

ACCOUNT LITIGATION IN TEXAS

Winstead Webinar Series

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Introduction

- This presentation will address common issues that arise in account litigation:
 - What is necessary to create a valid account with rights of survivorship;
 - Lost account documents;
 - Ownership of funds in accounts;
 - Claims against banks for improperly setting up accounts;
 - Claims regarding fraudulent requests for payment of funds from an account; and
 - Claims arising from IRAs.

Rights of Survivorship

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

Rights of Survivorship

- An agreement confers a right of survivorship if the agreement states 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."
- Similar language for P.O.D. and Trust accounts.
- A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

Rights of Survivorship

- In 1993, the Texas Legislature created a "Uniform Single-Party or Multiple-Party Account Form," as a supplement to Section 439(a)'s acceptable forms of survivorship language. This has been carried into the Estates Code.
- A financial institution may vary the format of the form and make disclosures in the account agreement or in any other form which adequately discloses the information.

Rights of Survivorship

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

Rights of Survivorship

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

Rights of Survivorship

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

Rights of Survivorship

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

Rights of Survivorship

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

Rights of Survivorship

- Where a decedent fails to sign the required deposit agreement, the decedent never creates a survivorship account.
- The original payee must sign the agreement, those with powers of attorney cannot create survivorship effect.
- Even if the decedent signs the signature card, if she does not sign in a space provided next to the survivorship option, the account will not be a survivorship account.
- But a party does not need to sign a new account agreement every time an account is renewed.

Rights of Survivorship

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

Lost Documents

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

Lost Documents

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

Lost Documents

- The court of appeals stated: “When a written, signed contract is lost or destroyed such that the party seeking to prove or enforce the agreement is unable to produce the written agreement in court, the existence and terms of the written contract may be shown by clear and convincing parol evidence.”
- Based on the testimony of the plaintiff, the court affirmed the jury’s verdict.
- Important: parol evidence must prove up the necessary language in, and signature of, a survivorship account agreement.

Ownership of Funds

- Generally, any party to a joint account has the authority to withdraw or encumber the account.
- Disputes can arise between parties to an account regarding the right to withdraw money from the account.
- Section 113.002 states, "During the lifetime of all parties to a joint account, the account belongs to the parties in proportion to the net contributions by each party to the sums on deposit unless there is clear and convincing evidence of a different intent."
- Unauthorized withdrawal can be a crime.
- Banks have safe-harbor provisions that protect them.

