General Questions

**Question (Affidavit of Heirship):** An accountholder died. Their children came in today asking how they can get the funds in their father's account. It is a small amount. They do not have a will, and are telling me that their father didn’t have enough property to make it worth opening a probate of the estate. What can we do to help them get the money?

**Answer:** You could accept a Small Estate Affidavit. These affidavits are for small estates where the total assets of the estate do not exceed $50,000. Once it is signed by the affiant and witnesses and is notarized, it should be filed with the clerk of the probate court. Once the court approves the affidavit, it will be recorded as an official public record by the clerk of the county. The heirs can then take a certified copy of the affidavit to persons owing money to the estate or having custody of estate property, and the property must be handed over to the heirs.

By requiring a certified copy of an affidavit of heirship, the bank should be able to avoid any liability.

For truly small accounts (say $5,000 and under), the bank could accept an affidavit of heirship. It should be signed and notarized by two independent persons who are familiar with the deceased.

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**Question (Checks):** A customer of ours died a few days ago. We have paid a number of checks on his account after the date of death. In fact, today, after we learned of the customer’s death, we paid a check that was drawn before the date of death. Are we liable to the deceased’s estate for any of those checks?

**Answer:** No. The death of a customer does not revoke the authority to accept, pay, collect, or account until the bank knows of the fact of the death and has reasonable opportunity to act on it. Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account. See UCC §4.405.

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**Question (Early Withdrawal Penalty):** Under Regulation D, if a depositor dies within six days after opening a time deposit, are we required to impose the early withdrawal penalty of at least seven days simple interest on the amounts withdrawn?

8/8/2011
Answer: No. There is a footnote to 12 CFR 204.2(c)(1)(i) that states that a time deposit, or a portion thereof, may be paid during the period when an early withdrawal penalty would otherwise be required under this part without imposing an early withdrawal penalty specified by this part upon the death of any owner of the time deposit funds.

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Question (Executor): If a person named as executor in the Will of a deceased accountholder shows up at the bank, can I deal with them just as I would have dealt with the accountholder when they were living?

Answer: No, a person named as executor in a Will is not actually the executor until the Will is admitted to probate and the court issues Letters Testamentary naming them as executor. You don’t know if the executor will actually be appointed executor - in fact without a Death Certificate you cannot be sure the depositor is dead.

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Question (Executor): An accountholder died and the executor showed up with the will clearly showing who gets the money in the account, is it OK for us to distribute this money according to the will?

Answer: No, you can’t. The will has not been admitted to probate, and may not be admitted. And the executor has not been issued letters testamentary and may not. The will could be contested. There could be another will that is admitted to probate. The executor could fail to qualify as executor. There could be another executor named in a more recent will. You don’t want to get into guessing what will happen when the estate is probated. When the accountholder’s will gets admitted to probate and the executor is named, upon presentation of Letters Testamentary to the bank, you can then follow the instructions of the executor with respect to the account.

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Question (Executor): When an accountholder dies and an executor brings in Letters Testamentary, can we just change the name of the account to the name of the estate?

Answer: No, you shouldn’t do that. You should’ve frozen the account at the time of death. Then when the executor brings in the Letters Testamentary, you should follow his or her directions as far as disposition of the funds in the account. However, the account needs to be closed. If the executor wants to keep the funds at your bank,
he/she should obtain a TIN and open an estate account. If the executor wants to withdraw the funds, you can follow his/her instructions.

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**Question (Letters Testamentary):** An executor for a deceased accountholder came in, presented Letters Testamentary, and asked to see 12 months of periodic statements on the accounts owned by the deceased. Can we give the executor this information? What if one of the accounts is a joint account with right of survivorship?

**Answer:** The executor is entitled to see the periodic statements on the accounts. If the account was joint with right of survivorship, the executor is entitled to see the periodic statements (and all account activity) up until the date of death. Upon the date of death, the account belongs to the joint account holder, and the executor is not entitled to any information about that.

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**Question (Loan Payment):** An account holder passed away July 15 and his final loan payment is due August 3. He has the payment set on automatic draft from his account here at the bank. The heirs have been in touch, but have not provided Letters of Testamentary to handle the customer’s finances. Do we let this auto payment go through to pay off his loan? Can we go ahead and offset his account to pay off?

