

PROBATE CODE
CHAPTER XI. NONTESTAMENTARY TRANSFERS
PART 1. MULTIPLE-PARTY ACCOUNTS

Sec. 436. DEFINITIONS. In this part:

(1) "Account" means 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.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means an 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.

(4) "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.

(5) "Multiple-party account" means a joint account, a convenience account, a P.O.D. account, or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits made to that account by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a certified copy of a death certificate or the judgment or order of a court in a proceeding where the death of a person is proved by circumstantial evidence to the satisfaction of the court as provided by Section 72 of this code.

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution, but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account

by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. It is not essential that payment to the beneficiary be mentioned in the deposit agreement. A 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 relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979. Amended by Acts 1993, 73rd Leg., ch. 846, Sec. 25, eff. Sept. 1, 1993.

Sec. 437. OWNERSHIP AS BETWEEN PARTIES AND OTHERS. The provisions of Sections 438 through 440 of this code that concern beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, 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.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 895, ch. 319, Sec. 2, eff. Sept. 1, 1981.

Sec. 438. OWNERSHIP DURING LIFETIME. (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees. If two or more parties are named as original payees, during their lifetimes rights as between them are governed by Subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by Subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 438A. CONVENIENCE ACCOUNT. (a) If an account is established at a financial institution by one or more parties in the names of the parties and one or more convenience signers and the terms of the account provide that the sums on deposit are paid or delivered to the parties or to the convenience signers "for the convenience" of the parties, the account is a convenience account.

(b) The making of a deposit in a convenience account does not affect the title to the deposit.

(c) A party to a convenience account is not considered to have made a gift of the deposit or of any additions or accruals to the deposit to a convenience signer.

(d) On the death of the last surviving party, a convenience signer shall have no right of survivorship in the account and ownership of the account remains in the estate of the last surviving party.

(e) If an addition is made to the account by anyone other than a party, the addition and accruals to the addition are considered to have been made by a party.

(f) All deposits to a convenience account and additions and accruals to the deposits may be paid to a party or to a convenience signer. The financial institution is completely released from liability for a payment made from the account before the financial institution receives notice in writing signed by a party not to make the payment in accordance with the terms of the account. After receipt of the notice from a party, the financial institution may require a party to approve any further payments from the account.

(g) If the financial institution makes a payment of the sums on deposit in a convenience account to a convenience signer after the death of the last surviving party and before the financial

institution has received written notice of the last surviving party's death, the financial institution is completely released from liability for the payment. If a financial institution makes payment to the personal representative of the deceased last surviving party's estate after the death of the last surviving party and before service on the financial institution of a court order prohibiting payment, the financial institution is released to the extent of the payment from liability to any person claiming a right to the funds. The receipt by the representative to whom payment is made is a complete release and discharge of the financial institution.

Added by Acts 1993, 73rd Leg., ch. 795, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 846, Sec. 27, eff. Sept. 1, 1993.

Subsecs. (a) and (c) to (g) amended by Acts 2003, 78th Leg., ch. 658, Sec. 1, eff. Sept. 1, 2003.

Sec. 439. RIGHT OF SURVIVORSHIP. (a) 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 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. Notwithstanding 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." A survivorship agreement will not be inferred from the mere fact that the account is a joint account. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

(b) If the account is a P.O.D. account and there is a written agreement signed by the original payee or payees, on the death of the original payee or on the death of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more P.O.D. payees die before the original payee. If two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account and there is a written agreement signed by the trustee or trustees, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more beneficiaries die before the trustee dies. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979. Amended by Acts 1987, 70th Leg., ch. 297, Sec. 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 26, eff. Sept. 1, 1993.

Sec. 439A. UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT FORM. (a) A contract of deposit that contains provisions substantially the same as in the form provided by Subsection (b) of this section establishes the type of account selected by a party. The provisions of this part of Chapter XI of this code govern an account selected under the form, other than a single-party account without a P.O.D. designation. A contract of deposit that does not contain provisions substantially the same as in the form provided by Subsection (b) of this section is governed by the provisions of this chapter applicable to the account that most nearly conforms to the depositor's intent.

(b) A financial institution may use the following form to establish the type of account selected by a party:

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:

(c) 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. If a financial institution varies the format of the form set forth in Subsection (b) of this section, then such financial institution may make disclosures in the account agreement or in any other form which adequately discloses the information provided in this section.

