

## Memorandum 84-77

Subject: Study L-601 - Nonprobate Transfers

In 1983, provisions relating to multiple-party accounts were enacted upon recommendation of the Law Revision Commission. The 1983 statute applies only to credit unions and industrial loan companies. The statute is drawn from a portion of the Uniform Probate Code that has been enacted in at least 20 states. A copy of the statute is attached as Exhibit 2.

The 1983 statute includes provisions that concern beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries, of multiple-party accounts. These provisions are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The statute also contains provisions that govern the liability of financial institutions who make payments pursuant to the chapter.

In 1983, the California Bankers Association objected to applying the bill to deposit accounts in banks. The Savings and Loan Associations took the view that, if the banks were to be excluded, the savings and loan institutions also should be excluded. The Credit Union League had made a careful study of the bill and was strongly in favor of being included under the bill. The Industrial Loan Companies also wanted to be included under the bill. The bill was enacted with the banks and savings and loan associations excluded. The hope was that at some future time the Commission could work with representatives of those groups to extend the statute to all financial institutions.

The 1983 statute made two significant changes in existing law (but only for credit union and industrial loan company accounts):

(1) Under the new statute, unless there is clear and convincing evidence of a different intent, during the lifetime of the original payees the funds on deposit belong to them in proportion to the net contributions by each to the sums on deposit. Under the law applicable to banks and savings and loan associations, the moneys in a joint account belong equally to the co-depositors. *Wallace v. Riley*, 23 Cal. App.2d 654, 667, 74 P.2d 807 (1937). But this equal ownership rule is not applicable if the account is not a true joint tenancy, and litigation

sometimes results in an effort to avoid the equal ownership rule by showing that a true joint tenancy was not intended. See the case attached as Exhibit 1. The new statute adopts a better rule than the equal ownership rule and will reduce the need for litigation.

(2) The new statute contains a provision that deals with the situation when community property funds are deposited in joint account. The provision creates a rebuttable presumption that funds of married persons on deposit in an account to which they are both parties are presumed to be their community property, whether or not they are described in the deposit agreement as husband and wife. This permits the court to divide the funds in case of dissolution of the marriage, but the provision--consistent with the UPC rule--also makes clear that a right of survivorship arising from the express terms of the account or by virtue of the statute cannot be changed by will.

The staff recommends that the staff be directed to contact the California Bankers Association and request that representatives of that association be designated to work with the Commission in an effort to provide a consistent body of law applicable to the rights of parties to multiple-party accounts during their lifetimes and upon death of a party. We could seek to retain existing Financial Code provisions that protect banks (and savings and loan institutions) rather than expanding the scope of the Probate Code provisions giving immunity from liability to financial institutions that pay out funds as provided in the statute.

During the last year, the staff has received five or six calls from lawyers who had problems determining and applying the applicable existing law that governs the rights of parties to a multiple-party account in a bank or savings and loan association. The staff believes that the Commission should seek to provide a uniform body of law that applies to accounts in all types of financial institutions.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

**Exhibit 1**

[Civ. No: 28926. Fourth Dist., Div. One. Feb. 7, 1984.]

[As modified Feb. 29, 1984.]

Estate of JANET C. DRUCKER, Deceased.  
ANN C. HALL, Petitioner and Respondent, v.  
JANE DENHAM CORNISH, as Executrix, etc., Objector and Appellant.

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**SUMMARY**

Two individuals established a joint tenancy bank account, with one individual making contributions and the other having the duty to use the funds deposited by the contributing tenant during the contributing tenant's lifetime to defray her living expenses. After the contributing tenant died, the trial court determined the noncontributing tenant, as surviving joint tenant, was the owner of a separate bank account established by the contributing tenant and the proceeds of a treasury certificate purchased by her, both of which were traceable to funds withdrawn from the joint tenancy account. (Superior Court of San Diego County, No. P 125323, Alpha L. Montgomery, Sr., Judge.)

The Court of Appeal reversed with instructions to enter orders in favor of the executrix of the deceased tenant's estate. It held the noncontributing tenant's use of the joint tenancy bank account funds for any purpose other than defraying the deceased tenant's living expenses had to await the deceased tenant's death, for only then did the noncontributing tenant, as the surviving joint tenant, have the right to those funds. It held that when the contributing tenant decided to transfer a portion of the joint tenancy bank account funds into a separate account and to purchase a treasury certificate in her name alone, the noncontributing tenant lost her right to those funds. Thus, the noncontributing tenant, named as a 25 percent beneficiary in the deceased tenant's will, was not entitled to the property traceable to the joint tenancy account funds standing in the deceased tenant's name alone. (Opinion by Wiener, J., with Brown (Gerald), P. J., and Work, J., concurring.)

