

Memorandum 81-82

Subject: Study L-601 - Probate Law (Nonprobate Transfers--AB 325)

The staff has made a careful examination of the statutes of the other states that have adopted all or a portion of the nonprobate transfers article of the Uniform Probate Code. (These states include: Alaska, Arizona, Colorado, Georgia, Hawaii, Idaho, Indiana, Kentucky, Maine, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia.) It is apparent from this examination that other states reviewed the nonprobate transfer article with care since they made a number of technical amendments.

Attached to this memorandum are staff recommended amendments to make technical and substantive amendments to the latest version of AB 325 (nonprobate transfers) (attached). The great majority of these amendments are technical amendments which are suggested by amendments made in other states to the Uniform Code provisions. We do not plan to discuss these technical amendments at the meeting, but we suggest that you review them prior to the meeting and raise any questions that concern you.

The Executive Secretary met with a committee of three lawyers representing the California Bankers Association to discuss AB 325 and any problems the Bankers might have with the bill. Generally the Bankers believe that the existing law is satisfactory and are greatly concerned that the enactment of AB 325 will impose substantial costs on the financial institutions by requiring new forms and expensive additional staff training.

The bill does not require new forms, although a financial institution might well review its forms in light of the bill and provide the P.O.D. account authorized by the bill. If the financial institution does provide a P.O.D. account, it will be much simpler to train the bank personnel as to how to set up a P.O.D. account than to train them to set up "Totten trusts" and much easier to explain the new P.O.D. account to potential customers of the bank. Accordingly, the staff does not believe that the bill generally will be detrimental to financial institutions but rather would simplify their accounts and procedures.

One qualification must be made to the above analysis. The representatives of the Bankers were concerned with Section 6115. This section requires a 60-day delay in payment from certain types of accounts under certain circumstances. The section is not found in the Uniform Probate Code. The Bankers fear that the section will impose the requirement of expensive staff training and create the risk of an inadvertent mistake in paying out before the 60-day period has elapsed. The staff recommends that the section be deleted and the attached amendments would delete the section.

The Bankers raised the question whether a tenancy in common account created before the operative date of the new statute would be continued as a joint account without the right of survivorship. We have added a provision to make clear that such an account will continue without the right of survivorship. As to accounts established after the operative date of the new statute, the form of the account should specifically provide that it is a nonsurvivorship account if that is the depositor's intent.

Minnesota enacted not only the Uniform Code provisions but also a simplified durable power of attorney provision for use only with accounts with a financial institution. If the Commission would be interested in reviewing this provision for possible enactment in California, the staff will present the matter at a future meeting. The Bankers do not like the concept of a durable power of attorney and were not impressed with the Minnesota provision.

Respectfully submitted,

John H. Demouilly
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL 325 AS AMENDED
IN ASSEMBLY AUGUST 17, 1981

Amendment 1

On page 3, line 19, of the printed bill as amended in Assembly August 17, 1981, strike out "6101" and insert:

6100

Amendment 2

On page 5, line 40, after "by" insert:

Part 1 (commencing with Section 6100) of

Amendment 3

On page 6, line 1, strike out "(commencing with Section 6101)"

Amendment 4

On page 6, line 21, strike out "6101" and insert:

6100

Amendment 5

On page 6, between lines 28 and 29, insert:

6100. This part may be cited as the California Multiple-Party Accounts Law.

Amendment 6

On page 6, line 30, strike out "division" and insert:

part

Amendment 7

On page 8, line 3, strike out "or" and insert:

and

Amendment 8

On page 8, strike out lines 6 to 10, inclusive

Amendment 9

On page 8, line 11, strike out "(j)" and insert:

(i)

Amendment 10

On page 8, line 16, strike out "(k)" and insert:

(j)

Amendment 11

On page 8, between lines 18 and 19, insert:

(k) "Proof of death" includes an original or attested or certified copy of a death certificate or record or report which is prima facie evidence of death under Section 10577 of the Health and Safety Code, Sections 1530 to 1532, inclusive, of the Evidence Code, or other statute of this state.

(l) A financial institution "receives" an order or notice under this part when it is received by the particular office or branch office of the financial institution where the account is carried.

