. Code Ann. §496 gives the agent the power to “continue, modify, or terminate an account or other banking arrangement” and to “establish, modify, or terminate an account or other banking arrangement.” This appears to authorize the agent to terminate, modify or initiate accounts with rights of survivorship or pay-on-death (P. O. D.) designations. Any such action may expose the agent to breach of fiduciary duty claims (especially if the agent personally benefits from the change at the expense of another party), but remember that the fiduciary duties the agent owes are to the principal and not to third parties. For this reason, the agent may face little or no exposure for terminating survivorship arrangements (since this means that the assets will be solely in the principal’s name and pass as part of the principal’s estate) while facing greater exposure for initiating new survivorship arrangements, if the persons benefitting from the survivorship arrangement are not also heirs or estate beneficiaries.

The author found no reported appellate cases on this subject. In Pressler v. Lytle State Bank, 982 S. W. 2d 561 (Tex. App. – San Antonio 1998, no writ), a guardian (after qualifying as guardian) placed another person’s name on an account holding guardianship property as a “beneficiary” (presumably as a pay-on-death beneficiary), but no dispute over the account arose until after both the ward and the guardian died and the propriety of naming a party with survivorship or P. O. D. rights in a guardianship account was not discussed. In Terrill v. Davis, 418 S. W. 2d 333 (Tex. Civ. App. – Eastland 1967, writ ref. n. r. e.), a guardian unsuccessfully attempted to repudiate a contractual right of survivorship in real property, but that should be irrelevant in determining if a guardian may terminate a right of survivorship where the ward is under no contractual obligation not to terminate the survivorship right.

Here are the author’s thoughts about this problem:

- If a guardian discovers the existence of survivorship accounts, he or she can ask the court for instructions. Asking the judge for instructions may effectively protect the guardian from claims that he should have done something, or should have refrained from doing something, about survivorship accounts. On the other hand, if the guardian files a motion for instructions and gives the joint tenant notice of the motion, the joint tenant may withdraw funds from the joint account prior to the hearing on the motion, jeopardizing the ward’s estate. To prevent this, the guardian may couple his or her motion for instructions with a request for a temporary restraining order to protect the funds in the joint account pending the hearing. This is a lot of trouble to go to, however, so the guardian may wish to
withdraw the funds from the joint account without notice and then ask the court for instructions. If the court determines that the right of survivorship should still exist, it can order that the funds be returned to a survivorship account or to a pay-on-death (P. O. D.) account naming the former joint tenant as beneficiary.

- As a practical matter, it is more difficult for agents acting under powers of attorney to ask a court for instructions. They can file a declaratory judgment action on this subject, but that is an expensive and burdensome process.

- Unless the court otherwise orders, the guardian probably has a duty to get all funds belonging to the ward, including funds in survivorship accounts, into the guardian’s name and subject to the guardian’s control. Tex. Prob. Code Ann. §771. This probably means that the guardian must remove the ability of other persons (such as joint tenants) to access guardianship funds, which in turn probably means that the guardian must terminate joint tenancy and tenancy in common accounts. This action probably will destroy the right of survivorship unless something is done to preserve it.

- The guardian may be able to preserve survivorship rights by using a safekeeping agreement (see Tex. Prob. Code Ann. § 703(d)). Under the agreement, the joint tenant and the financial institution would have to agree to prohibit withdrawals by anyone other than the guardian absent a written court order authorizing such withdrawals. Any such arrangement would work only if approved by the court, however.

- The guardian of an estate should have standing to challenge a suspicious survivorship designation. The guardian of an estate is entitled to possession and management of all property belonging to the ward, to collect claims due to the ward, to enforce all obligations in favor of the ward and to bring suits by the ward. Tex. Prob. Code Ann. § 768; see also Tex. Prob. Code Ann. §§ 772 and 773. Whether or not the guardian has an affirmative duty to challenge a suspicious survivorship designation is a question for the court.

- The court supervising a guardianship should have the power to terminate survivorship accounts or authorize the guardian to terminate survivorship accounts. See Tex. Prob. Code Ann. §§ 606, 607, 768, 771, 772, 773 and 774.

- Conversion of survivorship accounts to P. O. D. accounts in the guardian’s name may be an effective workaround in cases where there is no reason to doubt the appropriateness of the survivorship arrangement. Such arrangements must be approved by the court, however. The author is aware of one guardianship where there were multiple survivorship accounts with different joint tenants. The various survivorship accounts were closed and all of the money was transferred to
a common guardianship account under the guardian’s control with P. O. D. designations favoring the former joint tenants in proportion to the size of the various survivorship accounts. This enabled the guardian to use funds for the ward’s care while maintaining the proportional benefits to be paid to the former joint tenants on the ward’s death.

e. **Self-Help Estate Planning.** There are times when a survivorship account or P. O. D. account makes sense. If a person has very little property, use of survivorship and P. O. D. accounts may avoid the need for any type of probate proceeding.

Unfortunately, many people are infected with “probatitis.” The prospect of any probate proceeding is so unpleasant that they will do whatever it takes to avoid it. The living trust mills largely are responsible for this condition, and it is not uncommon for someone to buy a defective and inadequate living trust from a nonlawyer for three or four times as much as a lawyer would charge for a complete, customized estate plan.

Many probatitis victims see survivorship accounts as a panacea. Many are under the mistaken impression that property in survivorship accounts is not subject to the federal estate tax. For whatever reasons, many people have large amounts of cash and securities in survivorship accounts. As noted above, these accounts can frustrate effective estate tax planning. If there is more than one “beneficiary” of a survivorship account, there can be a number of problems when one party dies. Here are some examples:

- Assume Mom has a survivorship account with Son and Daughter. If Daughter dies before Mom, leaving two children, and Mom fails to change the account, Son gets all of the funds when Mom dies, disinheriting Daughter’s children.

- Assume Mom has a survivorship account with Son and Daughter. Mom dies, and before the account is divided Daughter dies, leaving two children. The money in the survivorship account goes to Son, and Daughter’s children are disinherited.

- Assume Mom has a survivorship account with Son, and Mom, Son and Daughter have an unwritten agreement that Son will give Daughter half of the money in the account when Mom dies. Mom dies and Son refuses to give Daughter her share. Daughter has no recourse, other than perhaps a fraud claim against Brother.

- Assume Mom has a survivorship account with Son, and Mom, Son and Daughter have an unwritten agreement that Son will give Daughter half of the money in the account when Mom dies. Mom dies, and Son gives daughter half of the money in the account. Son’s transfer to Daughter probably is a taxable gift. To the extent it exceeds $10,000, a gift tax return must be filed and a portion of the Son’s applicable exclusion amount must be allocated to the gift. If the property so paid
to Daughter exceeds the applicable exclusion amount, gift tax may be due.\textsuperscript{15}

Estate planning attorneys constantly engage in “what if” thinking. A well-drafted will carries the “what ifs” out further than most lay persons are likely to think. Survivorship agreements occasionally work well, but all too often they stop two or three “what ifs” short of what is needed.

6. Forms Used in the Year 2000 at the Five Largest Banks.

Attached as appendices are the signature cards and related account agreements used at the five largest banks in Texas in the summer of 2000. Some or all of these may have changed since then. These five banks account for more than 40\% of the funds on deposit in Texas, according to the 2000 – 2001 Texas Almanac:

<table>
<thead>
<tr>
<th>Bank</th>
<th>Appendix</th>
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<tbody>
<tr>
<td>Frost National Bank</td>
<td>B</td>
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<tr>
<td>Bank One, Texas, N. A.</td>
<td>C</td>
</tr>
<tr>
<td>Bank of America</td>
<td>D</td>
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<tr>
<td>Chase Bank of Texas</td>
<td>E</td>
</tr>
<tr>
<td>Wells Fargo Bank</td>
<td>F</td>
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</tbody>
</table>

Here are the author’s comments about the signature cards and account agreements of each of these banks:

a. Frost National Bank. In the author’s opinion, the signature card and account agreement at Frost (see Appendix B) are far-and-away the best of the five biggest banks. Primarily this is due to the fact that Frost uses the Uniform Single-Party or Multiple-Party Account Form promulgated by the legislature in Section 439A of the Probate Code. Unlike Bank One (see below and in Appendix C), Frost uses the statutory form verbatim (or substantially verbatim). Thus, Frost’s customers get the chance the legislature intended them to have to pick exactly the kind of account they want – including convenience accounts, which is an option the other four banks do not offer.

\textsuperscript{15} If this scenario happens, Son may be able to claim that he held Daughter’s money in trust and, therefore, his delivery of the money to daughter was not a gift. Depending upon the size of the estate and the “gift” involved, this may or may not satisfy the Internal Revenue Service. Under Stauffer v. Henderson, 801 S. W. 2d 858 (Tex. 1990), outside evidence of what the parties intended is inadmissible, so it would be difficult or impossible for Daughter to enforce an oral trust. If Daughter could not enforce an oral trust, the IRS is likely to argue that it ought to be ignored for gift tax purposes.
The first page of the signature card on a Frost account is computer-generated and contains no boxes to check. If the customers indicate they want a “multiple-party account with right of survivorship,” then the form generates with “Multiple-Party with Right of Survivorship” in the “Account Ownership” block. There are no boxes to check or initial on page one of the signature card – all of the initialing and checking happens on the Uniform Single-Party or Multiple-Party Account Form.

Among the few problems the author sees with the Frost documents are these:

- The customer may not fill out the Uniform Single-Party or Multiple-Party Account Form correctly. For example, the customer may choose more than one account type.
- The bank officer completing the first page of the signature card may specify an account type other than the one specified by the customer on the Uniform Single-Party or Multiple-Party Account Form. What happens if the customer properly completes the “Multiple-Party Account With Right of Survivorship” option on the uniform form but the bank officer enters something else on the first page of the signature card? Under *Stauffer v. Henderson* and the cases following it, the written agreement must unambiguously create the right of survivorship, so the party seeking to establish survivorship probably would lose if there were conflicting indications on the forms.

These problems are minimal, however. Thus, Frost customers are probably the most likely (among the customers of the five largest banks) to get the kind of account they want. Perhaps this is due to the fact that Frost is the only native Texas bank among the five.

**b. Bank One, Texas, N. A.** Bank One makes use of the Uniform Single-Party or Multiple-Party Account Form, but they try to fit it into a multi-state account framework, with mixed results.

The good news is that the survivorship language on the signature card by itself should be sufficient to create a survivorship account under Section 439(a) without anything else, if the box on the card is checked. The wording opposite the box to be checked states: “JROS – On the death of one party to this account, all sums in the account on the date of death vest in and belong to the surviving party or parties as his or her or their separate property and estate.” That language tracks the “magic words” in Section 439(a) almost exactly.

Another good thing about Bank One’s signature card form is that there are is only one box to be checked. On many cards, the customer must select from several alternatives and check the appropriate one. On Bank One’s card, either the “JROS” box is checked or it isn’t, making it pretty easy to decide after the fact whether the account is a survivorship account or not.
To back up the customer’s choice regarding survivorship, the bank officer completing the form is supposed to show the account title as “Party A or Party B (JROS)” if the customer chooses the survivorship option (see Appendix C, page 1 for an example), while showing the account title simply as “Party A or Party B” (in other words, without adding “JROS”) if the customer does not choose the survivorship option (see Appendix C, page 2 for an example). While this “JROS” designation in the account name may help, the Bank One documents do not make it a requirement (unlike Chase Bank of Texas, N. A., described below, where the survivorship feature fails even if the correct box is checked if the bank officer fails to put “JTWROS” or something similar in the account style).

Bank One also tries to make use of the Uniform Single-Party or Multiple-Party Account Form, but it does so in a somewhat troublesome way. The first thing that appears in the account agreement under the heading “Form of Account Ownership” is the following (see Appendix C, page 3):

If the Bank at which you maintain your Account is located in the state of Texas, refer to the “Texas Uniform Single or Multiple-Party Account Selection Form Notice” section on Page 28 for additional information regarding your Account.

When the customer turns to Page 28 (or, in the excerpt attached to this paper, to Appendix C, pages 6 - 7), he or she finds this:

Additional information and agreements regarding an Account maintained at a Bank located in the State of Texas are found in the following provisions.