**Answer:** When the owner of the account dies, the bank needs to freeze the account. When the account holder dies, he/she can no longer authorize debits, so it isn’t authorized. Also, you can’t setoff against the account to pay off the loan. This is now a debt of the deceased’s estate. You’ll need to deal with the estate … once it is established. If the representative of the estate doesn’t take care of this, you’ll want to contact the bank’s attorney.

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**Question (Muniment of Title):** If a will is filed as a Muniment of Title, is that enough to close an account and open an estate account with the funds in the account?

**Answer:** No. A Muniment of Title applies only to the transfer of property. The judge orders the will into probate as a Muniment of Title, and it is filed with the real estate records in every county where the deceased owned real property. It is not used as the basis to open an estate account or to distribute property. I think you are confusing a
court action (the probate of a will as Muniment of Title) and the payment of funds in an account under the terms of the decedents will – two different concepts.

Let’s say Aunt Tilley dies and has 25 acres of property. The court will probate the will and accept / use a Muniment of Title to transfer the property into the estate of Aunt Tilley and that Muniment of Title will be filed with the real estate records. The funds from the sale of the real property will become part of the estate and distributed according to the will. Again it is the job of the executor to carry out the terms of the will and disburse the funds accordingly.

A Muniment of Title is a vehicle to transfer title of real property and does not grant authority or provide instruction for the rightful distribution of the proceeds of a decedent’s estate. It should not be used as the basis to open an estate account. If the person named executor in the will wants to open a probate account, she should file the will for probate in the proper court and obtain Letters Testamentary appointing her executor from the court.

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**Question (Will):** If an accountholder names James Doe as the payable on death (POD) payee on the account, and the accountholder states in his will that the funds in that account are to go to Jane Doe, does the will supersede the payable on death instruction on the account. The executor has Letters Testamentary and is showing us the Will that was admitted to probate, and it actually says that the deceased gives the funds in this account to Jane Doe.

**Answer:** No. The Will does not control, the POD designation does. This is because the POD deposit contract was entered into before the effective date of the Will, which is the date of death. This situation shows how important it is to pay the funds in POD accounts to the POD payee as quickly as possible. It is always possible that the executor might assert a claim to the funds in a POD account, but the bank doesn’t want to get in the middle of such a dispute. The best way to stay out of a dispute between a POD payee and an executor is to pay the money out as quickly as possible. Just make sure that your account contract clearly states that the account is a POD account, and make sure that you carefully identify the POD payee.

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**Payable on Death (POD)**

**Question (Legal Entity):** Can a legal entity name a POD?
**Answer:** No, the Probate Code does not permit this. The problem is that a legal entity never dies, so there would never be a death of the entity that triggering payment of the funds in the account to the POD payee. (A “POD payee” is defined in the Probate Code as a person designated on a POD account as one to whom the account is payable on request after the death of one or more persons.) A sole proprietor is not prohibited from having a POD account because the sole proprietor will eventually die. Nevertheless, it may not be wise for a sole proprietor to have a POD on their business account if they want the business to continue after their death. Even without a POD on the account, the business the sole proprietor was operating will have difficulty continuing after the death of the sole proprietor, unless the proprietor sought professional advice to assure that it continues. (This can be particularly problematic where someone—such as a surviving spouse—depended on the income of the proprietorship.)

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**Question (Legal Entity):** May a depositor name a legal entity as a POD payee?

**Answer:** Yes, as long as the depositor is a living breathing person. A legal entity may not name a POD payee, but an individual may name a legal entity as a POD payee. Just remember that if the depositor isn't a living breathing human, who will eventually have a date of death, then they can't name a POD payee. You don't have the same concern with the POD payee because there is no event that is triggered by their death or termination. Typical entity PODs might be a church or charity.

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**Question (Multiple PODs):** May an accountholder name more than one POD payee.

**Answer:** Yes, although it is not recommended. The POD account should not take the place of professional estate planning.

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**Question (Multiple PODs):** May we open a POD account with multiple POD payees that states different amounts for each POD payee to receive?

**Answer:** That would be a very bad idea. The Probate Code does not provide for it, and you are getting dangerously close to practicing law when you start drafting language that distributes funds in an account other than equally among all POD payees.

