

ESTATES CODE

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PROPERTY IN GENERAL

CHAPTER 112. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. DEFINITION OF COMMUNITY PROPERTY SURVIVORSHIP AGREEMENT. In this chapter, "community property survivorship agreement" means an agreement between spouses creating a right of survivorship in community property.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.002. APPLICABILITY OF OTHER LAW TO COMMUNITY PROPERTY HELD IN MULTIPLE-PARTY ACCOUNTS. Chapter 113 applies to multiple-party accounts held by spouses with a right of survivorship to the extent that chapter is not inconsistent with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. COMMUNITY PROPERTY SURVIVORSHIP AGREEMENTS

Sec. 112.051. AGREEMENT FOR RIGHT OF SURVIVORSHIP IN COMMUNITY 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.052. FORM OF AGREEMENT. (a) A community property survivorship agreement must be in writing and signed by both spouses.

(b) A written agreement signed by both spouses is sufficient

to create a right of survivorship in the community property described in the agreement if the agreement 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."

(c) Notwithstanding Subsection (b), a community property survivorship agreement that otherwise meets the requirements of this chapter is effective without including any of the phrases listed in that subsection.

(d) A survivorship agreement may not be inferred from the mere fact that an account is a joint account or that an account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.06, eff. January 1, 2014.

Sec. 112.053. ADJUDICATION NOT REQUIRED. A community property survivorship agreement that satisfies the requirements of this chapter is effective and enforceable without an adjudication.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.054. REVOCATION OF AGREEMENT. (a) A community property survivorship agreement made in accordance with this chapter may be revoked as provided by the terms of the agreement.

(b) If a community property survivorship agreement does not provide a method of revocation, the agreement may be revoked by a written instrument:

(1) signed by both spouses; or

(2) signed by one spouse and delivered to the other spouse.

(c) A community property survivorship agreement may be revoked with respect to specific property subject to the agreement by the disposition of the property by one or both spouses if the disposition is not inconsistent with specific terms of the agreement and applicable law.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. ADJUDICATION TO PROVE COMMUNITY PROPERTY
SURVIVORSHIP AGREEMENT

Sec. 112.101. APPLICATION AUTHORIZED. (a) Notwithstanding Section 112.053, after the death of a spouse, the surviving spouse or the surviving spouse's personal representative may apply to the court for an order stating that a community property survivorship agreement satisfies the requirements of this chapter and is effective to create a right of survivorship in community property.

- (b) An application under this section must include:
- (1) the surviving spouse's name and domicile;
 - (2) the deceased spouse's name and former domicile;
 - (3) the fact, time, and place of the deceased spouse's death;
 - (4) facts establishing venue in the court; and
 - (5) the deceased spouse's social security number, if known.

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

(d) The original community property survivorship agreement shall be filed with an application under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.102. PROOF REQUIRED BY COURT. An applicant for an order under Section 112.101 must prove to the court's satisfaction that:

- (1) the spouse whose community property interest is at

issue is deceased;

(2) the court has jurisdiction and venue;

(3) the agreement was executed with the formalities required by law;

(4) the agreement was not revoked; and

(5) citation has been served and returned in the manner and for the length of time required by this title.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.103. METHOD OF PROOF OF SIGNATURES. (a) The deceased spouse's signature to an agreement that is the subject of an application under Section 112.101 may be proved by:

(1) the sworn testimony of one witness taken in open court;

(2) the affidavit of one witness; or

(3) the written or oral deposition of one witness taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

(b) If the surviving spouse is competent to make an oath, the surviving spouse's signature to the agreement may be proved by:

(1) the sworn testimony of the surviving spouse taken in open court;

(2) the surviving spouse's affidavit; or

(3) the written or oral deposition of the surviving spouse taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

(c) 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 by Subsection (a) for proof of the deceased spouse's signature.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 3, eff. September 1, 2017.

Sec. 112.104. COURT ACTION; ISSUANCE OF ORDER. (a) On completion of a hearing on an application under Section 112.101, if the court is satisfied that the requisite proof has been made, the court shall enter an order adjudging the agreement valid.