(d) A financial institution may combine any of the provisions and vary the format of the selections form and notices described in Subsection (b) of this section provided that the customer receives adequate disclosure of the ownership rights and there is appropriate indication of the names of the parties. This may be accomplished in a universal account form with options listed for selection and additional disclosures provided in the account agreement, or in any other manner which adequately discloses the information provided in this section.

Added by Acts 1993, 73rd Leg., ch. 795, Sec. 2, eff. Aug. 30, 1993.
Subsec. (b) amended by Acts 2003, 78th Leg., ch. 658, Sec. 2, eff. Sept. 1, 2003.

Sec. 440. EFFECT OF WRITTEN NOTICE TO FINANCIAL INSTITUTION. The provisions of Section 439 of this code as to rights of survivorship are determined by the form of the account at the death of a party. Notwithstanding any other provision of the law, this form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 441. ACCOUNTS AND TRANSFERS NONTESTAMENTARY. Transfers resulting from the application of Section 439 of this code are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to the testamentary provisions of this code.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 442. RIGHTS OF CREDITORS; PLEDGE OF ACCOUNT. 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, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient. No multiple-party account will be effective against the claim of a secured creditor who has a lien on the account. A party to a multiple-party account may pledge the account or otherwise create a security interest in the account without the joinder of, as appropriate, a P.O.D. payee, a beneficiary, a convenience signer, or any other party to a joint account, regardless of whether there is a right of survivorship. A convenience signer may not pledge or otherwise create a security interest in an account. Not later than the 30th day after the date on which a security interest on a multiple-party account is perfected, a secured creditor that is a financial institution the accounts of which are insured by the Federal Deposit Insurance Corporation shall provide written notice of the pledge of the account to any other party to the account who did not create the security interest. The notice must be sent by certified mail to any other party at the last address the party provided to the depository bank and is not required to be provided to a P.O.D. payee, a

beneficiary, or a convenience signer. A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate, but is not liable in an amount greater than the amount that the party, P.O.D. payee, or beneficiary received from the multiple-party account. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution received written notice from the personal representative stating the sums needed to pay debts, taxes, claims, and expenses of administration.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Amended by Acts 2003, 78th Leg., ch. 564, Sec. 1, eff. Sept. 1, 2003.

Sec. 443. PROTECTION OF FINANCIAL INSTITUTIONS. Sections 444 through 449 of this code govern the liability of financial institutions that make payments as provided in this chapter and the set-off rights of the institutions.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 444. PAYMENT ON SIGNATURE OF ONE PARTY. Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. A multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall 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 sum withdrawn from an account, for purposes of establishing net contributions.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 445. PAYMENT OF JOINT ACCOUNT AFTER DEATH OR DISABILITY. Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded, but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 439 of this code. A financial institution that pays a sum from a joint account to a surviving party to that account pursuant to a written agreement under Section 439(a) of this code is not liable to an heir, devisee, or beneficiary of the decedent's estate.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979. Amended by Acts 1987, 70th Leg., ch. 297, Sec. 2, eff. Aug. 31, 1987.

Sec. 446. PAYMENT OF P.O.D. ACCOUNT. A P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 447. PAYMENT OF TRUST ACCOUNT. A trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested

interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 448. DISCHARGE FROM CLAIMS. Payment made as provided by Section 444, 445, 446, or 447 of this code discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

Sec. 449. SET-OFF TO FINANCIAL INSTITUTION. Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979.

PART 2. PROVISIONS RELATING TO EFFECT OF DEATH

Sec. 450. PROVISIONS FOR PAYMENT OR TRANSFER AT DEATH. (a) Any of the following provisions in an 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, mutual fund account, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this state.

(c) In this section:

(1) "Employees' trust" means:

(A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of

1954 (26 U.S.C.A. Sec. 401 (1986));

(B) a pension trust under Chapter 111, Property Code; and

(C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(2) "Individual retirement account" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(3) "Retirement account" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.

(4) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).

(5) "Simplified employee pension" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, Sec. 31, eff. Aug. 27, 1979. Amended by Acts 1987, 70th Leg., ch. 94, Sec. 1, 2, eff. Aug. 31, 1987; Acts 1997, 75th Leg., ch. 1302, Sec. 14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 284, Sec. 1, eff. May 22, 2001.