What follows is Bank One’s derivation of the Uniform Single-Party or Multiple-Party Account Form. However, certain types of accounts are omitted (most notably, the convenience account). Also, the names of the accounts in Bank One’s version of the uniform form do not match precisely the account names used on the signature card. This makes it unclear whether the account is governed by Section 439(a), since the language on the signature card matches the magic words from Section 439(a), or by Section 439A, since Bank One seems to be trying to substantially comply with that statute. Also, Bank One’s version of the uniform form is a disclosure only – Bank One has eliminated all of the places on the uniform form for the customer to indicate his or her choice.

As a result of Bank One’s approach, the author believes that there will be very little doubt about whether or not a Bank One account is subject to a right of survivorship or not – if the “JROS” box is checked, it will be; if the box is unchecked, it won’t be. Whether this represents the customer’s wishes is less clear, since he or she is not given the opportunity to complete the Uniform Single-Party or Multiple-Party Account Form as he or she sees fit. Also, the customer may be frustrated if he or she wishes to create a type of account other than joint tenancy with right of survivorship. There is no way to create a convenience account at Bank One, for example. Also, since the signature card tracks Section 439(a) – which applies to non-community
property accounts – rather than Section 439A – which is neutral in its treatment of community property and non-community property, there is a small doubt of the effectiveness of a “JROS” designation on an account between a husband and wife that contains community property. This probably is not worth worrying about, since the courts tend to ignore this issue (see, e.g., Rogers v. Shelton, 832 S. W. 2d 709 (Tex. App. – Eastland 1992, writ denied), and Banks v. Browning, 873 S. W. 2d 763 (Tex. App. – Fort Worth 1994, writ denied)), but Bank One does not eliminate this problem entirely by using the Uniform Single-Party or Multiple-Party Account Form as it was intended by the legislature.

c. Bank of America. Bank of America makes no attempt to use the Uniform Single-Party or Multiple-Party Account Form, but its account agreement includes Texas-specific provisions which make it likely that customers who think they are getting a survivorship account will probably succeed in getting that type of account.

The signature card (see Appendix D, page 1) instructs the customer to “Sign the blank(s) below if applicable” and then gives the customer these choices: “Joint with Right of Survivorship,” “Payable on Death (‘POD’)” and “Totten Trust account.” Each choice has a box to the left which can be checked but, more importantly, has a space to the right for the customer to sign the appropriate choice.

The account agreement (see Appendix D, pages 2 - 4) informs the customer that the Bank’s rights and liabilities for payment of any sums on deposit in the account shall be governed by Part 1 of Chapter XI of the Texas Probate Code, as amended from time to time. It does not say that the relative rights of the depositors are governed by Part 1 of Chapter XI. However, it includes the following regarding survivorship accounts:

Survivorship. Unless you so elect and have indicated on the signature card, time deposit receipt or certificate of deposit that a joint account is “with right of survivorship,” there shall be no right of survivorship for the parties to the account. In the event a joint account is designated with right of survivorship:

(a) If none of you are married to each other, funds shall be held by you as joint tenants with right of survivorship.

(b) If any of you are married to each other:

(i) Funds in your account that are your separate property shall be held by you as joint tenants with right of survivorship;

(ii) Funds in the account that are your community property, upon the death of one of you, shall become the property of the survivor. Having chosen
that funds pass “with right of survivorship,” such married persons hereby jointly and severally agree to hold us harmless from any loss and liability arising in connection with such account designation and warrant that they have entered into all appropriate partitioning or other agreements necessary or required by law, including Part 3 of Chapter XI of the Texas Probate Code, to make such designation lawful.

(c) If survivorship is designated, 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.

That language, coupled with the language on the signature card, should successfully create a survivorship account, whether it is a joint tenancy with right of survivorship with separate property or community property with right of survivorship with community property.

The Bank of America agreement does not adequately describe the disposition of Totten Trust assets. Hopefully the “trust account” provisions of Section 438(c) and 439(c) of the Probate Code will suffice to fill in the gaps.

The account agreement does not provide for the creation of a convenience account.

Bank of America’s signature card presents the possibility of problems in completing it. For example, what if the customer checks the box opposite “Joint with Right of Survivorship” but fails to sign it opposite that space? What if the surviving account party (in other words, not the decedent) signs the “Joint with Right of Survivorship” space but the decedent only signs in the space provided below for each depositor’s signature? In that case, the decedent would have signed the account agreement, which may be all that Section 439(a) requires, but not the specific survivorship declaration. Hopefully the bank officer will help the customer complete the form in such a way that this is not a problem.

d. Chase Bank of Texas, N. A. Chase does some things right and other things wrong in their signature card and account agreement. The signature card in the appendix (see Appendix E, page 1) did not reproduce well, so it is excerpted in more detail here. It says:

“Check if any of the statements below apply to the Account and print the full name as applicable. The Account is:”

[] P. O. D. Account (Payable on Death Account)(Payable in equal amounts to each P. O. D. payee)
Payable on Death Payee(s): ________________________________

____________________________________________________

[] Totten Trust Account (No trust instrument on file):

Trustee(s): ________________________________

Beneficiary(ies): ________________________________

[] Joint Tenants with Right of Survivorship (see reverse for agreement regarding right of survivorship)

The reverse side states:

By signing this card and checking the box on the front of this card marked “Joint Tenancy with Right of Survivorship” [Note: the language opposite the box on the front of the card says “Joint Tenants with Right of Survivorship,” not “Joint Tenancy with Right of Survivorship], the Depositors stipulate and agree with each other and with Bank that the following terms and conditions shall apply to the Account:

(1) If husband and wife, each Depositor hereby agrees with the other and Bank that existing community funds on deposit and community funds to be deposited in the future and any interest and income shall be held in joint tenancy and shall pass by right of survivorship pursuant to the terms hereafter set forth.

(2) Depositors agree that, on the death of one party to the joint account listed on the reverse side, all sums in the account on the date of the death shall vest in and belong to the surviving party as his or her separate property and estate. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under the Texas Probate Code, Section 438, augmented by an equal share for each survivor of any interest the deceased Co-Depositor may have owned in the Account immediately before his or her death, and the right of survivorship shall continue to be in full force and effect between the surviving parties.

(3) DEPOSITORS AGREE TO INDEMNIFY AND HOLD BANK HARMLESS FROM LIABILITY ARISING FROM THE FAILURE OF THIS JOINT TENANCY WITH RIGHT OF SURVIVORSHIP AGREEMENT, FOR ANY REASON, INCLUDING THE BANK’S
NEGLECT TO CREATE A VALID JOINT TENANCY WITH RIGHT OF SURVIVORSHIP.

(4) This agreement regarding the right of survivorship will be effective only if the Account styling includes “Joint Tenants with Right of Survivorship,” “JTWROS,” or words or abbreviations of similar import.

On the positive side, at least Chase’s signature card addresses the community property with right of survivorship problem. The form of the signature card creates problems, however. Hopefully the silly incorrect cross-reference (“Joint Tenants” instead of “Joint Tenancy”) will not be a problem, although there probably are strict-constructionist judges who would have fun with that. The biggest problem, however, is likely to be condition (4) of the survivorship agreement. Even if the depositors check the survivorship box (Query: what happens if the bank officer types an “X” in the box rather than having the customers check the box?), if the bank officer fails to include “JTWROS” or something similar in the “account styling” (and there’s no space on the signature card called “account styling,” by the way), then condition (4) wipes out the survivorship status. Worse still, and somewhat offensively, condition (4) is immediately preceded by condition (3), in which the depositors indemnify the bank from liability arising from the failure of the survivorship agreement, even if the failure was due to the bank’s negligence to create a valid joint tenancy with right of survivorship! Part 1 of Chapter XI of the Probate Code contains loads of protection for the bank in multiple-party account situations, but Chase didn’t want to stop there.

Things get worse (for the customer, at least) when one turns to Chase’s deposit agreement (see Appendix E, pages 2 - 4). The agreement reaffirms that, to be a survivorship account, the account must be styled as such. In one interesting, and potentially beneficial, twist, the account agreement appears to permit the parties to come up with their own survivorship agreement and file it with the bank. Perhaps this is the ultimate solution for estate planners – send the client to the bank with a survivorship agreement drafted by the client’s lawyer. However, note that the account must be styled correctly even in this case.

The really bad thing about Chase’s account agreement is that it may require the customer to submit to binding arbitration (see Appendix E, page 2). The arbitration provision states that it does not apply if it is prohibited by applicable law, but it purports to cover “any controversy or claim relating to your accounts.” This may be broad enough to cover disputes between co-depositors over the terms of the account, even if the dispute does not involve the bank. (How could the dispute involve the bank with the indemnity and exculpatory language contained in the account agreement?) The author found no express prohibition against including an arbitration agreement in a deposit agreement (although the author admits to being in over his head on this issue). Generally, arbitration agreements are valid in Texas, Tex. Civ. Prac. & Rem. Code §171.001, but agreements to arbitrate are not enforceable if the are unconscionable when made, Tex. Civ. Prac. & Rem. Code §171.022.
e. **Wells Fargo Bank.** Of the account documents of the five biggest banks, Wells Fargo’s documents were the most disappointing to the author. They seem to incorporate the worst flaws of the other banks, plus add a few of their own. Consider:

- The only place to indicate joint tenancy with right of survivorship status on the signature card is a box marked “Joint Tenants” (with nothing about survivorship) in a section of the card marked “Bank Use Only – Information Required.” That same section also includes boxes marked “Tenants in Common” and “Community Property.” The same section has the following space for someone to enter information: “% Ownership Interest Customer 1 ________ Customer 2 _________ = 100%.”

- The account agreement provides:

  The type of account and ownership you select has tax and estate planning consequences and may determine how the funds in the account pass on at your death . . . . Depending on the state where you are located and the state laws that control your account, we offer the following types of account ownership . . . . **Please note:** *Your will may not control the disposition of funds held in some of these accounts . . . .**

  **Joint Tenancy With Right of Survivorship** - All owners of the account have equal and undivided ownership in the entire account during their lifetimes. When an owner dies, the funds in the account belong to the surviving owners automatically.

  **Tenancy in Common (not available in all states)** - All owners of the account have ownership in the account, but the size of each owner’s interest may vary. When an owner dies, that owner’s share in the account belongs to the owner’s estate and passes to the owner’s successor in interest through a will or by transfer to the estate . . . . **Community Property (not available in all states)** - The owners of the account are husband and wife, and each has an interest in the account. When one spouse dies, ownership does not automatically pass to the surviving spouse because the deceased spouse can pass his or her interest through a will to someone else.

  Nowhere in the account agreement does it state what the effect is of checking the “Joint Tenants” box on the signature card. Is one supposed to assume that checking “Joint Tenants” means you want the provisions in the account agreement labeled “Joint Tenancy With Right of Survivorship” to apply? That goes against the Texas presumption that a survivorship right is not presumed merely because of joint ownership.

  While the signature card and account agreement address community property, the
“Community Property” account clearly has no right of survivorship. How does a married couple create a “community property with right of survivorship” account at Wells Fargo? For that matter, how does anyone create a “joint tenancy with right of survivorship” account at Wells Fargo?

What is the effect of completing the space on the signature card for ownership percentages? Parts 1 and 3 of Chapter XI of the Texas Probate Code provide comprehensive means for determining ownership of funds in multi-party accounts. Does the ownership percentage designation on the signature card override these Texas provisions?

Like Chase, the Wells Fargo account agreement includes an arbitration provision. Wells Fargo goes a step further, however, by attempting to make the account agreement be governed by California law. None of the other banks tried that. Does this mean that the depositors’ relative rights to multi-party accounts are governed by California law? Does it mean that the rights of the personal representative of a Texas decedent’s estate is stuck with California law on issues involving the bank account? Texas law may prohibit a bank from enforcing a choice of law provision with respect to Texas depositors. Also, it is possible to read the choice of law provision (see Appendix F, page 5) as applying only to disputes between the depositor and the bank and not to disputes between a surviving depositor and a deceased depositor’s estate. Nevertheless, the problems with the Wells Fargo documents are serious enough to make creating any survivorship agreement there a dicey proposition at best.

