Survivorship is not a topic that gets discussed much around the dinner table. In fact, people who have not had to deal first-hand with survivorship rights have often never even heard the term before. However, the concept is extremely important and can affect people in various circumstances.

It is important to understand the default provisions in Texas law. With the right estate planning, you can take steps to override the laws in most situations, but if you don't take action, then the default survivorship laws will take effect.

What is Survivorship?

Survivorship can be used to refer to different features of Texas law regarding property and inheritance. Much of the time, survivorship refers to the interests held in jointly owned property. When the joint ownership includes a right of survivorship, each co-owner holds an undivided interest in the whole property. When one owner dies, the other then owns the entire property.

When co-ownership does not include a right of survivorship, each owner's share is a distinct portion of the property. The death of one owner does not automatically make the other owner the sole owner of everything. Instead, the deceased owner's share passes to their heirs or beneficiaries of their will or trust.

Survivorship can also refer to the act of one person outliving another. For instance, Texas law sets a required surviving period for inheritance and other rights. If one person does not live for at least 120 hours after the death of another, the law will essentially act as if their rights to inheritance or other issues never existed.

Survivorship Agreements

In many jurisdictions, when property is owned in “joint tenancy,” the right of survivorship is presumed. By contrast, property owned as “tenants in common” traditionally does not include a right of survivorship. Texas law does not include a presumption of survivorship. In order for survivorship rights to apply to jointly-owned property, the owners must execute a written agreement covering survivorship rights. This must be filed with the county. The survivorship agreement can be prepared at the time the property is purchased or sometime thereafter. Even spouses who own property as community marital property do not have a presumed right of survivorship. The law allows them to execute a survivorship agreement establishing this right, but it is not automatic.

Survival for Intestate Succession and Other Purposes

The other sense of survivorship applies to inheritance issues when a person who would normally inherit passes away at the same time or soon after the person they would inherit from. For instance, if a married couple were in a car accident and one spouse died at the scene of the accident while the other passed away in the hospital a few hours later, the survival rule would come into play. The spouse who survived the accident would normally inherit at least some of the other spouse’s property under the laws of intestate succession. However, the Texas survival requirement specifies that in order to inherit through intestate succession, the heir must live at least 120 hours longer than the deceased person. Because that did not happen, the law treats the situation as if the surviving spouse had died first—they do not inherit. Instead, the relative who is next in line will inherit.

The survival requirement applies to inheritance without a will (intestate), homestead allowance, and exempt property.

Survivorship Rules Can Be Altered Through Estate Planning

It is important to know the survivorship rules, but it is not necessary to accept those rules. You have the power to override the presumptions in the law through estate planning. You can create a will or trust to leave your property to whoever you want and the laws of intestate succession will not apply. You can specify whether or not you want survivorship to be included with the ownership of real estate or other property.

Regardless of the value or complexity of your assets, an estate planning attorney can help you develop a plan that makes the most sense to accomplish your goals under the circumstances. But when you fail to make a plan, you leave everything up to the default provisions of Texas law.

Schedule a Free Consultation with The Nordhaus Firm

Estate planning is necessary, but it does not have to be complex. At The Nordhaus Firm, we can develop strategies to accomplish your goals efficiently and effectively. Schedule a free consultation today to learn more about the ways we can help protect you and your loved ones. Just call 214-726-1450 or contact us online.