**HEADNOTES**

Classified to California Digest of Official Reports, 3d Series

- (1) **Banks and Banking § 8—Deposits—Joint Accounts—Joint Tenancy.**—The nature of each party's interest in a joint tenancy bank account turns on the intent of the parties establishing the account. Where each party contributes funds into the joint tenancy account each has a present vested interest in those funds even though the contributions may be unequal. Even though one party may make no contributions whatsoever, the parties may nonetheless agree that each has an interest in those funds allowing any party to use the funds under the terms of their agreement.
- (2) **Banks and Banking § 8—Deposits—Joint Accounts—Joint Tenancy—Revocable Living Trust.**—Where two individuals establish a joint tenancy bank account with one party making no contributions whatsoever, as part of an estate plan intending to make a gift to the surviving noncontributing tenant effective upon the contributing tenant's death, the arrangement is the legal equivalent of a revocable living trust in which the contributing tenant is the trustor and both tenants are trustees. As trustee, the noncontributing tenant must comply with the trust terms. Where the contributing tenant intends to preclude the noncontributing tenant from a present lifetime interest, the funds must be used solely for the trustor's benefit during the trustor's lifetime, and only upon the trustor's death is the noncontributing tenant entitled to the balance in the joint tenancy account.
- (3) **Banks and Banking § 8—Deposits—Joint Accounts—Revocable Living Trust.**—Where two individuals establish a joint tenancy bank account with one party making no contributions whatsoever, as part of an estate plan intending to make a gift to the surviving noncontributing tenant effective upon the contributing tenant's death, the trustor may invade part or all of the trust corpus or even revoke the trust to use the funds for purposes other than making a gift to the person named earlier as trust beneficiary. Under such circumstances, if the trustor were to die without redepositing the funds withdrawn from the trust, the beneficiary is not entitled to the property acquired by the trustor from trust funds. When the noncontributing joint tenant, as trustee, violates the trust and takes the funds for his own purposes, the trustor can trace those funds into any property acquired by the errant trustee.
- (4) **Banks and Banking § 8—Deposits—Joint Accounts—Joint Tenancy—Tracing of Funds.**—Where two individuals established a joint tenancy bank account, with one individual making contributions and the other having the duty to use the funds deposited by the contributing tenant during the contributing tenant's lifetime to defray her living expenses, the noncontributing tenant's use of the funds for any other purpose had to await the contributing tenant's death; only then did the noncontributing tenant, as the surviving joint tenant, have the right to those funds. Thus, when the contributing tenant decided to transfer a portion of the funds into a separate account

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[See Cal.Jur.3d, Banks and Other Financial Institutions, § 110 et seq.; Am.Jur.2d, Banks, § 385.]

and later to purchase a treasury certificate in her name alone, the noncontributing tenant lost her right to those funds. Consequently, upon the contributing tenant's death, the noncontributing tenant, named as a 25 percent beneficiary in the contributing tenant's will, was not entitled to the property traceable to the joint tenancy account funds standing in the deceased tenant's name alone.

#### COUNSEL

Brown & Adler and John Adler for Objector and Appellant.

Crabtree & Goodwin, Brooks Crabtree and Daniel B. Crabtree for Petitioner and Respondent.

#### OPINION

**WIENER, J.**—Jane Denham Cornish, executrix of the estate of Janet C. Drucker, deceased, appeals the orders determining Ann C. Hall to be the owner as surviving joint tenant of (1) a bank account at La Jolla Bank & Trust Company (La Jolla account) and (2) the proceeds of a \$25,000 treasury bill. Although the source of the La Jolla account and the treasury bill was a joint tenancy account between Drucker and Hall, those items were in Drucker's name alone at the time of her death. Because the joint tenancy was not a *true* joint tenancy we reverse with instructions to enter orders in favor of the executrix.

In August 1981, Hall petitioned under Probate Code section 851.5 for a declaration that she was the sole owner as surviving joint tenant of the La Jolla account opened by Janet Drucker, deceased. Finding Hall owned the account, the court granted her motion for judgment on the pleadings and

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ordered Cornish to give the money in the account to Hall. This court reversed the judgment in an unpublished opinion (4 Civ. No.