7. Conclusion.

While the area of multi-party accounts remains thorny, the law in the area becomes clearer and clearer. Now if only the banks will take advantage of this clarity in the law, Texans may have fewer reasons to sue each other.

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16 Tex. Bus. & Com. Code §4.102(c) appears to make deposit agreements by Texas consumers at branches of out-of-state banks located in Texas governed by Texas law, so this may trump the choice of law clause in Wells Fargo’s account agreement.
## APPENDIX A – SURVIVORSHIP CASES SINCE 1990

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Bank / Account</th>
<th>Wording of Signature Card</th>
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<th>Right of Survivorship?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stauffer v. Henderson, 801 S. W. 2d 858 (Tex. 1990)</td>
<td>(Institution unknown)</td>
<td>“JOINT ACCOUNT – PAYABLE TO EITHER OR SURVIVOR”</td>
<td>N/A</td>
<td>Both depositors signed the signature card.</td>
<td>Section 439(a) is the exclusive means of establishing survivorship bank account. Extrinsic evidence is not allowed. Signature card authorizes payment to survivor but does not create a right of survivorship.</td>
<td>No</td>
</tr>
<tr>
<td></td>
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<td>“We agree and declare that all funds ... are and shall be our joint property, ...and that upon the death of either of us any balance in said account or any part thereof may be withdrawn by, or upon the order of the survivor.”</td>
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<tr>
<td>Martinez v. Martinez, 805 S. W. 2d 873 (Tex. App. – San Antonio 1991, no writ)</td>
<td>Alamo Savings</td>
<td>“The undersigned ... agree ... that with respect to all sums ... we are joint depositors, that the moneys in such account may be paid to or on the order of any one of us, either before or after the death of the other account holder ... and payment ... shall be valid and discharge Association from liability regardless of original ownership of the money so deposited.”</td>
<td>N/A</td>
<td>Both decedent and other party signed signature card.</td>
<td>The signature card was not a written agreement meeting the requirements of Section 439(a).</td>
<td>No</td>
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<td>Kitchen v. Sawyer, 814 S. W. 2d 798 (Tex. App. – Dallas 1991, writ denied)</td>
<td>Gibraltar Savings</td>
<td>Account was set up as “Mrs. R. M. Park or Mrs. Joy Kitchen.” No box was checked. One (unchecked) box read: “Joint Tenancy With Right of Survivorship. The undersigned agree that all funds ... are and shall be our joint property with the right of survivorship and that such funds may be paid to ... any of us, either before or after the death of any of us.”</td>
<td>N/A</td>
<td>Decedent signed signature card; other party later signed it as well. Card had boxes to check which account type was desired, but no box was checked.</td>
<td>No box was checked to indicate account type desired. The signature card “is not an unambiguous written contract establishing a joint account with right of survivorship, as required by section 439(a).” Extrinsic evidence to the contrary was not admissible.</td>
<td>No</td>
</tr>
<tr>
<td>Rogers v. Shelton, 832 S. W. 2d 709 (Tex. App. – Eastland 1992, writ denied)</td>
<td>Royall National Bank of Palestine</td>
<td>N/A (Court just says account agreement established a joint account with right of survivorship with community funds.)</td>
<td>N/A</td>
<td>Husband and Wife signed card when joint account was established with community funds. Six years later, son’s name was typed onto card, but husband and wife did not re-sign the card. Later, wife died and will left everything to her husband. Later, husband died.</td>
<td>The account agreement created a right of survivorship between original parties. However, typing an additional name on the signature card at a later date and having the added party sign the card did not create a right of survivorship in the added party, since the depositors did not make a “new written agreement” meeting the requirements of Section 439(a).</td>
<td>No</td>
</tr>
<tr>
<td>Shaw v. Shaw, 835 S. W. 2d 232 (Tex. App. – Waco 1992, writ denied)</td>
<td>MBank (2 accounts)</td>
<td>“Type of Customer – Joint with Survivorship.”</td>
<td>N/A</td>
<td>Accounts belonged to husband before marriage; husband added wife to accounts after marriage. “Joint with Survivorship” does not substantially fulfill the requirements of Section 439(a) and Stauffer.</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Case Name</td>
<td>Bank / Account</td>
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<td>Ephran v. Frazier, 840 S. W. 2d 81 (Tex. App. – Corpus Christi 1992, no writ)</td>
<td>Wharton Bank and Trust (2 accounts)</td>
<td>Boxes for “Joint – With Survivorship” and “Joint – No Survivorship.” No box was marked.</td>
<td>Savings Account: “JOINT ACCOUNT – WITH SURVIVORSHIP. Each joint tenant intends and agrees that the account balance upon his death shall be the property of the survivor ...”</td>
<td>Account was made payable to “Elward Ephran or Mary L. Hayes.” Signatures were on printed signature card form provided by the bank, which listed several types of accounts. Boxes appeared opposite each type of account and depositors could mark the type desired, but none of the boxes were marked.</td>
<td>By failing to mark a box to select an account type, the signature cards and depository agreements are insufficient to establish joint tenancy with right of survivorship because they do not satisfy the statutory requirements of Section 439(a).</td>
<td>No</td>
</tr>
<tr>
<td>McNeme v. Hart, 860 S. W. 2d 536 (Tex. App. – El Paso 1993, on rehearing)</td>
<td>First National Bank of Monahans</td>
<td>“The undersigned, joint depositors, hereby agree ... that all sums ... are and shall be owned by them jointly, with right of survivorship ....”</td>
<td>N/A</td>
<td>Both depositors signed signature card.</td>
<td>Although §439 “magic words” are not used, “shall be owned by them jointly, with right of survivorship” is sufficient to create survivorship right.</td>
<td>Yes</td>
</tr>
<tr>
<td>McNeme v. Hart, 860 S. W. 2d 536 (Tex. App. – El Paso 1993, on rehearing)</td>
<td>NCNB</td>
<td>Box opposite “or with right of survivorship” marked with an “X” and initialed by all joint depositors.</td>
<td>“If survivorship is designated, on the death of one party to a joint account, all sums ... vest in and belong to the surviving party as his or her separate property and estate.”</td>
<td>Decedent signed the signature card as depositor; the decedent and the other depositors initialed the “survivorship” box</td>
<td>Initials written next to a statement reading “with right of survivorship” was enough to create a right of survivorship, because the account agreement was incorporated by reference</td>
<td>Yes</td>
</tr>
<tr>
<td>Ivey v. Steele, 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>Home Savings (3 accounts)</td>
<td>“Joint Tenancy with Right of Survivorship: Accountholders own this account as joint tenants with right of survivorship. Upon the death of one of us the survivor(s) shall own the entire account.”</td>
<td>N/A</td>
<td>Decedent signed signature cards; cards had boxes checked designating the type of account chosen.</td>
<td>Accounts had signature cards signed by decedent which “specified in clear language that upon the death of one of the parties, the account was owned by the survivor(s).”</td>
<td>Yes</td>
</tr>
</tbody>
</table>

APPENDIX A – SURVIVORSHIP CASES SINCE 1990 – PAGE 3
<table>
<thead>
<tr>
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<tr>
<td><em>Ivey v. Steele,</em> 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>San Jacinto Savings (3 accounts)</td>
<td>“Joint Tenancy with Right of Survivorship. The undersigned agree that all funds now or hereafter deposited in the account(s) ... are and shall be our joint property with right of survivorship ....”</td>
<td>N/A</td>
<td>Decedent signed signature cards; cards had boxes checked designating the type of account chosen.</td>
<td>Accounts had signature cards signed by decedent which “specified in clear language that upon the death of one of the parties, the account was owned by the survivor(s).”</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Ivey v. Steele,</em> 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>Heights Savings</td>
<td>“Joint Tenancy with Right of Survivorship: Accountholders agree that they own this account as joint tenants with right of survivorship and that upon the death of one of us the survivor(s) shall own the entire account.”</td>
<td>N/A</td>
<td>Decedent signed signature cards; cards had boxes checked designating the type of account chosen.</td>
<td>Account had signature card signed by decedent which “specified in clear language that upon the death of one of the parties, the account was owned by the survivor(s).”</td>
<td>Yes</td>
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<td><em>Ivey v. Steele,</em> 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>Guardian Savings</td>
<td>“Joint Account – With Survivorship – Such an account is issued in the name of two or more persons. Each of you intend that upon your death the balance in the account ... will belong to the survivor(s) ....”</td>
<td>N/A</td>
<td>Decedent signed signature cards; cards had boxes checked designating the type of account chosen.</td>
<td>Account had signature card signed by decedent which “specified in clear language that upon the death of one of the parties, the account was owned by the survivor(s).”</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Ivey v. Steele,</em> 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>San Jacinto Savings</td>
<td>“Tenants in Common” and not “Joint Tenancy with Right of Survivorship”</td>
<td>N/A</td>
<td>Decedent signed signature cards; cards had boxes checked designating the type of account chosen.</td>
<td>Account “contained language insufficient to confer a right of survivorship upon the surviving party.”</td>
<td>No</td>
</tr>
<tr>
<td><em>Ivey v. Steele,</em> 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>Home Savings</td>
<td>N/A</td>
<td>N/A</td>
<td>Failed to have a box checked off designating the type of account chosen.</td>
<td>Accounts had signature cards signed by decedent which “specified in clear language that upon the death of one of the parties, the account was owned by the survivor(s).”</td>
<td>No</td>
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<td>Ivey v. Steele, 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>Citizens Savings (2 accounts)</td>
<td>“Joint Accounts – With Survivorship” with no other designating language</td>
<td>N/A</td>
<td>Decedent signed signature cards; cards had boxes checked designating the type of account chosen.</td>
<td>Account “contained language insufficient to confer a right of survivorship upon the surviving party.”</td>
<td>No</td>
</tr>
<tr>
<td>Ivey v. Steele, 857 S. W. 2d 749 (Tex. App. – Houston [14th Dist.] 1993, no writ)</td>
<td>University Savings</td>
<td>N/A</td>
<td>N/A</td>
<td>Account contained no language indicating the type account opened.</td>
<td>Account “contained language insufficient to confer a right of survivorship upon the surviving party.”</td>
<td>No</td>
</tr>
<tr>
<td>Banks v. Browning, 873 S. W. 2d 763 (Tex. App. – Fort Worth 1994, writ denied)</td>
<td>Sunbelt Savings</td>
<td>“Joint account with right of survivorship.” [Court does not say if there is additional language.]</td>
<td>N/A</td>
<td>“X” in box by “joint account with right of survivorship.” Estate argued that the decedent did not place “X” there, but a clerk at the bank did.</td>
<td>Account card is “clear and unambiguous regarding the parties’ intent to create joint accounts with the right of survivorship.” No extrinsic evidence to the contrary is admissible. Language of signature card is sufficient to create right of survivorship.</td>
<td>Yes</td>
</tr>
<tr>
<td>Banks v. Browning, 873 S. W. 2d 763 (Tex. App. – Fort Worth 1994, writ denied)</td>
<td>AmWest Savings</td>
<td>“Right of survivorship.” [Court does not say if there is additional language.]</td>
<td>N/A</td>
<td>“XX” in box by “right of survivorship.” Estate argued that the decedent did not place “XX” there, but a clerk at the bank did.</td>
<td>Account card is “clear and unambiguous regarding the parties’ intent to create joint accounts with the right of survivorship.” No extrinsic evidence to the contrary is admissible. Language of signature card is sufficient to create right of survivorship.</td>
<td>Yes</td>
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<tr>
<td><em>In re Gibson</em>, 893 S. W. 2d 749 (Tex. App. – Texarkana 1995, no writ)</td>
<td>Nine savings accounts (institution unknown)</td>
<td>Account parties “as joint tenants with right of survivorship and not as tenants in common and not as tenants by the entirety” agree that “any funds placed in or added to the account by any one of us is and shall be conclusively intended to be a gift and delivery at that time of such funds to the other tenant signer or signers to the extent of his or their pro rata interest in the account.”</td>
<td>N/A</td>
<td>N/A</td>
<td>“The language on the signature card clearly meets the requirements of Chopin.” (Chopin v. Interfirst Bank Dallas, 694 S. W. 2d 79 [Tex. App. – Dallas 1985, writ ref’d, n.r.e., holding that words such as “held as joint tenants with the right of survivorship” create a right of survivorship.)</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Arlene v. Omnibank, N. A.</em>, 894 S. W. 2d 76 (Tex. App. – Houston [14th Dist.] 1995, no writ)</td>
<td>Omnibank, N. A.</td>
<td>The funds in the account should be paid to “either of the undersigned regardless of the original ownership of the funds so deposited,” and that “[i]n the event of the death of either person, the funds shall be payable to the survivor, and in the event of the death of the survivor, the funds shall be payable to the administrator, executor, heirs, assigns or legal successors of such survivor....”</td>
<td>N/A</td>
<td>Signature card was signed by decedent. After decedent’s death, joint account holder continued to make deposits and withdrawals and designated another person as joint account holder. Bank delivered cashier’s check for account balance to administrator of decedent’s estate, then decided it was mistaken and dishonored check.</td>
<td>Account was not a survivorship account. The signature card does not purport to alter ownership of the funds at the death of an account holder. While the bank was authorized to pay the joint account holder after decedent’s death, the signature card did not create a right of survivorship.</td>
<td>No</td>
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<td>Evans v. First National Bank of Bellville, 946 S. W. 2d 367 (Tex. App. – Houston [14th Dist.] 1997, writ denied)</td>
<td>First National Bank of Bellville</td>
<td>The “time deposit signature card” read: The signator(s) of this account hereby acknowledge that the depositor or depositors, both as to the original deposit and any subsequent deposits, intend that such funds as may constitute any account balance upon the death of any party to this account, shall be the property of the surviving party or parties who shall take as a surviving joint tenant.</td>
<td>N/A</td>
<td>Individual certificates of deposit were only in the name of decedent. There was no reference to “time deposit signature card” on the certificate, and there were no references to CD’s account numbers on the card.</td>
<td>Language of “time deposit signature card” was sufficient to create right of survivorship. Extrinsic evidence not admissible to prove the existence of a survivorship agreement, but in this case extrinsic evidence is admissible to establish which accounts, if any, are subject to the survivorship language in the “time deposit signature card.” Case remanded for factual determination.</td>
<td>Maybe</td>
</tr>
<tr>
<td>Allen v. Wachtendorf, 962 S.W. 2d 279 (Tex. App. – Corpus Christi 1998, no writ)</td>
<td>Cuero Federal S&amp;L</td>
<td>“Multiple Party Account – With Survivorship”</td>
<td>“OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION – These rules apply to this account depending upon the form of ownership ... specified on page 1 ... Multiple-Party Account With Right of Survivorship (joint, and not as tenants in common) – At death of party, ownership passes to surviving parties. If two or more of you survive the deceased party, you will own the balance in the account as joint tenants with the right of survivorship and not as tenants in common.”</td>
<td>Bank officer prepared signature card. Both depositors signed card. Decedent initialed the account-type selection box. The box also is marked with two Xs. Page 2 of signature card was specifically referred to on Page 1 but not attached. Bank officer testified that it was maintained on computer media. Court said that Pages 1 and 2 constitute a single document.</td>
<td>Combined language of pages 1 and 2 substantially complies with the requirements of Section 439A(b)(4) &amp; (c) [the legislative form adopted in 1997].</td>
<td>Yes</td>
</tr>
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<td>Pressler v. Lytle State Bank, 982 S. W. 2d 561 (Tex. App. – San Antonio 1998, no writ)</td>
<td>Lytle State Bank</td>
<td>Box opposite “Individual” account type had “XX” typed in it; box opposite “Joint – With Survivorship” account type had “X” handwritten in blue ink. (Other language of signature card unavailable.)</td>
<td>N/A</td>
<td>Jury found that handwritten, blue ink “X” in box opposite “Joint – With Survivorship” was not placed on the signature card either by the decedent or with his consent.</td>
<td>Trial court properly placed burden of proof on disputed fact issue on party claiming survivorship. “[A] party who claims to own an account as the survivor of a joint account bears the burden of proving her claim.”</td>
<td>No</td>
</tr>
<tr>
<td>In re Estate of Dillard, 98 S. W. 3d 386 (Tex. App. – Amarillo 2003, writ denied)</td>
<td>Merrill Lynch (court applies §439 to what appears to be a brokerage account and not a bank account, without explanation)</td>
<td>Court says no one disputes that there appears of record an agreement containing survivorship language, but the language is not reproduced in the opinion.</td>
<td>N/A</td>
<td>Signed account agreement references Merrill Lynch Account No. 51D-11699. Property at death was in ML Acct. No. 552-17M38.</td>
<td>Broker testimony allowed to explain that account is the same, but the number changed when the account was moved from Fort Worth ML office to Austin office. Court says Stauffer permits extrinsic evidence of which document governs which account (it prevents extrinsic evidence of the intent to make it survivorship or not survivorship.</td>
<td>Yes</td>
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APPENDIX B – FROST NATIONAL BANK ACCOUNT DOCUMENTS

