

Memorandum 83-56

Subject: Study L-652 - Nonprobate Transfers

The Commission recommended to the 1983 session that Article VI of the Uniform Probate Code (nonprobate transfers) be enacted in California with a number of revisions, omissions, and additions. A copy of the new law--Chapter 92 of the Statutes of 1983--is attached.

As enacted, the new law covers only multiple-party accounts in credit unions and industrial loan companies. This means that there is a clear body of law that determines the rights of depositors in credit union accounts and industrial loan company accounts during the lifetime of the depositors and upon their death. However, the law relating to accounts in other types of financial institutions--banks and savings and loan associations--remains uncertain and may be inconsistent with the new law.

Chapter 3 (commencing with Section 5301) of the new law determines the ownership between parties to multiple-party accounts and their creditors and successors. It is difficult to justify not having this chapter apply to accounts in all types of financial institutions. Chapter 4 (commencing with Section 5401) of the new law provides protection to financial institutions. The banks and savings and loan associations, which are not covered by this chapter, have similar protections provided by provisions in the Financial Code that cover the particular type of financial institution. These Financial Code provisions are not consistent with Chapter 4 of the new law.

Although the provisions of Chapter 3 of the new law relate to the ownership between parties and their creditors and successors, one provision has some effect on the management of accounts by financial institutions: Section 5303 specifies the exclusive methods for changing the terms of a multiple-party account once the account has been established. If Chapter 3 were made applicable to all financial institutions, Section 5303 would govern the procedures for the financial institutions now excluded from the new law.

The enactment of the new law was opposed by the banks and savings and loan associations. Only after these financial institutions were excluded was it possible to obtain enactment of the bill. The excluded

financial institutions are satisfied with the protections against liability that they now have under the Financial Code provisions.

The staff does not believe it would be politically possible to make the entire new law applicable to all financial institutions. However, it might be possible to make Chapter 3 (ownership between parties and their creditors and successors) applicable to multiple-party accounts in all types of financial institutions. To make Chapter 3 applicable to all types of financial institutions would require a search of the Financial Code provisions to eliminate portions that govern the subject matter of Chapter 3 of the new law.

We were able to obtain legislative approval of the new law on the ground that it provided an opportunity to test the rules of the new law in a limited area--credit union accounts. If the rules proved desirable in actual experience, then they could be extended to other types of financial institutions. (The credit unions had made a careful study of the new law and were strongly in support of its enactment.)

The Commission has three options:

(1) Seek to extend all aspects of the new law to all types of financial institutions. The staff does not believe that this is politically possible at this time.

(2) Seek to extend Chapter 3 (ownership between parties and their creditors and successors) to all types of financial institutions and make conforming changes in the relevant provisions of the Financial Code.

(3) Defer further action until there is more experience under the new law.

The staff believes that choice (2) above is the best. We recommend that a recommendation be prepared for the 1985 legislative session. This would give us time to work with the banks and savings and loan associations in an effort to develop a legislative proposal that had no opposition.

Respectfully submitted,

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Executive Secretary