26554) because Hall had not established a joint tenancy account by a writing as required by Civil Code section 683 and Financial Code section 852. The opinion said: "Nevertheless, this case should be remanded for trial because Hall contends the funds deposited by Drucker into the account were withdrawn from a separate account held in joint tenancy by Drucker and Hall. The significance of this contention was not pursued by the superior court due to the erroneous award of judgment on the pleadings based on the writings. If at trial Hall can prove the source of the funds was indeed a joint tenancy account owned by *Drucker and herself*, the new account opened by Drucker ordinarily would also be held in joint tenancy despite the lack of a sufficient writing.

"Contrary to the common law rule, if money is taken from a joint tenancy account in a California bank during the joint lives of the depositors, property acquired with the money so withdrawn, or another account into which the money is traced, has the character of property held in joint tenancy, unless there has been a change in the character by some agreement between the parties." (9 CALJUR (3d ed. 1974) Banks, etc., § 115, p. 326.)

"A joint tenancy account does not lose its status as such when one of the joint tenants withdraws the funds and reinvests them (*Estate of Harris*, 9 Cal.2d 649; *Taylor v. Crocker-Citizens Nat. Bank*, 258 Cal.App.2d 682; *Cordasco v. Scalero*, *supra*, 203 Cal.App.2d 95; *Wallace v. Riley*, 23 Cal.App.2d 654; *Estate of McCoin*, 9 Cal.App.2d 480). Therefore, although a finding of a joint tenancy cannot be supported by any of the writings in evidence here, given the proper evidentiary showing, a joint tenancy may be proved by *tracing the source of the funds in the account*. The award of judgment on the pleadings to either party would be improper." (Italics supplied.)

Before the superior court heard the matter, Hall filed another petition against the estate for proceeds of a \$25,000 treasury bill in Drucker's name at the time of her death asserting it, like the La Jolla account, was traceable to a joint tenancy bank account at San Diego Trust and Savings Bank (San Diego account). The two petitions were consolidated for hearing. The court found that when Drucker established the La Jolla account by withdrawing funds from the San Diego account she did not intend

to terminate the joint tenancy between herself and Hall. Accordingly, the court ruled Hall was entitled to both the La Jolla account and the treasury bill.

Our earlier decision precluded the court on retrial from finding the La Jolla account to be in joint tenancy form. We specifically held: "The superior court also erred when it found the documents presented (the signature

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card and the checking-savings fund transfer authorizations) were sufficient to create a joint tenancy. Under Civil Code section 683 and Financial Code section 852, a joint tenancy bank account may only be created by a writing which contains specific language referring to a joint tenancy and/or a right of survivorship; 'the intention to create a joint tenancy must appear expressly in the instrument allegedly giving rise to it. Without such a declaration, no joint tenancy results.' [Citation.] Even where two parties have created a common bank account to which both have equal access and where they have been informed by a bank officer a joint tenancy has been created, no joint tenancy will result absent a writing which specifically states the parties' intent to create a joint tenancy." (*In re Estate of Drucker* (Nov. 23, 1982) 4 Civ. 26554 [unpub. opn.], at pp. 4-5.) And "The absence of a writing sufficient to create a joint tenancy precludes the admission of parol evidence to prove a joint tenancy was intended by Drucker. [Citations.]" (*Id.*, at p. 6.)

Thus, the only avenue available to Hall and the critical issue before the court on retrial was whether the San Diego account was a *true* joint tenancy between the decedent and Hall. The general statement contained in our opinion to the effect that property acquired with joint tenancy money is joint tenancy property unless the parties have agreed otherwise did not mean that Hall could satisfy her burden by merely tracing the source of the treasury bill and the La Jolla account to an account which she and Drucker held in joint tenancy form. Borrowing from *Estate of Zeisel* (1983) 143 Cal.App.3d 516 [192 Cal.Rptr. 25] "It begs the question to argue [that Hall] is the surviving joint tenant of the account standing in the name of [Drucker] at the time of [her] death and that she is

therefore conclusively presumed to have been a joint tenant of the accounts on which her name was placed in the first instance. She was not a joint tenant of the successor account unless she was a true joint tenant of the original account, and in determining whether [any] presumption is applicable we may not assume the answer to the ultimate question at issue." (*Id.*, at p. 524.)