<table>
<thead>
<tr>
<th>Account Holder Name(s):</th>
<th>Reporting SSN/TIN:</th>
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<td>Mailing Address:</td>
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<tr>
<td>Telephone Number:</td>
<td>Telephone Number:</td>
</tr>
<tr>
<td>Number of Signatures Required:</td>
<td>Off-Tel Num:</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Signatures of Authorized Individuals:</th>
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<tbody>
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<td>X</td>
</tr>
</tbody>
</table>

(Signatures and printed names of each account signer)

The Authorized Individuals signing above agree(s), jointly and severally, to the terms set forth in the Deposit Account Agreement and, specifically, the Right of Survivorship feature, if applicable. Each of the Authorized Individuals also acknowledges that the Financial Institution provided a copy of these deposit account documents.

**Account Purpose:** Consumer

**ACCOUNT OWNERSHIP:** Multiple-Party with Right of Survivorship

**ACCOUNT TYPE:** Budget Checking

<table>
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<th>ACCOUNT NUMBER</th>
<th>OPENED BY</th>
<th>DATE CLODED</th>
<th>DATE REVISED</th>
<th>OPENING DEPOSIT</th>
<th>ATM CARD</th>
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<th>TELE &amp; CHEX</th>
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<th>STATEMENT DISPOSITION</th>
<th>MAIL DISPOSITION</th>
<th>SERVICE CHG DISPOSITION</th>
<th>DATE CLODED</th>
<th>DATE REVISED</th>
<th>OPENING DEPOSIT</th>
<th>ATM CARD</th>
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Frost National Bank

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<tr>
<th>Account Holder Name(s):</th>
<th>Reporting SSN/TIN:</th>
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<td>Telephone Number:</td>
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<td>Number of Signatures Required:</td>
<td>Off-Tel Num:</td>
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</table>

<table>
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<th>Signatures of Authorized Individuals</th>
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<tbody>
<tr>
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</tr>
</tbody>
</table>

(Signatures and printed names of each account signer)
TX UNIFORM SINGLE/MULTIPLE PARTY ACCOUNT SELECTION FORM

Depositor: 

Account No: 

Financial Institution: Frost National Bank
West Lake Hills (333)
3267 Bee Cave Road
Austin, TX 78746

NOTICE: The type of account you select may determine how property passes on your death. You will not control the disposition of funds held in some of the following accounts.

Select one of the following accounts by placing your initials next to the account selected:

SINGLE-PARTY ACCOUNT WITHOUT P.O.D. (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party’s estate under the party’s will or by intestacy.

Enter the name of the party: 

Enter the name(s) of the beneficiary(ies): 

SINGLE-PARTY ACCOUNT WITH P.O.D. (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiary of the account. The account is not a part of the party’s estate.

Enter the name of the party: 

Enter the name(s) of the beneficiary(ies): 

MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties’ net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party’s ownership of the account passes as a part of the party’s estate under the party’s will or by intestacy.

Enter the names of the parties: 

MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties’ net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party’s ownership of the account passes to the surviving parties.

Enter the names of the parties: 

MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND P.O.D. (PAYABLE ON DEATH) DESIGNATION. The parties to the account own the account in proportion to the parties’ net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiary(ies).

Enter the names of the parties: 

Enter the name(s) of the beneficiary(ies): 

CONVENIENCE ACCOUNT. The party to the account owns the account. The assignee to the account may make account transactions for the party. The assignee does not own the account. On the death of the party, ownership of the account passes as a part of the party’s estate under the party’s will or by intestacy. The financial institution may pay funds in the account to the assignee before the financial institution receives notice of the death of the party. The payment to the assignee does not affect the party’s ownership of the account.

Enter the name of the assignee: 

Enter the name of the assignee: 

TRUST ACCOUNT. The party or parties named (trustee(s) to the account own the account in proportion to the party(ies)’ net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not part of a trustor’s estate and does not pass under the trustor’s will or by intestacy, unless the trustor survives all of the beneficiaries and all other trustees.

Enter the name(s) of the trustee(s): 

Enter the name(s) of the beneficiary(ies): 

APPENDIX B – FROST NATIONAL BANK ACCOUNT DOCUMENTS – PAGE 2
**Excerpts from Frost Bank Deposit Account Agreement and Disclosure**

**INTRODUCTION:** In this Deposit Account Agreement and Disclosure, each and all of the depositors are referred to as “you” and “your.” The Financial Institution is referred to as “we,” “our,” and “us.” This Deposit Account Agreement contains the terms and conditions governing certain of your deposit accounts with us. As used in this document, the term “Agreement” means this document, the signature card, a rate and fee schedule (the “Schedule”), Truth in Savings disclosures, a Funds Availability Policy Disclosure, and an Electronic Funds Transfer Agreement and Disclosure, if applicable. Each of you signing the signature card for a deposit account acknowledges receipt of this Agreement, and agrees to the terms set forth in the Agreement, as amended from time to time. You agree that we may waive, in our sole discretion, any fee, charge, term or condition set forth in this Agreement at the time the Account is opened or subsequent thereto, on a one-time basis or for any period or duration, without changing the terms of the Agreement or your obligation to be bound by the Agreement, and we are not obligated to provide similar waivers in the future or waive our rights to enforce the terms of this Agreement.

***

Based upon the type of account ownership that you have designated, the following terms and conditions apply.

**NOTICE:** THE TYPE OF ACCOUNT YOU SELECT MAY DETERMINE HOW PROPERTY PASSES ON YOUR DEATH. YOUR WILL MAY NOT CONTROL THE DISPOSITION OF FUNDS HELD IN SOME OF THE FOLLOWING ACCOUNTS. You may select some of the following accounts by placing your initials next to the account you select on the Texas Uniform Single or Multiple-Party Account Selection Form.

**INDIVIDUAL ACCOUNTS.** An Individual ("Single-Party") Account is an account in the name of one depositor only.

**Single-Party Account Without P.O.D. (Payable on Death) Designation.** The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

**Single-Party Account With P.O.D. (Payable on Death) Designation.** The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate.

**MULTIPLE-PARTY ACCOUNTS.** Our rights and liabilities for payment of any sums on deposit in this account shall be governed by the Texas Probate Code, as amended from time to time.

This section pertains to multiple-party accounts:

**(a) Joint Account Ownership.** An account with two or more Account Holders is a joint ("multiple-party") account.
Multiple-Party Account Without Right of Survivorship. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Community Property Without Right of Survivorship. If you have designated your Account as a community property account without right of survivorship, the money in your Account is the community property of the named parties who are husband and wife. You will need to select the Multiple-Party Account Without Right of Survivorship designation on the Texas Uniform Single or Multiple-Party Account Selection Form according to Section 439A of the Texas Probate Code. The ownership of the community property account during the lifetime and after death of a spouse is determined by state law and may be affected by a will.

Multiple-Party Account With Right of Survivorship. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties.

Community Property With Right of Survivorship. Texas law allows a husband and wife to agree in writing that community property funds in an account shall become the property of the surviving spouse on the death of either spouse. If the parties to the account have community property funds and desire to have right of survivorship in those funds, they will not only need to choose the Multiple-Party Account With Right of Survivorship designation on the Texas Uniform Single or Multiple-Party Account Selection Form according to Section 439A of the Texas Probate Code, but will also need to execute an additional agreement signed by both the husband and wife regarding the disposition of the community property funds. We will furnish a written survivorship agreement to be placed on file with us for community property accounts with right of survivorship, however, you should consult your own attorney if you have any questions regarding community property laws and the division of property at the death of either spouse.