Amendment 12

On page 8, line 19, strike out "(l)" and insert:

(m)

Amendment 13

On page 8, line 22, after "signatures" insert a comma

Amendment 14

On page 8, line 29, strike out "(m)" and insert:

(n)

Amendment 15

On page 8, line 33, strike out "(n)" and insert:

(o)

Amendment 16

On page 8, line 38, strike out the semicolon and insert:

. In a trust account,

Amendment 17

On page 9, line 5, strike out "(o)" and insert:

(p)

Amendment 18

On page 9, line 29, strike out "; if" and insert:

. If

Amendment 19

On page 9, line 30, strike out "rights as between them are" and strike out line 31 and insert:

the account belongs to them in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

Amendment 20

On page 9, line 37, strike out "beneficial" and strike out line 38 and insert:

the account belongs beneficially to them in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

Amendment 21

On page 10, line 18, strike out the comma and insert:

(A)

Amendment 22

On page 10, line 21, strike out the semicolon and insert:

, (B) if two or more P.O.D. payees survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and

(C)

Amendment 23

On page 10, line 31, strike out the comma and insert:

(A)

Amendment 24

On page 10, line 34, after "clear" insert:

and convincing

Amendment 25

On page 10, line 35, strike out the semicolon and insert:

, (B) if two or more beneficiaries survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and (C)

Amendment 26

On page 10, line 35, after "survive" insert a comma

Amendment 27

On page 11, line 8, after "6105." insert:

(a)

Amendment 28

On page 11, strike out lines 10 to 19, inclusive, and insert:
at the death of a party.

(b) Once established, the terms of a multiple-party account can be changed only by any of the following methods:

(1) Closing the account and reopening it under different terms.

(2) Presenting to the financial institution a modification agreement in a form satisfactory to the financial institution which is signed by all parties with a present right of withdrawal.

(3) If the provisions of the terms of the account or deposit agreement provide a method of modification of the terms of the account, complying with those provisions.

Amendment 29

On page 11, strike out lines 23 to 27, inclusive, and insert: considered as testamentary. The right under this part of a surviving party to a joint account, or of a beneficiary, or of a P.O.D. payee, to the sums on deposit on the death of a party to a multiple-party account shall not be denied, abridged, or affected because such right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

Amendment 30

On page 12, between lines 10 and 11, insert:

(d) Except as provided in subdivision (c), a multiple-party account created with community property funds does not in any way alter community property rights.

Amendment 31

On page 12, line 27, after "estate" insert:

, but is not liable in an amount greater than the amount the P.O.D. payee or beneficiary received from the account

Amendment 32

On page 13, line 20, after "request" insert:

and according to its terms

Amendment 33

On page 13, strike out lines 22 and 23

Amendment 34

On page 13, line 24, strike out "the parties" and insert:

(b) The terms of the account or deposit agreement

Amendment 35

On page 13, line 25, strike out "such parties" and insert:

the parties to a multiple-party account

Amendment 36

On page 13, line 30, strike out "instructions" and insert:
terms

Amendment 37

On page 13, lines 30 and 31, strike out "no such instructions"
and insert:
those terms do not

Amendment 38

On page 13, line 39, after "request" insert:
and according to its terms

Amendment 39

On page 14, line 7, after "request" insert:
and according to its terms

Amendment 40

On page 14, line 16, strike out "his or her decedent" and
insert:
the deceased original payee

Amendment 41

On page 14, line 19, after "request" insert:
and according to its terms

Amendment 42

On page 14, lines 25 and 26, strike out "his or her decedent"
and insert:
the deceased trustee

Amendment 43

On page 14, line 27, strike out "Payment"

Amendment 44

On page 14, strike out lines 28 and 29, and insert:
A trust account may be paid to a beneficiary or beneficiaries or the personal representative or heirs of a beneficiary or beneficiaries if proof of death is presented to the financial institution

Amendment 45

On page 14, line 32, strike out "Subject to Section 6115, payment" and insert:

Payment

Amendment 46

On page 14, line 38, strike out "The" and insert:
Unless the notice is withdrawn, the

Amendment 47

On page 14, line 39, strike out "particular office"

Amendment 48

On page 14, strike out line 40

Amendment 49

On page 15, strike out lines 1 to 7, inclusive, and insert:
financial institution has received written notice from any party that withdrawals in accordance with the terms of the account should not be permitted.

Amendment 50

On page 15, line 14, strike out "and" and insert:
or

Amendment 51

On page 15, line 20, after "accounts" insert:
and is in addition to, and not exclusive of, any protection provided the financial institution by any other provision of law

Amendment 52

On page 15, line 32, after the period, insert:
Nothing in this section limits any right the financial institution may have under any other law.

Amendment 53

On page 15, strike out lines 39 and 40

Amendment 54

On page 16, strike out lines 1 to 11, inclusive, and insert:
6115. Nothing in this division affects the law relating to transfers in fraud of creditors.

Amendment 55

On page 16, between lines 26 and 27, insert:
6118. For the purposes of this part, if a joint account was established before July 1, 1983, and the account was established as a "tenancy in common" account, no right of survivorship arises from the terms of the account or under Section 6104.

Amendment 56

On page 17, line 7, strike out the first "the"