(1) The nature of each party's interest in a joint tenancy bank account turns on the intent of the parties establishing the account. (*Paterson v. Comastri* (1952) 39 Cal.2d 66, 71-74 [244 P.2d 902]; *Wallace v. Riley* (1937) 23 Cal.App.2d 654, 665-666 [74 P.2d 807].) Where each party contributes funds into the joint tenancy account each has a present vested interest in those funds even though the contributions may be unequal. Even though one party may make no contributions whatsoever, the parties may nonetheless agree each has an interest in those funds allowing either party to use the funds under the terms of their agreement.

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(2) Frequently, however, individuals establish a joint tenancy account as part of an estate plan intending to make a gift to the surviving noncontributing joint tenant effective upon the contributing joint tenant's death. The California Supreme Court judicially recognized this purpose in *Paterson v. Comastri, supra*, 39 Cal.2d 66. (See also *Estate of Zeisel, supra*, 143 Cal.App.3d 516.) This type of arrangement is the legal equivalent of a revocable living trust in which the contributing joint tenant is the trustor and both joint tenants are trustees. As trustee the noncontributing joint tenant must comply with the trust terms. Where the contributing joint tenant intends to preclude the noncontributing joint tenant from a present lifetime interest the funds must be used solely for the trustor's benefit during the trustor's lifetime. It is only upon the trustor's death that the noncontributing joint tenant becomes entitled to the balance in the joint tenancy account.

(3) Viewed in this light, the trustor may invade part or all of the trust corpus or even revoke the trust to use the funds for purposes other than making a gift to the person named earlier as trust beneficiary. Under such cir-

circumstances, if the trustor were to die without redepositing the funds withdrawn from the trust, the beneficiary is not entitled to the property acquired by the trustor from trust funds. When the noncontributing joint tenant, as trustee, violates the trust and takes the funds for his own purposes the trustor can trace those funds into any property acquired by the errant trustee. Thus, the rule stated in our earlier opinion applies only in the latter situation. The facts in each of the cases reciting the general rule support our conclusion. (See *Estate of Harris* (1937) 9 Cal.2d 649 [72 P.2d 873]; *Taylor v. Crocker-Citizens Nat. Bank* (1968) 258 Cal.App.2d 682 [65 Cal.Rptr. 771]; *Cordasco v. Scalero* (1962) 203 Cal.App.2d 95 [21 Cal.Rptr. 339]; *Wallace v. Riley*, *supra*, 23 Cal.App.2d 654; *Estate of McCoin* (1935) 9 Cal.App.2d 480 [50 P.2d 114].)

(4) Here, the joint tenancy relationship between Hall and Drucker was well defined. Hall, the noncontributing tenant, had the duty to use the funds deposited by Drucker during Drucker's lifetime to defray Drucker's household expenses, medical bills and taxes. Hall's use of those funds for any other purpose had to await Drucker's death for only then did

Hall, as the surviving joint tenant, have the right to those funds. When Drucker decided to transfer part of what in effect was trust corpus from the San Diego account into the La Jolla account and later purchase a treasury certificate in her name alone, Hall lost her right to those funds. (See *Paterson v. Comastri*, *supra*, 39 Cal.2d at p. 71.) Hall was named as a 25 percent beneficiary in Drucker's will. Lacking admissible evidence of Drucker's testamentary intent other than the intent she expressed in her will and lacking any evidence establishing the San Diego account as a true joint tenancy

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account, Hall is not entitled to the property standing in Drucker's name alone at the time of Drucker's death.

*Disposition*

Orders reversed with instructions to enter orders in favor of the executrix.

Brown (Gerald), P. J., and Work, J., concurred.

EXHIBIT 2

Division 5  
NONPROBATE TRANSFERS

<b>Part</b>	<b>Section</b>
1. Multiple-Party Accounts .....	5100

*Division 5 is operative July 1, 1984*

Part 1

MULTIPLE-PARTY ACCOUNTS

<b>Chapter</b>	<b>Section</b>
1. Short Title and Definitions .....	5100
2. General Provisions .....	5201
3. Ownership Between Parties and Their Creditors and Successors .....	5301
4. Protection of Financial Institution .....	5401

CHAPTER 1. SHORT TITLE AND DEFINITIONS

<b>Sec.</b>
5100. Short title.
5101. Definitions.