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8/8/2011
**Question (Death of Payee):** If an accountholder on a POD account dies, but before we can pay out the funds in the account to the sole POD payee, and the payee dies, who gets the funds?

**Answer:** Because the POD payee survived the accountholder, the POD payee’s representative or heirs are entitled to the funds. If the POD beneficiary does not have a will probated, you should consult local counsel before paying out to heirs. The bank should not make that determination on their own.

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**Question (Death of Payee):** If the accountholder named several POD payees, but none of them survived the accountholder, may the money be divided equally among the personal representatives or heirs of the POD payees?

**Answer:** No. To claim a portion of the account, a POD payee must survive the accountholder. With no surviving POD payees, treat the account as if it weren’t a POD account at all.

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**Question (Death of Payee):** What if there are three POD payees, but one of them did not survive the accountholder?

**Answer:** Only those POD payees who did survive the accountholder are entitled to the funds. The bank can write checks payable to the two surviving POD payees (with the word “and” between their names) or it can write separate checks to each POD payee for one-half of the funds in the account.

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**Right of Survivorship (ROS)**

**Question (Death of Accountholder):** We have a joint account with right of survivorship and both of the owners on the account are deceased. We do have death certificates on both individuals. Today we received Letters of Administration from the executor of one of the owners and this executor wants copies of the bank statements, but there are two deceased owners. May we do this for the executor of one deceased owner or do we need something from the executor for the other deceased owner?

**Answer:** Yes, you can give the periodic statements to one executor. However, if this executor represents the person who died first, then, because this is a right of
survivorship account, that executor is only entitled to periodic statements up until the date of death of the accountholder whose estate the executor represents. Remember, upon the first death of an accountholder, the funds in the account belong to the other accountholder or accountholders (in your case, accountholder—singular). The executor for the first accountholder to die is NOT entitled to any information after that accountholder’s death because the surviving accountholder owned the account thereafter. The accountholder who died second is entitled to the periodic statements for the entire time the account is open. When accountholders die simultaneously (which you most often see with accidents involving spouses), they are both entitled to the periodic statements. You should be able to provide up to seven years of records.

Although, we do not endorse the practice, if an accountholder was later added to an existing account with right of survivorship, then the new accountholder would NOT be entitled to copies of periodic statements before the date they were added to the account.

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**Question (NO ROS and POD):** We have a multiparty account without the right of survivorship and POD. How do we distribute the funds in the account upon the death of each party?

**Answer:** I am not sure what the parties intended by this. The Probate Code doesn’t anticipate a POD designation on a multi-party account without right of survivorship. Did they intend for a portion of the account to go to the POD payees upon the death of each party or did they intend for the funds in the account when the last party died to go to the POD payees. There are problems with either result. You’ll need to speak with the bank’s attorney. I would look at all your multi-party POD accounts and fix any that have this designation. If the parties do not want a right of survivorship do not add a POD payee either.

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**Question (JWROS and POD):** We have a multi-party account with right of survivorship and POD payee. When one of the accountholder’s dies, do we pay something to the POD payee?

**Answer:** No. Upon the death of the last surviving accountholder, the ownership of the account passes to the POD payee or payees.

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8/8/2011
**Question (JWROS):** We have a multiparty account without the right of survivorship – in this case it is a father and daughter. The father passed away. Should we put a hold on the account? Can the daughter (not a minor) continue to use the account? Can the daughter withdraw the funds?

**Answer:** In a multiparty account without right of survivorship when one of the parties to the account dies, deceased’s interest in the funds in the account do not pass to the surviving accountholders. The interest the deceased had in the account will pass in accordance with his will or to his heirs by intestate succession if he/she does not have a will.

The bank should allow any surviving accountholders to continue to use the account to transact business after the death of another accountholder. The bank is not obligated to put a hold on the account. The Texas Probate Code provides cover for the bank because it states that funds in a joint account can be paid out upon request of any party, before or after the death of an accountholder. However, the account should be closed as soon as possible.

§ 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.

If there is any question as to ultimate disposition of the funds when one of the accountholders dies, that is between the surviving accountholders and the deceased accountholders estate or heirs. It is not an issue for the bank to get involved in.

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