Multiple-Party Account With Right of Survivorship and P.O.D. (Payable on Death) Designation. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

(b) Convenience Account. The party to the account owns the account. The cosigner to the account may make account transactions for the party. The cosigner does not own the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy. The financial institution may pay funds in the account to the cosigner before the financial institution receives notice of the death of the party. The payment to the cosigner does not affect the party's ownership of the account.

(c) Totten Trust Account. The party or parties named trustee(s) to the account own the account in proportion to the party's or parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the
beneficiary. The trust account is not part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

Each joint ("multiple-party") Account Holder, without the consent of any other Account Holder, may, and hereby is authorized by every other joint Account Holder, to make any transaction permitted under the Agreement, including without limitation, (1) to withdraw all or any part of the account funds, (2) to pledge the account funds as collateral to us for any obligation, whether that of one or more Account Holders or of a third party, (3) to endorse and deposit checks and other items payable to any joint Account Holder, (4) to give stop payment orders on any check or item, whether drawn by that Account Holder or not, and (5) to close the Account, with the disbursement of account proceeds as instructed by the joint Account Holder. Each joint Account Holder is authorized to act for the other Account Holder(s) and we may accept orders and instructions regarding the account from any joint Account Holder. If we believe there to be a dispute between joint Account Holders or we receive inconsistent instructions from the Account Holders, we may suspend or close the Account, require a court order to act, and/or require that all joint Account Holders agree in writing to any transaction concerning the Account.

Your obligations under the Agreement are joint and several. This means that each joint Account Holder is fully and personally obligated under the terms of the Agreement, including liability for overdrafts and debit balances as set forth above, irrespective of which joint Account Holder benefitted from the withdrawal. If you establish a joint account without the signature of the other joint Account Holder(s), you agree to hold us harmless for our reliance upon your designation of the other joint Account Holder(s) listed on our documents. Further, the Account is subject to the right of setoff as set forth below.

ADDITIONAL ACCOUNT TYPES. This section applies to other deposit account types:

(a) Formal Trust Account. A Formal Trust Account is an account held by one or more trustees for the benefit of one or more beneficiaries according to a written trust agreement. Upon our request, the trustee(s) will supply to us a copy of any trust agreement covering the Account. We act only as custodian of the trust funds and are under no obligation to act as a trustee or to inquire as to the powers or duties of the trustee(s). The trustee(s) and/or any person opening the Account, in their individual capacity and jointly and severally, agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any beneficiary or other trustee with respect to the authority or actions taken by the trustee(s) in handling or dealing with the Account.

(b) Uniform Transfer to Minors. If you have established the Account as a custodian for a minor beneficiary under our state version of the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act, your rights and duties are governed by the Act. You will not be allowed to pledge the Account as collateral for any loan to you. Deposits in the Account will be held by us for the exclusive right and benefit of the minor. The custodian and/or any person opening the Account, in their individual capacity, agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any beneficiary or other custodian with respect to the authority or actions taken by the custodian in handling or dealing with the Account.
(c) **Agency Account.** An Agency Account is an account to which funds may be deposited and withdrawals made by an Agent designated by the owner of the funds. An Agent has full authority with regard to the Account but does not have an ownership interest in the Account. An Agency Account is revocable at any time by notifying us in writing. An Agency designation may be combined with one of the other forms of account ownership.

(d) **Business Accounts.** If the Account is not owned by a natural person (a corporation, partnership, limited liability company, sole proprietorship, unincorporated association, etc.), then the Account Holder must provide us with evidence to our satisfaction of the authority of the individuals who sign the signature card to act on behalf of the Account Holder. On any transactions involving the Account, we may act on the instructions of the person(s) authorized in the resolutions, banking agreement, or certificate of authority to act on behalf of the Account Holder. You agree to notify us in writing of any changes in the person(s) authorized or the form of ownership. If we receive conflicting instructions or a dispute arises as to authorization with regard to the handling of the Account, you agree we may place a hold on the Account until such conflict or dispute is resolved to our satisfaction and we will not be liable for dishonored items as a result of such hold.

(e) **Fiduciary Accounts.** With respect to all fiduciary accounts, including but not limited to estate accounts, guardianship accounts, and conservatorship accounts, and the accounts described in subsections (a) through (c) above, we reserve the right to require such documents and authorizations as we may deem necessary or appropriate to satisfy that the person(s) requesting or directing the withdrawal of funds held in the Account have the authority to withdraw such funds. This applies at the time of account opening and at all times thereafter.

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**GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with all applicable federal laws and all applicable substantive laws of the State of Texas in which we are located and where you opened your account. In addition, we are subject to certain federal and state regulations and local clearing house rules governing the subject matter of the Agreement. You understand that we must comply with these laws, regulations, and rules. You agree that if there is any inconsistency between the terms of the Agreement and any applicable law, regulation, or rule, the terms of the Agreement will prevail to the extent any such law, regulation, or rule may be modified by agreement.
SIGNATURE CARD - PERSONAL

ACCOUNT NUMBER 9101003615
ACCOUNT TITLE WHITNEY HOUSTON OR BOBBY BROWN (JDOES)
DATE OF BIRTH Jan. 21, '1973
TYPE OF OWNERSHIP JOINT (OR)
ACCOUNT TYPE REGULAR CD
DATE OPENED/CHANGED Jul. 11, 2000
CUSTOMER ADDRESS 321 NEED TO GET
AUSTIN TX 78705
PRIMARY ID 18946425
PHONE NUMBER 611-0214
CARD NUMBER 1254212354
SECURITY CODE 012

☐ Name/Style Change  ☐ TIN Change  ☐ Replacement
Acknowledgement - By signing this Signature Card, I (whether one or more apply) agree to open a deposit account at Bank One ("Bank"). I acknowledge that the information provided to the Bank by me is true to the best of my knowledge and authorize the Bank, at its discretion, to obtain credit reports and employment verifications on me. I acknowledge receipt of the Bank's Account Rules and Regulations, including all applicable inserts, and agree to be bound by the agreements and terms contained therein. If I have purchased a Certificate of Deposit, I acknowledge receiving notice of the early withdrawal penalties that apply. I acknowledge that this Bank does not represent or warrant that the funds in my account will or can be paid upon my death as indicated on this signature card. Texas Residents: See the Uniform Single or Multiple-Party Account Selection Form Notice in your Account Rules & Regulations for additional information concerning certain types of accounts.

Certification - I verify under penalty of perjury that (1) the Taxpayer Identification Number given below is correct and (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding. (You must check item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.)

Taxpayer ID Number: 86-02-3955

Office Name and Number AUSTIN TRAINING 2204
Opened By CARRIE HANLEY HANSEY

COMPLETE THIS SECTION FOR NAME/STYLE CHANGE ONLY
A signer on the account has authorized a name/style change as indicated by the new signature card above. Complete the applicable information below and acquire customer's signature.

☐ This authorizes the style change on the account as indicated above.

☐ This authorizes removal of my name ___________________________ from the above listed Bank One account.

Notes: Signature must be witnessed by a Bank One Employee or a Notary Public. See reverse side.

☐ My name on the above listed Bank One account has changed from ___________________________ to ___________________________.

Customer Signature ___________________________ Date ___________________________
Excerpts From Bank One, Texas, N.A. Deposit Account Agreement  
(for Consumer and Business Accounts)

This booklet contains the rules and regulations governing consumer and business deposit accounts at Bank One (excluding Certificates of Deposit and Certificates of Deposit Individual Retirement Accounts which are governed by a separate agreement). By signing a Bank One Services application or deposit account signature card, or by otherwise opening or maintaining an Account with Bank One, you accept and agree to be bound by the terms and conditions of this Deposit Account Agreement ("Agreement"), as well as all applicable state and federal laws and regulations. Sections to this Agreement entitled “More Specifics About Your Account” ("More Specifics") and “Miscellaneous Fees” list the checking and savings accounts available at Bank One and applicable fees and charges respectively. The section to this Agreement entitled “Electronic Funds Transfer Services Agreement” provides information regarding electronic funds transfers governed by Regulation E and the section entitled “Funds Availability Policy” sets forth Bank One’s policy regarding the availability of checking account deposits as governed by Regulation CC. These sections are adopted and incorporated into this Agreement by reference and shall apply to each deposit account you have with Bank One.

As used in this Agreement, Bank One or “Bank” means the Bank One affiliate identified on the front of this booklet. “You” or “your” means each person or entity in whose name the Account at the Bank is maintained or who exercises an ownership interest therein, any assignee or successor in interest to the Account and any designated attorney-in-fact. “Account” means each deposit account you have with the Bank. References to “your state” mean the state in which the principal office of the Bank is located.

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Form of Account Ownership

If the Bank at which you maintain your Account is located in the state of Texas, refer to the “Texas Uniform Single or Multiple-Party Account Selection Form Notice” section on Page 28 for additional information regarding your Account.

Individual Accounts

If you have an individual Account, all funds held in the Account are owned solely by you. In the event of your death or adjudication of incompetency or interdiction, you agree that the Bank has the right to honor checks or other items drawn against your Account until ten days after the Bank receives actual written notice of your death, incompetency or interdiction, unless ordered to stop payment by a person claiming an interest in your Account. To the extent and under the circumstances permitted by the laws of your state, upon receipt of actual written notice and proof of your death, the balance in your Account will be paid to the person or entity you designate to “pay on death” ("POD") or you designate as a POD payee or beneficiary on your Account’s signature card or on a form provided by the Bank. Please consult your legal advisor to determine the validity and advisability of designating a beneficiary to your Account.
Joint Accounts

If you have a joint Account, and if the laws of your state recognize such form of ownership, you agree that the Account will be a joint account with rights of survivorship. However, if the laws of your state recognize joint ownership with rights of survivorship but require additional or different acts on your part to create a survivorship account, then the Account will not be with rights of survivorship unless and until you have performed such acts. Unless your state is Louisiana, where two or more individuals are designated or appear on a signature card as owners of such Account, then as between them, the Bank may treat the owners as joint tenants with rights of survivorship.

For any joint Account where a joint owner has died, the Bank reserves the right not to release funds in the Account until all required legal documents are delivered to the Bank. You agree to notify the Bank of the death of any joint owner and to reimburse the Bank for any tax it may be required to pay by reason of its payment or release of funds in the Account to you.

If the Bank at which you maintain your Account is located in the State of Wisconsin and you are a married Wisconsin resident, then the following paragraph applies:

If your Account is designated as a “Marital Account” on the signature card, the Account is payable to you during the lifetime of both parties and until the Bank receives actual notice in writing of the death of one of the parties. Of the sums remaining on deposit upon the death of one of the parties, unless the Bank receives a document which controls payment of the Account pursuant to Wisconsin law, the Bank will pay upon request not more than 50% of the sums on deposit to the surviving spouse and the remaining 50% to the personal representative of the decedent’s estate or POD beneficiary in accordance with Wisconsin law. Except as modified by this paragraph, all provisions of the Joint Account section apply to Marital Accounts.

Any joint owner may close the Account. The Bank may, at its sole discretion, act upon such other instructions of any joint owner, including withdrawing funds or adding a signatory to the Account, without the signature of the other joint owner. However, the Bank is under no obligation to observe such instruction, and may do so or refuse to do so without liability. The Bank may also pay all or any part of the funds in the Account to any of the joint owners upon request of that joint owner or to a court or governmental agency upon receipt of a garnishment order, tax levy or similar legal process identifying any one of the joint owners.

The Bank may refuse to accept items for deposit or pay withdrawals on the signature of any one of several joint Account owners if the Bank receives a written request not to do so from any joint Account owner. After the Bank receives such written request, the Bank may refuse to honor any check, draft or demand upon the Account by any of the joint Account owners, including the one providing the request to the Bank, unless all of the joint Account owners concur in the withdrawal of funds from the Account. In the event the Bank receives such a written request, the Bank shall be relieved of any and all liability to every joint Account owner for failure or refusal to honor any check, draft or other demand for payment or withdrawal unless all of the joint Account owners join the drawing or other request. This shall not affect transactions previously completed.
Each joint owner appoints each of the others as his/her agent and attorney in fact with power to endorse and deposit items payable to him/her in the joint Account. Such appointment shall remain effective until the Bank receives written notice from a joint owner revoking the authority of any other joint owner to endorse items for deposit on his/her behalf.