§ 5100. Short title

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

(Added by Stats.1983, c. 92, § 5.)

*Operative July 1, 1984*

§ 5101. Definitions

In this part, unless the context otherwise requires:

(a) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

(b) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(c) "Financial institution" means:

(1) Any organization authorized to do business under state or federal laws relating to credit unions.

(2) Any industrial loan company as defined in Section 18003 of the Financial Code.

(d) "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

(e) A "multiple-party account" is any of the following types of account: (1) a joint account, (2) a P.O.D. account, or (3) a trust account. It does not include: (1) accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, (2) accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or (3) a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(f) "Net contribution" of a party to a joint account as of any given time is the sums of all deposits thereto made by or for the party, less all withdrawals made by or for the party that have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question. In the absence of proof otherwise, only parties who have a present right of withdrawal shall be considered as having a net contribution and the net contribution of each of the parties having a present right of withdrawal is deemed to be an equal amount.

(g) "Party" means a person who, by the terms of the account, has a present right, subject to request,

to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of surviving the original payee or trustee. Unless the context otherwise requires, "party" includes a guardian, conservator, personal representative, or assignee, including a levying creditor, of a party. "Party" also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless the beneficiary has a present right of withdrawal.

(h) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

(i) "P.O.D. account" means an account payable on request to one person during the person's lifetime and on the person's death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(j) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(k) "Proof of death" includes an original or attested or certified copy of a death certificate or record or report that 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 another 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.

(m) "Request" means a proper request for withdrawal, or a check or order for payment, that complies with all conditions of the account (including special requirements concerning necessary signatures) and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(n) "Sums on deposit" means the balance payable on a multiple-party account including interest, divi-

dends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(o) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. In a trust account, it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include (1) a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account or (2) a fiduciary account arising from a fiduciary relation such as attorney-client.

(p) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

(Added by Stats.1983, c. 92, § 5.)

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## CHAPTER 2. GENERAL PROVISIONS

### Sec.

5201. Application of provisions concerning beneficial ownership and liability of financial institutions.

5202. Fraudulent transfers.

### § 5201. Application of provisions concerning beneficial ownership and liability of financial institutions

(a) The provisions of Chapter 3 (commencing with Section 5301) concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

(b) The provisions of Chapter 4 (commencing with Section 5401) govern the liability of financial institutions who make payments pursuant to that chapter.

(Added by Stats.1983, c. 92, § 5.)

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**§ 5202. Fraudulent transfers**

Nothing in this part affects the law relating to transfers in fraud of creditors.

(Added by Stats.1983, c. 92, § 5.)

*Operative July 1, 1984*

### CHAPTER 3. OWNERSHIP BETWEEN PARTIES AND THEIR CREDITORS AND SUCCESSORS

**Sec.**

5301. Ownership; joint accounts; P.O.D. accounts; trust accounts.  
 5302. Sums remaining upon death of party; joint accounts; P.O.D. accounts; trust accounts; other multiple-party accounts.  
 5303. Determination of form of account; methods for change.  
 5304. Transfers not testamentary; necessity of writing.  
 5305. Presumption of community property; rebuttal.  
 5306. Tenancy in common accounts established before July 1, 1984.

**§ 5301. Ownership; joint accounts; P.O.D. accounts; trust accounts**

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his or her lifetime and not to the P.O.D. payee or payees. If two or more parties are named as original payees, during their lifetimes 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.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his or her lifetime, and if two or more parties are named as trustee on the account, during their lifetimes 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. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

(Added by Stats.1983, c. 92, § 5.)

*Operative July 1, 1984*

**§ 5302. Sums remaining upon death of party; joint accounts; P.O.D. accounts; trust accounts; other multiple-party accounts**

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 5301 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the decedent's death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account:

(1) On death of one of two or more original payees, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole original payee or of the survivor of two or more original payees, (A) any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee, (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) if two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account:

(1) On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole trustee or the survivor of two or more trustees, (A) any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent, (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) if two or more beneficiaries survive,

**§ 5302**

**NONPROBATE TRANSFERS**

**Div. 5**

there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will. (Added by Stats.1983, c. 92, § 5.)

*Operative July 1, 1984*

**§ 5303. Determination of form of account; methods for change**

(a) The provisions of Section 5302 as to rights of survivorship are determined by the form of the account 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 that is signed by all parties with a present right of withdrawal. If the financial institution has a form for this purpose, it may require use of the form.