(b) Certified copies of the agreement and order may be:

(1) recorded in other counties; and

(2) used in evidence, as the original agreement might be, on the trial of the same matter in any other court, on appeal or otherwise.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.105. EFFECT OF ORDER. (a) An order under this subchapter adjudging a community property survivorship agreement valid constitutes sufficient authority to a person who:

(1) owes money, has custody of any property, or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right that is subject to the terms of the agreement; or

(2) purchases from or otherwise deals with the surviving spouse for payment or transfer to the surviving spouse.

(b) The surviving spouse may enforce that spouse's right to a payment or transfer from a person described by Subsection (a)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.106. CUSTODY OF ADJUDICATED AGREEMENT. (a) An original community property survivorship agreement adjudicated under this subchapter, together with the order adjudging the agreement valid, shall be deposited in the office of the county clerk of the county in which the agreement was adjudicated and must remain at that office, except during a period when the agreement is moved to another location for inspection on order of the court in which the agreement was adjudicated.

(b) If the court orders an original community property survivorship agreement adjudicated under this subchapter to be moved to another location for inspection, the person moving the

original agreement shall give a receipt for the agreement and the court clerk shall make and retain a copy of the original agreement. Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. OWNERSHIP AND TRANSFER OF COMMUNITY PROPERTY SUBJECT TO AGREEMENT

Sec. 112.151. OWNERSHIP OF PROPERTY DURING MARRIAGE; MANAGEMENT RIGHTS. (a) Property subject to a community property survivorship agreement remains community property during the marriage of the spouses.

(b) Unless the agreement provides otherwise, a community property survivorship agreement does not affect the rights of the spouses concerning the management, control, and disposition of property subject to the agreement.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.152. NONTESTAMENTARY NATURE OF TRANSFERS UNDER AGREEMENT. (a) Transfers at death resulting from community property survivorship agreements made in accordance with this chapter are effective by reason of the agreements involved and are not testamentary transfers.

(b) Except as expressly provided otherwise by this title, transfers described by Subsection (a) are not subject to the provisions of this title applicable to testamentary transfers.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. THIRD PARTIES DEALING WITH COMMUNITY PROPERTY SUBJECT TO RIGHT OF SURVIVORSHIP

Sec. 112.201. DEFINITION OF CERTIFIED COPY. In this subchapter, a "certified copy" means a copy of an official record or document that is:

- (1) authorized by law to be recorded or filed and

actually recorded or filed in a public office; and

(2) certified as correct in accordance with Rule 902, Texas Rules of Evidence.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.202. ACTUAL KNOWLEDGE OR NOTICE OF AGREEMENT. (a) In this subchapter, a person or entity has "actual knowledge" of a community property survivorship agreement or the revocation of a community property survivorship agreement only if the person or entity has received:

(1) written notice of the agreement or revocation; or

(2) the original or a certified copy of the agreement or revoking instrument.

(b) In this subchapter, a person or entity has "notice" of a community property survivorship agreement or the revocation of a community property survivorship agreement if:

(1) the person or entity has actual knowledge of the agreement or revocation; or

(2) with respect to real property, the agreement or revoking instrument is properly recorded in the county in which the real property is located.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.203. PERSONAL REPRESENTATIVE WITHOUT ACTUAL KNOWLEDGE OF AGREEMENT. If the personal representative of a deceased spouse's estate has no actual knowledge of the existence of an agreement creating a right of survivorship in community property in the surviving spouse, the personal representative is not liable to the surviving spouse or any person claiming from the surviving spouse for selling, exchanging, distributing, or otherwise disposing of the property.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.204. THIRD-PARTY PURCHASER WITHOUT NOTICE OF

AGREEMENT. (a) This section applies only to a person or entity who for value purchases property:

(1) from a person claiming from a deceased spouse more than six months after the date of the deceased spouse's death or from the personal representative of the deceased spouse's estate; and

(2) without notice of the existence of an agreement creating a right of survivorship in the property in the surviving spouse.

(b) A purchaser of property from a person claiming from the deceased spouse has good title to the interest in the property that the person would have had in the absence of the agreement described by Subsection (a)(2), as against the claims of the surviving spouse or any person claiming from the surviving spouse.