If you establish a joint Account without the signature of the other joint owner, you agree to hold the Bank harmless for its reliance upon your designation of the other as a joint owner.

Corporation, Unincorporated Association and Limited Liability Company Accounts

If you are a corporation, unincorporated association or limited liability company ("llc"), you agree that the Account is payable only to or on the order of the corporation, association or llc, as applicable, and not, except as they may be a payee on a check or other item drawn on the Account, to any individual director, shareholder or member thereof. You further represent and agree that the corporation, association or llc has taken all action necessary to open and maintain banking accounts at the Bank and that all resolutions delivered to the Bank in connection with the Account are true, accurate, complete, and will be kept up to date and may be conclusively relied upon by the Bank. On any transaction involving the Account, the Bank may act upon the instructions of the person(s) authorized in the resolutions to act on behalf of the corporation, association or llc. You agree to notify the Bank in advance of any change in your form of ownership. You also agree that the Bank is not obligated to cash checks payable to you or to accept “less cash” deposits.

Partnership Accounts

If you are a partnership, including a limited partnership, limited liability partnership ("llp") or joint venture, you agree that the Account is payable only to or on the order of the partnership, llp or joint venture, and not to any individual partner, except as the partner may be a payee on a check or other item drawn on the Account. You further represent and agree that the partnership, llp or joint venture has taken all action necessary to open and maintain banking accounts at the Bank and that any certificates or resolutions delivered to the Bank in connection with the Account are true, accurate, complete, and will be kept up to date and may be conclusively relied upon by the Bank. On any transaction involving the Account, the Bank may act upon the instructions of the person(s) authorized in the certificates or resolutions to act on behalf of the partnership, llp or joint venture. You agree to notify the Bank in advance of any change in your form of ownership.

Sole Proprietorship Accounts

If you are a sole proprietor, you agree that upon your death, your estate shall release and indemnify the Bank for any payment made at the direction of an authorized signer on your Account, provided the Bank has not received written notice of your death. If you are doing business under an assumed name, you represent and agree that you have properly filed all assumed name certificates or other documents required by the laws of your state. You agree to notify the Bank in advance of any change in your form of ownership.

Fiduciary and Similar Accounts
If the Account is opened as an estate account, trust account, guardianship or conservatorship account, or other similar type of account, the Bank reserves the right to require such documents or authorizations as it may reasonably deem necessary or appropriate to satisfy the Bank that the person requesting or directing the withdrawal of funds held in the Account has the authority to withdraw such funds. The Bank shall be held harmless for refusing to pay or release funds in the Account where such refusal is based on the failure of the person requesting or directing the withdrawal to provide documents or authorizations requested by the Bank. If you establish your account as “in trust for” (“ITF”) or as trustee for a third person without presenting formal trust documents, then the Bank may treat the Account as a Totten Trust account or as otherwise required by the laws of your state. If you have opened an account as custodian for a minor beneficiary under a Uniform Transfers to Minors Act or other similar type of account, you will not be allowed to pledge the account as collateral for a personal loan to you or cash checks against the account, and, when the minor beneficiary reaches the age of 21 years, the beneficiary is entitled to the funds in the account upon reasonable identification without notice to or consent of the custodian, except as otherwise required by law.

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TEXAS UNIFORM SINGLE OR MULTIPLE PARTY ACCOUNT SELECTION FORM NOTICE

(Source: Texas Probate Code 439A)

Additional information and agreements regarding an Account maintained at a Bank located in the State of Texas are found in the following provisions.

The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts.

1. **Single-Party or Individual Account Without “P.O.D.” (Payable on Death) Designation.** The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party’s estate under the party’s will or by intestacy.

2. **Single-Party or Individual Account With “P.O.D.” (Payable on Death) Designation.** The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party’s estate.

3. **Multiple-Party or Joint Account without Right of Survivorship.** The parties to the account own the account in proportion to the parties’ net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party’s ownership of the account passes as part of the party’s estate under the party’s will or by intestacy.

4. **Multiple-Party or Joint Account With Right of Survivorship.** The parties to the account own the account in proportion to the parties’ net contributions to the account. The
financial institution may pay any sum in the account to a party at any time. On the death of a party, the party’s ownership of the account passes to the surviving spouse.

5. **Multiple-Party Account With Right of Survivorship And P.O.D. (Payable on Death) Designation.** The parties to the account own the account in proportion to the parties’ net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

6. **Revocable Trust Account Evidenced by Signature Card Only.** The parties named as trustees to the account own the account in proportion to the parties’ net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of the trustee’s estate and does not pass under the trustee’s will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees. Generally, the Bank will title such an Account “[Trustee name(s)] for the benefit of [Beneficiary Name(s)]”.

APPENDIX C – BANK ONE, TEXAS, N. A. ACCOUNT DOCUMENTS – PAGE 7
APPENDIX D – BANK OF AMERICA ACCOUNT DOCUMENTS

Bank of America
BANK OF AMERICA, N.A. (THE "BANK")

Personal Signature Card
with Substitute Form W-9

Account Number _____________________________
Account Type _____________________________
Account Title _____________________________

By signing below, I/we acknowledge and agree that this account is and shall be governed by the terms and conditions set forth in the following documents, as amended from time to time: (1) if this account is a deposit account, the Deposit Agreement and Disclosures, the Personal Schedule of Fees, and the Miscellaneous Fees for Personal Accounts, (2) if this account is a Line of Credit, the Line of Credit Agreement and Disclosures. Furthermore, I/we acknowledge and agree that the signature(s) will serve as verification for any transaction in connection with this account, any Line of Credit checks which I/we may sign, and as the certification (set forth below) of the taxpayer identification number to which I/we want interest reported.

Substitute Form W-9. (Required only for Deposit Accounts) Certification: Under penalties of perjury, I certify that:
1. The number shown on this form is the correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am subject to backup withholding because (A) I am exempt from backup withholding, or (B) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (C) The IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions
You must answer Item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. (See also IRS instructions for Substitute Form W-9 in the Deposit Agreement and Disclosures).

☐ Individual
☐ Joint with Right of Survivorship
☐ Payable on Death ("POD")
☐ Trust/Trust account

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

<table>
<thead>
<tr>
<th>Tax Identification Number</th>
<th>Report Interest On</th>
<th>Signature</th>
<th>ATM/Check Card Requested? *</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* By checking the box marked "ATM/Check Card Requested?", I/we hereby request an Automatic Teller Machine Card and/or a Check Card.

If we name the following person(s) as beneficiary(ies) or POD payee(s), whichever is applicable, of this account, superseding any prior designations:

Beneficiary/POD Payee’s Name _____________________________
Beneficiary/POD Payee’s Social Security Number _____________________________
Beneficiary/POD Payee’s Present Telephone Number _____________________________
Beneficiary/POD Payee’s Present Address _____________________________

(Please notify the Bank of any subsequent changes of beneficiary(ies)’ or POD payees’ address or telephone.)
Excerpts From Bank of America’s Deposit Agreement

This Deposit Agreement will govern all deposit accounts established with Bank of America, N.A. or one of our predecessors, and replaces and supersedes any previous deposit agreements. The words “we,” “our,” “us” and “bank” refer to Bank of America, N.A. The words “you,” “your” and “depositor” refer to the account owner or each joint owner identified on the signature card or other account documents and each of their legal representatives. Please read this information carefully and keep it with your other account records.

1. Ownership of accounts

a. Multiple-party accounts.

(1) With respect to accounts of individuals, if your account as evidenced by the signature card or other account documentation is a joint account, a P.O.D. (Pay on Death) Account or Totten Trust Account, our rights and liabilities for payment of any sums on deposit in the account shall be governed by Part 1 of Chapter XI of the Texas Probate Code, as amended from time to time. A multiple-party account may be paid upon proper request to any one or more of the parties to your account. We will not be 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 sums withdrawn from such an account.

(2) “P.O.D. Account” means an account payable on request of one person during his or her lifetime and, on his or her death, to one or more designated P.O.D. payees or to one or more persons during their lifetime and on the death of all of them to one or more P.O.D. payees.

(3) “Totten Trust Account” means an account in the name of one or more persons as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with us and there are no assets of the trust other than the sums on deposit in the account. A Totten Trust Account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relationship such as attorney-client.

(4) As used in this paragraph, the term “payee” means a payee under a P.O.D. Account or a beneficiary under a Totten Trust Account. No more than three (3) persons may be designated as payees on one account. Each payee must be designated by name and should sign a signature card. If more than one person has been designated as a payee, each payee agrees that, at the time any funds become payable to the payee, unless, within thirty (30) days following the date on which the funds become payable to such payees, all payees sign and submit a written request to us that the account be closed and the funds be paid over to the payees, the account shall become a joint account with right of survivorship in each payee.

(5) “Joint Account” means an account payable on request to one or more of two or more parties (whether or not there is a right of survivorship). Any joint account that you establish with us that does not denote whether more than one (1) signature is required will be deemed to require the signature of only one (1) signer to effect all transactions in connection with said account. Each party to a joint account agrees that we may pay the funds in the account to or on the order of any one or more
of such parties or to or on the order of the duly authorized agent of any of them without regard to
whether any of such parties is incapacitated or deceased. Under certain circumstances, payment may
be made to the heirs or personal representatives of a deceased party. Any party, without the consent
of any other party, may 1) make deposits to or withdraw funds from the account; 2) close the account;
3) obtain additional account services, including lines of credit tied to the account; 4) endorse any item
payable to any one or more parties for deposit to the account (and each of you specifically authorizes
the other parties to endorse such items for deposit); and 5) place a stop payment order with respect to
any item drawn on the account by any of the parties. Each party is jointly and severally liable for
payment of all proper charges against the account, including, but not limited to, overdrafts which we
may choose to pay. If you are joint fiduciaries, each of you authorizes the other(s) to act individually,
and such action will be considered to be the joint action of the fiduciaries.

(6) Survivorship. Unless you so elect and have indicated on the signature card, time
deposit receipt or certificate of deposit that a joint account is “with right of survivorship,” there shall
be no right of survivorship for the parties to the account. In the event a joint account is designated
with right of survivorship:

(a) If none of you are married to each other, funds shall be held by you as joint
tenants with right of survivorship.

(b) If any of you are married to each other:

(i) Funds in your account that are your separate property shall be held by
you as joint tenants with right of survivorship;

(ii) Funds in the account that are your community property, upon the death
of one of you, shall become the property of the survivor. Having
chosen that funds pass “with right of survivorship,” such married
persons hereby jointly and severally agree to hold us harmless from any
loss and liability arising in connection with such account designation
and warrant that they have entered into all appropriate partitioning or
other agreements necessary or required by law, including Part 3 of
Chapter XI of the Texas Probate Code, to make such designation
lawful.

(c) If survivorship is designated, 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.

(7) With respect to all multiple-party accounts or other accounts, we make no
representation regarding the tax aspects or the legal results of opening an account in particular
circumstances.
(8) With respect to all multiple-party accounts, the rights of survivors shall be determined by the form of the account at your death. A change in the form of the account must be consistent with this Deposit Agreement, and such change will not be effective until it is made in writing, received and acknowledged by us during your lifetime.

(9) In the event we receive written notice from a personal representative pursuant to § 442 of the Texas Probate Code, we shall be entitled to rely on all figures supplied and representations made by such personal representative.

b. Business and other nonpersonal accounts. If the depositor is a corporation, unincorporated association, limited liability company, professional limited liability company, limited liability partnership, fiduciary, partnership or sole proprietorship, each person signing the signature card or other account documents represents and agrees that 1) such person is fully authorized to execute all documents in the capacity stated therein; 2) such person has furnished all documents necessary to evidence that authority; and 3) the depositor will furnish any other documents in such form as we may request from time to time. We are not required to recognize any resolution affecting the account that is not on our form. Any change in authorized signers will not be effective against us until three (3) business days after our receipt of documents effecting the change provided that we may recognize such change earlier.