Liability For Creating Accounts

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

Liability For Creating Accounts

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

Liability For Creating Accounts

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

Liability For Creating Accounts

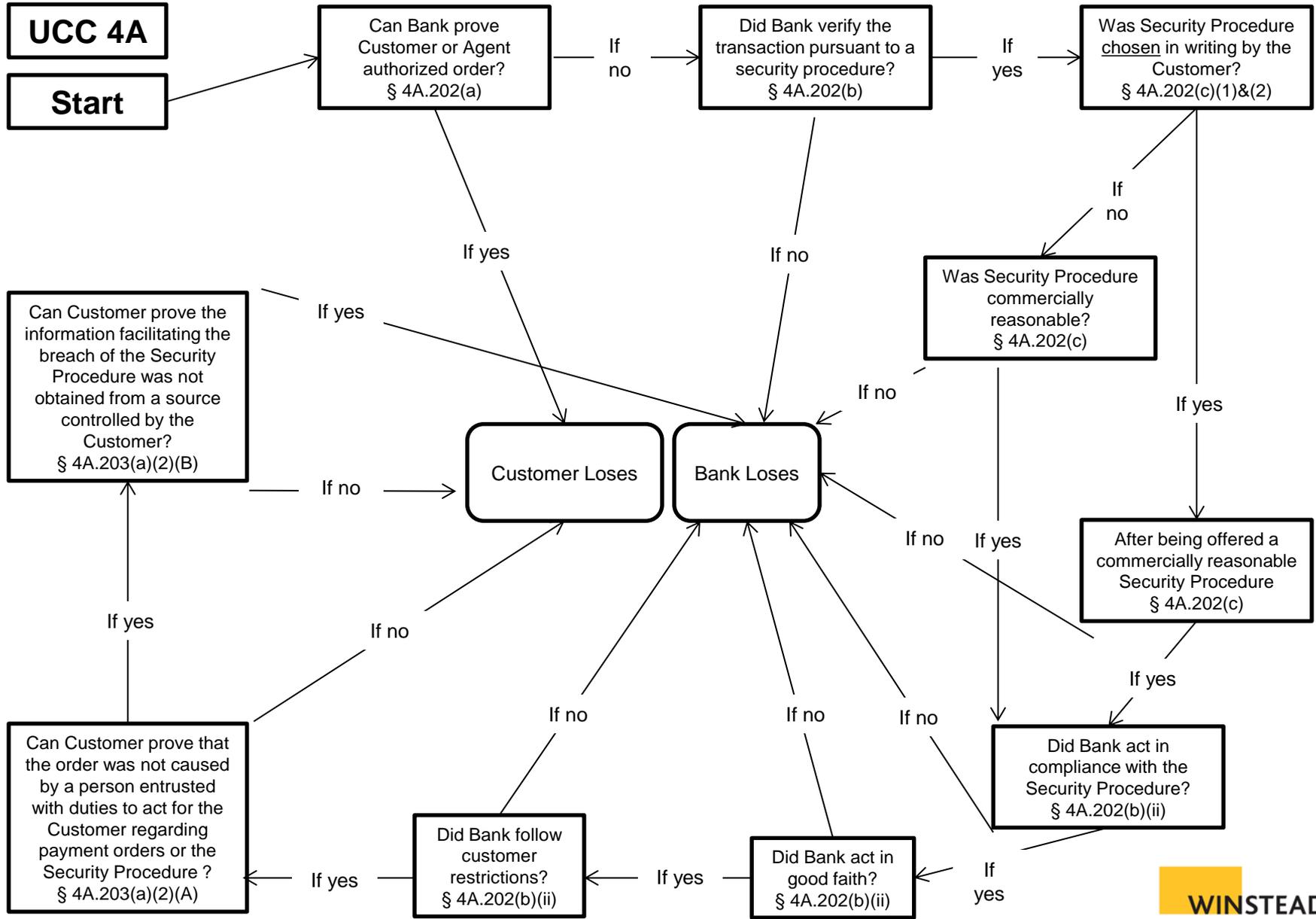
- In *Clark v. Wells Fargo Bank, N.A.*, the court of appeals held that a bank did not tortiously interfere with inheritance rights or act with negligence with respect to CDs.
- The court distinguished *A.G. Edwards* because the claimants did not have any contractual relationship with the bank: "There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

Liability For Creating Accounts

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

Payment of Fraudulent Requests

- The default rule is that financial institutions are liable for unauthorized funds transfers.
- However, financial institutions can raise an affirmative defense that it followed a commercially reasonable security procedure, and accepted the payment order in good faith.



IRA Litigation

- Duties are set forth in the account agreement.
- Self-directed IRAs normally limit the bank's duties to: (1) keeping the funds safe, and (2) investing the funds pursuant to the customer's directive.
- Discretionary custodian's have broader fiduciary duties

IRA Litigation

- One court described these duties as: (1) manage the account in a manner directly comporting with the needs and objectives of the customer as stated in the authorization papers or as apparent from the customer's investment and trading history; (2) keep informed regarding the changes in the market which affect his customer's interest and act responsively to protect those interests; (3) keep his customer informed as to each completed transaction; and (4) explain forthrightly the practical impact and potential risks of the course of dealing.

Conclusion

I hope that this presentation was helpful in pointing out many of the important issues that arise in the area of account litigation.