PART 3. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

Sec. 451. RIGHT OF SURVIVORSHIP. 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.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 452. FORMALITIES. 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. Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 453. OWNERSHIP AND MANAGEMENT DURING MARRIAGE. Property subject to an agreement between spouses creating a right of survivorship in community property remains community property during the marriage of the spouses. Such an agreement does not affect the rights of the spouses concerning management, control, and disposition of the property subject to the agreement unless the agreement provides otherwise.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 454. TRANSFERS NONTESTAMENTARY. Transfers at death resulting from agreements made in accordance with this part of this code are effective by reason of the agreement involved and are not testamentary transfers. Such transfers are not subject to the provisions of this code applicable to testamentary transfers except as expressly provided otherwise in this code.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 455. REVOCATION. An agreement between spouses made in accordance with this part of this code may be revoked in accordance with the terms of the agreement. If the agreement does not provide a method for revocation, the agreement may be revoked by a written instrument signed by both spouses or by a written instrument signed by one spouse and delivered to the other spouse. The agreement may be revoked with respect to specific property subject to the agreement by the disposition of such property by one or both of the spouses if such disposition is not inconsistent with specific terms of the agreement and applicable law.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 456. PROOF OF AGREEMENT. (a) Application for Adjudication. An agreement between spouses creating a right of survivorship in community property that satisfies the requirements of this part is effective without an adjudication. After the death of a spouse, however, the surviving spouse or the personal representative of the surviving spouse may apply to the court for an order stating that the agreement satisfies the requirements of this

code and is effective to create a right of survivorship in community property. The original agreement shall be filed with the application for an adjudication. An application for an adjudication under this section must include:

- (1) the name and domicile of the surviving spouse;
- (2) the name and former domicile of the decedent and the fact, time, and place of death;
- (3) facts establishing venue in the court; and
- (4) the social security number of the decedent, if known.

(b) Proof Required. An applicant for an adjudication under this section must prove to the satisfaction of the court:

- (1) that the spouse whose community property interest is at issue is dead;
- (2) that the court has jurisdiction and venue;
- (3) that the agreement was executed with the formalities required by law;
- (4) that the agreement was not revoked; and
- (5) that citation has been served and returned in the manner and for the length of time required by this code.

(c) Method of Proof. The deceased spouse's signature to the agreement may be proved by the sworn testimony of one witness taken in open court, by the affidavit of one witness, or by the deposition of one witness, either written or oral, taken in the same manner and under the same rules as depositions in other civil actions. If the surviving spouse is competent to make an oath, the surviving spouse's signature to the agreement may be proved by the sworn testimony of the surviving spouse taken in open court, by the affidavit of the surviving spouse, or by the deposition of the surviving spouse either written or oral, taken in the same manner and under the same rules as depositions in other civil actions. If the surviving spouse is not competent to make an oath, the surviving spouse's signature to the agreement may be proved in the manner provided above for the proof of the deceased spouse's signature.

(d) Venue. An application for an adjudication under this section must be filed in the county of proper venue for administration of the deceased spouse's estate.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 457. ACTION OF COURT ON AGREEMENT. On completion of a hearing on an application under Section 456 of this code, if the court is satisfied that the requisite proof has been made, an order adjudging the agreement valid shall be entered. Certified copies of the agreement and order may be recorded in other counties and may be used in evidence, as the original might be, on the trial of the same matter in any other court, on appeal or otherwise.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 458. EFFECT OF ORDER. An agreement between spouses creating a right of survivorship in community property that satisfies the requirements of this code is effective and enforceable without an adjudication. If an order adjudging such an agreement valid is obtained, however, the order shall constitute sufficient authority to all persons owing money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, that is subject to the provisions of the agreement, and to persons purchasing from or otherwise dealing with the surviving spouse for payment or transfer to the surviving spouse, and the surviving spouse may enforce his or her right to such payment or transfer.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 459. CUSTODY OF ADJUDICATED AGREEMENTS. An original agreement creating a right of survivorship in community property that has been adjudicated together with the order adjudging it valid shall be deposited in the office of the county clerk of the county in which it was adjudicated and shall remain there, except during such time when it may be removed for inspection to another place on order of the court where adjudicated. If the court orders an original agreement to be removed to another place for inspection, the person removing the original agreement shall give a receipt therefor, and the clerk of the court shall make and retain a copy of the original agreement.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 460. PROTECTION OF PERSONS OR ENTITIES ACTING WITHOUT KNOWLEDGE OR NOTICE. (a) Personal Representatives. If the personal representative of a decedent's estate has no actual knowledge of the existence of an agreement creating a right of survivorship in community property in the decedent's surviving

spouse, the personal representative shall not be liable to the surviving spouse or to any person claiming from the surviving spouse for selling, exchanging, distributing, or otherwise disposing of the property or an interest therein.

(b) Purchaser without Notice of Survivorship Agreement.