2. Powers of attorney

We are not required to recognize any power of attorney (including a power of attorney executed pursuant to the Texas Probate Code) to act on an account. If we accept a power of attorney, we may continue to recognize the authority of your attorney in fact until we receive written notice of revocation or termination and have had a reasonable time to act upon it. We also reserve the right to restrict the types or sizes of transactions we will permit an attorney in fact to conduct, on a case-by-case basis, and may require the attorney in fact to present the original power of attorney before conducting any transaction.

***

Governing law, jurisdiction and severability

This agreement will be governed by the laws and regulations of the State of Texas and the United States. Any lawsuit regarding your account must be brought in a proper court in the State of Texas. You hereby submit to the personal jurisdiction of the State of Texas. A determination that any part of this agreement is invalid or unenforceable will not effect the remainder of this agreement.
Introduction

Welcome to Chase Bank of Texas. We are pleased that you decided to open an account with us. This agreement, together with the product and fee information and any other agreements you receive governing our services, contains the rules, regulations, terms and conditions for the accounts and services you use. This agreement is the contract between you and Chase Bank of Texas, N.A. (“Chase” or “Bank”). By signing signature cards or by using these accounts or services, you agree to these rules, regulations, terms and conditions. To the extent that there is any conflict between any statement, made by one of our employees and this agreement, this agreement applies. If you enter into any other written agreement relating to services we provide and the other agreement conflicts in any way with this agreement, the other agreement will control. If you have any questions, please contact any Chase branch or call ServiceLine, our 24-hour-toll-free customer service line, at 1-800-235-8522.

Arbitration

Unless prohibited by applicable law, either you or we may request (before or after judicial proceedings have begun) that any controversy or claim relating to your accounts or any of the services described in this agreement be settled by mandatory and binding arbitration using the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). In that case, all statutes of limitation that would otherwise apply will continue to apply, and the arbitration will be conducted in the city where our principal office is located. The arbitrator(s) may (i) order discovery to be conducted in accordance with the Federal Rules of Civil Procedures, and (ii) make summary rulings such as summary judgments and orders of dismissal after a party submits a motion to dismiss. Any arbitration award will be final and binding. This agreement to arbitrate does not prevent us from exercising self-help remedies such as setoff, or from foreclosing any lien or security interest we may have, or from obtaining emergency court relief where it would otherwise be available. Controversies or claims involving automatic funds transfer (ACH) services will be settled by arbitration in accordance with NACHA arbitration procedures.

Power of Attorney

We are not required to honor an appointment of another person to act on your behalf pursuant to a power of attorney, but we may do so in our sole discretion.

Special Account Types
1. **Multiple Party Accounts**

1. **Joint Accounts.**

   We may pay any amount on deposit to or on the order of any joint owner, either before or after the death of any owner, without reference to the ownership of the funds in the account, even if the account is styled “A and B.” Payment to or on the order of any owner will discharge us from liability for the amount paid. Any owner may grant a security interest in a joint account without the consent of the other owners, subject to the restrictions on transfer of accounts contained in this agreement.

   You and each other owner of your account are jointly and severally liable for any overdraft on the accounts whether or not you signed or requested the order for payment or participated in the transaction creating the overdraft or received any benefit from the overdraft. We may report unpaid overdrafts to local clearinghouses and other consumer reporting agencies locally, regionally and nationwide.

2. **Joint Accounts with Right of Survivorship.**

   If your account is a joint account with a right of survivorship, then if one of the owners dies, the interest of the deceased passes directly to the surviving owners instead of to the estate of the deceased. A survivorship agreement is not inferred from the mere fact that the account is a joint account and more than one person has the right to withdraw the funds in the account. To obtain an account with a right of survivorship, the account must be styled as such, and there must be a written survivorship agreement on file with us. For your convenience, you may elect to use a survivorship agreement that is contained on our signature cards for checking, savings and money market accounts or the Receipt for CDs. Other than the effect of death of a depositor, a joint account with right of survivorship is subject to the same rules applicable to a non-survivorship joint account.

3. **“Totten” Trust Accounts.**

   If an account is opened bearing the styling “for the benefit of” or “in trust for” another person (or any similar wording) and we do not receive written information acceptable to us about the existence or terms of a valid trust, the account will be a “trust account” under Chapter XI of the Texas Probate Code, payable during the life of the named trustee to the trustee, and to the named beneficiary or beneficiaries if proof of death is presented to us showing to our satisfaction that the beneficiary or beneficiaries survived all named trustees. If more than one “trustee” is named, upon the death of any trustee the account is the property of the surviving trustee(s) during their life.

4. **Payable on Death Accounts.**
A Payable on Death ("P.O.D.") account is an account payable on request to one or more persons during his, her or their lifetime and on his or her death (or the death of all of them) to one or more P.O.D. payees. A P.O.D. account belongs to the original payee during the original payee’s lifetime. P.O.D. accounts are established designating the account name as such on the signature card. If more than one original payee is named, upon the death of any original payee the account is the property of the surviving original payee(s) during their life.

5. Nontestamentary Transfers.

If an account is opened as a joint account with right of survivorship, a “Totten” trust account, or a payable on death account, and we do not receive a signature card signed by all joint owners, or other signed instruction of all joint owners regarding the establishment of the account, upon the death of any joint owner from whom we do not have a signed instruction establishing the account styling we may consider the account ownership to be disputed, or we may pay the account in accordance with its styling. The estate of any deceased account owner will indemnify us against any loss, cost or expense arising from any claim by the estate or beneficiaries of the estate that payment in accordance with the styling of the account is wrongful.

2. Fiduciary Accounts.

1. Texas Uniform Transfers to Minors Act Accounts.

An account established under the Texas Uniform Transfers to Minors Act ("TUTMA") irrevocably transfers the money deposited in the account to the minor. The “custodian” of the account acts as a trustee for the minor until the minor is 21 years of age, at which time the minor is absolutely entitled to the money. Neither the donor of the money nor the custodian is entitled to the use or benefit of the money, except for the support, education, maintenance and benefit of the minor. If you establish a TUTMA account for your child, the money deposited will be the property of your child, and you may not invest the money in your name, use it to satisfy balance requirements on your accounts, use the account as collateral for a loan or otherwise use the money for your benefit.
# APPENDIX F – WELLS FARGO BANK ACCOUNT DOCUMENTS

**Account Selection**

<table>
<thead>
<tr>
<th>Checking</th>
<th>Savings</th>
<th>INTER/EXTRAS/Philippines ATM Remittance</th>
</tr>
</thead>
</table>

**Customer Information**

<table>
<thead>
<tr>
<th>CUSTOMER 1</th>
<th>CUSTOMER 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Signature</strong></td>
<td><strong>Signature</strong></td>
</tr>
<tr>
<td><strong>Name</strong></td>
<td><strong>Name</strong></td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td><strong>Address</strong></td>
</tr>
<tr>
<td><strong>City</strong></td>
<td><strong>City</strong></td>
</tr>
<tr>
<td><strong>State</strong></td>
<td><strong>State</strong></td>
</tr>
<tr>
<td><strong>Zip</strong></td>
<td><strong>Zip</strong></td>
</tr>
<tr>
<td><strong>Phone</strong></td>
<td><strong>Phone</strong></td>
</tr>
</tbody>
</table>

**Bank Use Only**

<table>
<thead>
<tr>
<th><strong>Primary Identification Customer 1</strong></th>
<th><strong>Secondary Identification Customer 1</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social Security Number</strong></td>
<td><strong>Social Security Number</strong></td>
</tr>
<tr>
<td><strong>Date of Birth</strong></td>
<td><strong>Date of Birth</strong></td>
</tr>
<tr>
<td><strong>City</strong></td>
<td><strong>City</strong></td>
</tr>
<tr>
<td><strong>State</strong></td>
<td><strong>State</strong></td>
</tr>
<tr>
<td><strong>Zip</strong></td>
<td><strong>Zip</strong></td>
</tr>
</tbody>
</table>

**Existing Customers Must enroll online for**

**New Accounts Only (All information below is required)**

- **Enroll in FREE Online Banking**
- **Enroll in Online Bill Pay**
- **Enroll in Internet Banking**
- **Enroll in Online Bill Pay**

**Account Number**

<table>
<thead>
<tr>
<th><strong>Card Type</strong></th>
<th><strong>Issuing Bank</strong></th>
</tr>
</thead>
</table>

**Account Agreement and Authorization (Use reverse side)**

**Existing Customer**

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
</tr>
</thead>
</table>

**Send to Online Customer Service MAC: A0003-058**
New Account Checklist

☐ Have customer complete Application.
 ☐ Check all sections of application.

☐ Order ATM & Check Card. If the customer does not qualify for an ATM & Check Card, order an ATM Card. If customer already has card, ask the new account to the existing card.
 ☐ Link all accounts to ATM & Check Card.
 ☐ Tell customer that their approved credit card account will be linked to their ATM & Check Card.
 ☐ Tell customer to expect their card to arrive within 5-7 business days.

☐ Sign up customer for Direct Deposit.

☐ Purchase "Rules Governing Deposit Accounts" (UNIT 402), the "Schedules of Account Terms & Fees" (UNIT 402), and the "UNIT 400 Addendum" (applicable).

☐ Tell customer that the "Rules Governing Deposit Accounts" contains tips on protecting their account from check fraud.

☐ Ask customer if they have access to the Internet.
  ☐ New customer may enroll for Wells Fargo Online* using the application on the reverse side.
    ☐ A Social Security Number is required to enroll for Online Banking.
    ☐ The customer's signature and e-mail address are required.
    ☐ Enroll now in 5-7 business days.
  ☐ Existing customer can sign up for Online Banking at www.wellsfargo.com.

☐ Ask customer if they would transfer money via touchtone banking? If yes,
  ☐ Provide customer appropriate number to set up Account Info.
    ☐ Password with Telephone Banking on a Customer Account (US) Required for Telephone Banking.
    ☐ If customer has more than one account, check all accounts for name and SSN consistency. Correct as needed. This allows customer to transfer via touchtone banking.
  ☐ Ask customer if they will be transferring money to accounts for which they are not a co-signer and/or transferring amounts greater than $500.00 if yes.
    ☐ Have customer fill out Telephone Transfer Agreement (UNIT 907).
    ☐ Make copy to UNIT 900.
    ☐ Give link copy to customer.
    ☐ Send yellow copy to FG.

☐ Ask customer if they own a home.
  ☐ If yes, complete Wells Fargo Equity Line brochure.

☐ If customer signs an ATM Remittance Account in the Philippines.
  ☐ Collect Beneficiary's name and address on the application.
  ☐ Order Express Card for the customer only if customer does not currently have one.
  ☐ Order Express Card for the beneficiary.
  ☐ Inform customer to hand over the card (FOR 5 OR MORE ONLY) for Remittance Card.
  ☐ Link only the ATM Remittance Account in the Philippines to the Remittance Card.

☐ If customer signs an InterCuenta Express*, the account which allows customers to transfer money to Mexico.
  ☐ Collect the Beneficiary's complete name.
  ☐ In Mexico, people initially have two last names and it is very important that the name be recorded exactly as it appears on the Beneficiary's ID.
  ☐ Collect the Beneficiary's address in Mexico (Include city and state if available).
  ☐ Collect the Beneficiary's Mexico savings account number. Available. This number will be 16 digits long.
  ☐ Order Express Card for the customer if this is the only relationship with Wells Fargo or if they do not have to have their InterCuenta Express linked to their existing card.

☐ Have customer sign Sample Signature Card in New Account Kit or use UNIT 498 and send in for forged card control.

Account Agreement and Authorization (For Deposit Accounts Only)

☐ You agree that we will not open a new account and/or add any other authority.
☐ You authorize that the same signature requirements for banking will be those on or signing checks on the account and may be required to close the account.
☐ You agree to sign the deposit agreement subject to the terms of our deposit agreement relating to the accounts, and our policies. He should review the terms applicable to the account(s) and procedures for closing the account(s) under the scenarios relating to the terms, and any other terms of the deposit agreement applicable to the accounts in the deposit agreement, and that the terms and conditions of the deposit agreement apply.
☐ You agree to sign the deposit agreement subject to the terms of the deposit agreement relating to the accounts, and our policies. He should review the terms applicable to the account(s) and procedures for closing the account(s) under the scenarios relating to the terms, and any other terms of the deposit agreement applicable to the accounts in the deposit agreement, and that the terms and conditions of the deposit agreement apply.