(c) A purchaser of property from the personal representative of the deceased spouse's estate has good title to the interest in the property that the personal representative would have had authority to convey in the absence of the agreement described by Subsection (a)(2), as against the claims of the surviving spouse or any person claiming from the surviving spouse.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.205. DEBTORS AND OTHER PERSONS WITHOUT NOTICE OF AGREEMENT. (a) This section applies only to a person or entity who:

(1) owes money to a deceased spouse; or

(2) has custody of property or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right owned by a deceased spouse before that spouse's death.

(b) A person or entity with no actual knowledge of the existence of an agreement creating a right of survivorship in property described by Subsection (a) in the surviving spouse may pay or transfer that property to the personal representative of the deceased spouse's estate or, if no administration of the deceased spouse's estate is pending, to the heirs or devisees of the estate and shall be discharged from all claims for those amounts or

property paid or transferred.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.206. THIRD-PARTY PURCHASER WITHOUT NOTICE OF REVOCATION OF AGREEMENT. (a) This section applies only to a person or entity who for value purchases property from a surviving spouse more than six months after the date of the deceased spouse's death and:

(1) with respect to personal property:

(A) the purchaser has received an original or certified copy of an agreement purporting to create a right of survivorship in the personal property in the surviving spouse, purportedly signed by both spouses; and

(B) the purchaser has no notice of the revocation of the agreement; or

(2) with respect to real property:

(A) the purchaser has received an original or certified copy of an agreement purporting to create a right of survivorship in the real property in the surviving spouse, purportedly signed by both spouses or such an agreement is properly recorded in a county in which any part of the real property is located; and

(B) the purchaser has no notice of the revocation of the agreement.

(b) A purchaser has good title to the interest in the property that the surviving spouse would have had in the absence of the revocation of the agreement, as against the claims of the personal representative of the deceased spouse's estate or any person claiming from the representative or the deceased spouse.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.207. DEBTORS AND OTHER PERSONS WITHOUT NOTICE OF REVOCATION OF AGREEMENT. (a) This section applies only to a person or entity who:

(1) owes money to a deceased spouse; or

(2) has custody of property or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right owned by a deceased spouse before that spouse's death.

(b) If a person or entity is presented with the original or a certified copy of an agreement creating a right of survivorship in property described by Subsection (a) in the surviving spouse, purportedly signed by both spouses, and if the person or entity has no actual knowledge that the agreement was revoked, the person or entity may pay or transfer that property to the surviving spouse and shall be discharged from all claims for those amounts or property paid or transferred.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.208. RIGHTS OF SURVIVING SPOUSE AGAINST CREDITORS. Except as expressly provided by this subchapter, this subchapter does not affect the rights of a surviving spouse or person claiming from the surviving spouse in disputes with persons claiming from a deceased spouse or the successors of any of them concerning a beneficial interest in property or the proceeds from a beneficial interest in property, subject to a right of survivorship under an agreement that satisfies the requirements of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. RIGHTS OF CREDITORS

Sec. 112.251. MULTIPLE-PARTY ACCOUNTS. Chapter 113 governs the rights of creditors with respect to multiple-party accounts, as defined by Section 113.004.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.252. LIABILITIES OF DECEASED SPOUSE NOT AFFECTED BY RIGHT OF SURVIVORSHIP. (a) Except as expressly provided by Section 112.251, 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 on that spouse's death without regard to a right of survivorship in the surviving spouse under an agreement made in accordance with this chapter.

(b) The surviving spouse is liable to account to the deceased spouse's personal representative for property received by the surviving spouse under a right of survivorship to the extent necessary to discharge the deceased spouse's liabilities.

(c) A proceeding to assert a liability under Subsection (b):

(1) may be commenced only if the deceased spouse's personal representative has received a written demand by a creditor; and

(2) must be commenced on or before the second anniversary of the deceased spouse's death.

(d) Property recovered by the deceased spouse's personal representative under this section shall be administered as part of the deceased spouse's estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 112.253. RIGHTS OF DECEASED SPOUSE'S CREDITORS IN RELATION TO THIRD PARTIES. This subchapter does not affect the protection afforded to a person or entity under Subchapter E unless, before payment or transfer to the surviving spouse, the person or entity received a written notice from the deceased spouse's personal representative stating the amount needed to discharge the deceased spouse's liabilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.