(1) If any person or entity purchases real or personal property from a person claiming from a decedent more than six months after the date of the decedent's death, for value, and without notice of the existence of an agreement creating a right of survivorship in the property in the decedent's surviving spouse, the purchaser shall have good title to the interest which the person claiming from the decedent would have had in the absence of the agreement, as against the claims of the surviving spouse or any person claiming from the surviving spouse.

(2) If any person or entity purchases real or personal property from the personal representative of a decedent's estate, for value, and without notice of the existence of an agreement creating a right of survivorship in the property in the decedent's surviving spouse, the purchaser shall have good title to the interest which the personal representative would have had the power to convey in the absence of the agreement, as against the claims of the surviving spouse or any person claiming from the surviving spouse.

(c) Purchaser without Notice of Revocation of Survivorship Agreement. If any person or entity purchases real or personal property from a decedent's surviving spouse more than six months after the date of the decedent's death, for value, and:

(1) with respect to real or personal property, the purchaser has received an original or certified copy of an agreement purporting to create a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the surviving spouse; or

(2) with respect to real property, an agreement purporting to create a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the surviving spouse, is properly recorded in a county in which a part of the property is located;

and the purchaser has no notice that the agreement was revoked, the purchaser shall have good title to the interest which the surviving spouse would have had in the absence of a revocation of the agreement, as against the claims of the personal representative of the decedent's estate and all persons claiming from the decedent or the personal representative of the decedent's estate.

(d) Debtors, Transfer Agents, and Other Persons Acting without Notice of Survivorship Agreement. If any person or entity owing money to a decedent or having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right which was owned by a decedent prior to death has no actual knowledge of an agreement creating a right of survivorship in such property in the decedent's surviving spouse, that person or entity may pay or transfer such property to the personal representative of the decedent's estate or to the heirs, legatees, or devisees of the decedent's estate if no administration is pending on the estate, and the person or entity shall be discharged from all claims for amounts or property so paid or transferred.

(e) Debtors, Transfer Agents, and Persons Acting without Notice of Revocation of Survivorship Agreement. If any person or entity owing money to a decedent or having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right which was owned by a decedent prior to death is presented with the original or a certified copy of an agreement creating a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the decedent's surviving spouse and if such person or entity has no actual knowledge that the agreement was revoked, that person or entity may pay or transfer such property to the decedent's surviving spouse and shall be discharged from all claims for amounts or property so paid or transferred.

(f) Definitions. Under this section:

(1) a person or entity has "actual knowledge" of an agreement creating a right of survivorship in community property or of the revocation of such an agreement only if the person or entity has received written notice or has received the original or a certified copy of the agreement or revoking instrument;

(2) a person or entity has "notice" of an agreement creating a right of survivorship in community property or the revocation of such an agreement if the person or entity has actual knowledge of the agreement or revocation or, with respect to real property, if the agreement or revoking instrument is properly recorded in the county in which the real property is located; and

(3) a "certified copy" is a copy of an official record or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, certified as correct in accordance with the provisions of Rule 902 of the Texas Rules of Civil Evidence.

(g) Other Cases. Except as expressly provided in this section, the provisions of this section do not affect the rights of a surviving spouse or person claiming from the surviving spouse in disputes with persons claiming from a decedent or the successors of any of them concerning a beneficial interest in property or the proceeds therefrom, subject to a right of survivorship pursuant to an agreement that satisfies the requirements of this code.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 461. RIGHTS OF CREDITORS. The provisions of Part 1 of this chapter govern the rights of creditors in multiple-party accounts, as defined by Section 436 of Part 1. Except as expressly provided above in this section, the community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death without regard to a right of survivorship in the decedent's surviving spouse under an agreement made in accordance with the provisions of this 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. No proceeding to assert such a liability shall be commenced unless the personal representative has received a written demand by a creditor, and no proceeding shall be commenced later than two years following the death of the decedent. Property recovered by the personal representative shall be administered as part of the decedent's estate. This section does not affect the protection given to persons and entities under Section 460 of this code unless, before payment or transfer to the surviving spouse, the person or entity received a written notice from the decedent's personal representative stating the amount needed to satisfy the decedent's liabilities.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.

Sec. 462. COORDINATION WITH PART 1 OF CHAPTER XI. The provisions of Part 1 of this chapter apply to multiple-party accounts held by spouses with a right of survivorship to the extent that such provisions are not inconsistent with the provisions of this part.

Added by Acts 1989, 71st Leg., ch. 655, Sec. 2, eff. Aug. 28, 1989.