Additional Signer (For Deposit Accounts Only)

CUSTOMER 3

CUSTOMER 4

Social Security Number: ____________________________
Social Security Number: ____________________________

Birth Date: ____________________________
Birth Date: ____________________________

Enrollment Date: ____________________________
Enrollment Date: ____________________________

Mother’s Maiden Name: ____________________________
Mother’s Maiden Name: ____________________________

Primary Identification Customer 3: ____________________________
Secondary Identification Customer 3: ____________________________

Primary Identification Customer 4: ____________________________
Secondary Identification Customer 4: ____________________________

Bank Use Only

Customer 3 Signature: ____________________________
Customer 4 Signature: ____________________________

Account Use Only - Information Required

Customer Signature: ____________________________

Cardholder’s Address: ____________________________

Account Number: ____________________________

Account Title: ____________________________

Acct No: ____________________________

Account Access Date: ____________________________

Account Period: ____________________________

Account Number: ____________________________

Account Title: ____________________________

Acct No: ____________________________

Account Access Date: ____________________________

Account Period: ____________________________

Additional Account(s) Opened

☐ I have received a disclosure statement for each account opened.

☐ This Signature Card will replace this card after 5 years.

☐ This Signature Card is replaced by a new card after 5 years.

☐ This Signature Card replace this card today.

Bank Use Only

This Signature Card will replace the card used today.

This Signature Card is replaced by a new card after 5 years.

This Signature Card replace this card today.

ADDENDA F – WELLS FARGO BANK ACCOUNT DOCUMENTS – PAGE 2
**Excerpts from Wells Fargo Bank’s Account Agreement**

*Please note: This brochure contains the terms of our dispute resolution program, which is an arbitration program. At your or our request, disputes must be resolved by an arbitration proceeding before a neutral arbitrator. If arbitration is requested, you do not have the right to a jury or court trail to resolve the dispute. The terms of the program are in “Resolving Disputes.” Please read them carefully.*

**Our Agreement**

Below are the key points to which you and all persons signing on the account (the “signers”) agree when you open any account with us ("Wells Fargo” or the “bank”). This agreement applies whether the account is opened in person, online, by mail, or telephone.

***

**Account Ownership**

You may open your account in your name alone as owner (a single name account) or you may share ownership of your account with one or more persons. The type of account and ownership you select has tax and estate planning consequences and may determine how the funds in the account pass on at your death. Account ownership is not transferrable. If you have questions about these issues, please consult your attorney or tax advisor. Depending on the state where you are located and the state laws that control your account, we offer the following types of account ownership.

*Please note: Your will may not control the disposition of funds held in some of these accounts.*

**Individual** - One individual is the owner of the account. When the owner dies, ownership of funds in the account passes as part of the owner’s estate to the successor through the owner’s will or by applicable state law, if the owner does not have a will.

**Joint Tenancy With Right of Survivorship** - All owners of the account have equal and undivided ownership in the entire account during their lifetimes. When an owner dies, the funds in the account belong to the surviving owners automatically.

**Tenancy in Common (not available in all states)** - All owners of the account have ownership in the account, but the size of each owner’s interest may vary. When an owner dies, that owner’s share in the account belongs to the owner’s estate and passes to the owner’s successor in interest through a will or by transfer to the estate.

**Community Property (not available in all states)** - The owners of the account are husband and wife, and each has an interest in the account. When one spouse dies, ownership does not automatically pass to the surviving spouse because the deceased spouse can pass his or her interest through a will to someone else.
FIDUCIARY

(Trusts & Estates) - Executors, administrators, conservators, personal representatives, guardians or trustees under written trust agreements, court orders or other documents may open individual accounts as a fiduciary. We may require evidence of the authority of the person or persons to act, such as a copy of the court order appointing the fiduciary, a copy of the trust instrument or portions of the trust instrument or appropriate trustee certification, to verify that the person (or persons) opening the account is the designated fiduciary, what his or her powers are, what the provisions for succession are and any unusual provisions.

(Court Ordered) - The court order will direct the Bank in how the account will be set up. A certified or file copy of the order and order to deposit funds is required to be submitted to the Bank to verify the court instructions on how the account is to be managed.

Transfers to Minors - A person may open an account under the provisions of state law that allow for transfers or gifts to minors. The person opening the account is the custodian, but the account is owned by the minor. If the custodian resigns, is removed or dies, upon satisfactory proof, we deliver the funds to a successor custodian or to the minor according to state law. You agree to keep us informed about each minor’s location.

Bank Account (Totten) Trusts (not available for Money Market Checking or Money Market Access Accounts; also not available in all states) - When an account is opened with ownership showing as one party (the “trustee”) in trust for another party (the “beneficiary”) and there is no written trust agreement, in the absence of other facts, the trustee (who may be more than one person) is the owner of the account and the beneficiary has no interest in the account until the trustee (or all trustees are) is dead. We pay the funds in the account to the trustee during his or her lifetime, or the survivor’s lifetime if there is more than one trustee. When the last trustee dies, the balance in the account is paid to the named beneficiary, or his or her heirs, executors or administrators. These accounts are sometimes referred to as “payable on death” accounts.

Special Terms for Multi-Party Accounts - If an account is owned in joint tenancy, tenancy in common, as community property or as a bank account (Totten) trust, when all owners authorize any one owner to write checks against the account then, each owner, acting alone, is also authorized to request and receive withdrawals from the account; close the account without notice to the other; establish additional accounts in the same name or names and subject to the same signature provision; pledge the account as security for any indebtedness to us; obtain overdraft protection for the account; and exercise all other rights associated with the account.

We may accept for deposit into the account any check payable to one or more owners whether or not endorsed, and if endorsed, without questioning the endorsement.

To the extent permitted by law, in a joint tenancy account, each joint tenant appoints each other joint tenant as his or her attorney-in-fact with full power to endorse the name of any joint tenant or any item for deposit into the account or to cash the item.
Governing Law - All relationships between us are governed by applicable federal law and regulation and California law (except when otherwise required by applicable law), and are subject to our policies and the rules described in this disclosure.
APPENDIX G – NON-PROBATE ASSETS – DISCUSSION POINTS

1. What Are Non-Probate Assets?
   a. Survivorship/POD Property
      i. Bank Accounts
      ii. Brokerage Accounts
      iii. Other
   b. Beneficiary Designation Property
   c. Other Contract Rights
   d. Living Trust Property

2. Survivorship Property – Choice of Law Issues
   a. Bank Accounts
   b. Brokerage Accounts

3. Administrative Problems with Non-Probate Assets
   a. Creditor Issues
      i. Beneficiary Designation Property
      ii. Survivorship Property – Bank Accounts
      iii. Survivorship Property – Brokerage Accounts, etc.
      iv. Living Trust Property
   b. Guardianship Issues
      i. Survivorship Property
      ii. Living Trusts
   c. The Caregiver Problem
   d. Self-Help Plans Gone Awry
      i. Living Trusts
      ii. Survivorship Property
The Plan

How to Establish

Account

No: IRAs and other retirement accounts.

Signature

must be on document by you or your

Instrucrion

Either one or both of the

Limitations

Account

Eligible

For Plan Coverage

No

To Consider

Important Points
APPENDIX H – VANGUARD DIRECTED BENEFICIARY PLAN – PAGE 3

Article II - Plan Directors

Section 1 - Definition of Plan

The Plan is a plan directed by a group of directors of the plan. The directors of the plan are the individuals who have been designated by the plan and who are responsible for the administration of the plan. Any director may be removed at any time by the plan for any reason.
**Vanguard® Directed Beneficiary Plan Application**

Complete this form to establish, change, or delete beneficiaries on your individual or joint Vanguard accounts, including Vanguard Brokerage Services® accounts.

- Be sure to read the Vanguard Directed Beneficiary Plan Agreement (see pages 6 through 9 in this brochure). All registered owners of the Plan Accounts must sign in Section 5.
- Only individual accounts and accounts held as joint tenants with right of survivorship are eligible for coverage under the Plan. IRA accounts and other retirement accounts, community property accounts, and joint accounts held as tenants-in-common **cannot** be covered under the Plan.
- For new accounts, you must also complete an Account Registration Form.
- The registration (that is, name, address, and taxpayer identification number) for all accounts listed in Section 2 must be identical. Complete a separate Vanguard Directed Beneficiary Plan Application for accounts that are registered differently.

If you need assistance or other Vanguard forms, call us toll-free at 1-800-662-2739. Most forms are available on our website at [www.vanguard.com/serviceforms](http://www.vanguard.com/serviceforms). Return this completed form and any other required documents in the enclosed postage-paid envelope, or mail to: The Vanguard Group, P.O. Box 1110, Valley Forge, PA 19482-1110.

Please print in capital letters, preferably in black ink.

1. **Shareholder Information** *(If this application is accompanying an Account Registration Form, skip to Section 3.)*

   **(Please check one.)**
   - New request
   - Change in information
   - Delete plan *(Complete Sections 1, 2, and 5 only.)*

   **Social Security Number**

   **Name of Account Owner (first, middle initial, last)**

   **Name of Joint Account Owner (if applicable) (first, middle initial, last)**

   **Street Address and Apartment or Box Number**

   **City**

   **State**

   **Zip**

   **Daytime Telephone Number**

   **Evening Telephone Number**

2. **Plan Account Information** *(List the identically registered existing accounts to be covered under the Plan.)*

   **Fund Number**

   **Fund Name**

   **Account Number**

---

**Vanguard Brokerage Services Account Numbers (if applicable)**

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*(over, please)*
3. **Plan Beneficiary Designation** (Your beneficiaries will share equally in your accounts covered under the Plan unless you specify different percentages below.) If you need more space, list the additional information on a separate sheet and attach it to this form. If percentages are not indicated, the assets will be divided equally among the beneficiaries.

   **A. Primary Beneficiaries.** If a primary beneficiary dies before you, the last surviving joint owner, his or her share of your plan accounts covered under the Plan will be divided proportionately among the surviving primary beneficiaries. General instructions, such as “All my children,” “Per stirpes,” or “Lineal Descendants,” are not acceptable. Any changes will replace any previous designations.

<table>
<thead>
<tr>
<th>Name (Spouse)</th>
<th>Social Security Number</th>
<th>Date of Birth (month, day, year)</th>
<th>Percentage Allocated</th>
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   *Minimum of 10% per beneficiary and total must equal 100%.

   **B. Contingent Beneficiaries.** Vanguard will transfer ownership of accounts covered under the Plan to your contingent beneficiaries only if there are no surviving primary beneficiaries at the time of your death (or the last surviving joint owner).

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<tr>
<th>Name (Spouse)</th>
<th>Social Security Number</th>
<th>Date of Birth (month, day, year)</th>
<th>Percentage Allocated</th>
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   *Minimum of 10% per beneficiary and total must equal 100%.

4. **Custodian Designation for Minors (optional)**

   If you have named a minor (child) as any beneficiary, you can designate a custodian under the Uniform Transfers to Minors Act (UTMA) of your state. This option is not available if all designated parties (owners, custodians, and minors) reside in South Carolina or Vermont, where UTMA has not been adopted.

   - Name of Minor (first, middle initial, last)
   - Name of Custodian (first, middle initial, last)
   - Name of Minor (first, middle initial, last)
   - Name of Custodian (first, middle initial, last)

5. **Shareholder Signatures—YOU MUST SIGN BELOW** (All owners must sign exactly as their Vanguard accounts are registered.)

   The undersigned Plan Account owners hereby acknowledge having received and read the Vanguard Directed Beneficiary Plan Agreement and agree to all terms and conditions set forth therein as supplemented by this application. I understand and agree that any service options previously established for my Plan Accounts will remain the same until otherwise changed by me.

   - Name of Account Owner (Please print.)
   - Signature of Account Owner
   - Date (month, day, year)
   - Name of Joint Account Owner (if applicable) (Please print.)
   - Signature of Joint Account Owner
   - Date (month, day, year)