(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.

(Added by Stats.1983, c. 92, § 5.)

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**§ 5304. Transfers not testamentary; necessity of writing**

Any transfers resulting from the application of Section 5302 are effective by reason of the account contracts involved and this part and are not to be 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.

(Added by Stats.1983, c. 92, § 5.)

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**§ 5305. Presumption of community property; rebuttal**

(a) Notwithstanding Sections 5301 to 5303, inclusive, if parties to an account are married to each other, whether or not they are so described in the deposit agreement, their net contribution to the account is presumed to be and remain their community property.

(b) The presumption established by this section is a presumption affecting the burden of proof and may be rebutted by proof of either of the following:

(1) The sums on deposit that are claimed to be separate property can be traced from separate property unless it is proved that the married persons made an agreement that expressed their clear intent that such sums be their community property.

(2) The married persons made a written agreement, separate from the deposit agreement, that expressly provided that the sums on deposit, claimed not to be community property, were not to be community property.

(c) Notwithstanding subdivision (a), a right of survivorship arising from the express terms of the account or under Section 5302, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

(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.

(Added by Stats.1983, c. 92, § 5.)

*Operative July 1, 1984*

**§ 5306. Tenancy in common accounts established before July 1, 1984**

For the purposes of this chapter, if a joint account was established before July 1, 1984, 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 5302.

(Added by Stats.1983, c. 92, § 5.)

*Operative July 1, 1984*

## CHAPTER 4. PROTECTION OF FINANCIAL INSTITUTION

### Sec.

5401. Financial institutions; multiple-party accounts; terms; requirements.
5402. Payment of sums in joint account; personal representative or heir of deceased party.
5403. Payment of P.O.D. account; personal representative or heir of deceased payee.
5404. Payment of trust account; personal representative or heir of deceased trustee.
5405. Payment as discharge of financial institution from claims.
5406. Payment of trust account without notice of failure to fit definition.
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### § 5401. Financial institutions; multiple-party accounts; terms; requirements

(a) Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request and according to its terms, to any one or more of the parties.

(b) The terms of the account or deposit agreement may require the signatures of more than one of the parties to a multiple-party account during their lifetimes or of more than one of the survivors after the death of any one of them on any check, check endorsement, receipt, notice of withdrawal, request for withdrawal, or withdrawal order. In such case, the financial institution shall pay the sums on deposit only in accordance with such terms, but those terms do not limit the right of the sole survivor or of all of the survivors to receive the sums on deposit.

(c) A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

(Added by Stats. 1983, c. 92, § 5.)

*Operative July 1, 1984*

### § 5402. Payment of sums in joint account; personal representative or heir of deceased party

Any sums in a joint account may be paid, on request and according to its terms, 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 proof of death is presented to the financial

institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 5302.

(Added by Stats. 1983, c. 92, § 5.)

*Operative July 1, 1984*

### § 5403. Payment of P.O.D. account; personal representative or heir of deceased payee

Any P.O.D. account may be paid, on request and according to its terms, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that the deceased original payee was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

(Added by Stats. 1983, c. 92, § 5.)

*Operative July 1, 1984*

### § 5404. Payment of trust account; personal representative or heir of deceased trustee

Any trust account may be paid, on request and according to its terms, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that the deceased trustee was the survivor of all other persons named on the account either as trustee or beneficiary. 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 showing that the beneficiary or beneficiaries survived all persons named as trustees.

(Added by Stats. 1983, c. 92, § 5.)

*Operative July 1, 1984*

**§ 5405. Payment as discharge of financial institution from claims**

(a) Payment made pursuant to Section 5401, 5402, 5403, or 5404 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors.

(b) The protection provided by subdivision (a) does not extend to payments made after the financial institution has been served with a court order restraining payment. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided by subdivision (a).

(c) Unless the notice is withdrawn, after receipt of a written notice from any party that withdrawals in accordance with the terms of the account should not be permitted, the financial institution may refuse, without liability, to pay any sums on deposit pending determination of the rights of the parties or their successors.

(d) The protection provided by this section has no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts and is in addition to, and not exclusive of, any protection provided the financial institution by any other provision of law.

(Added by Stats. 1983, c. 92 § 5.)

*Operative July 1, 1984*

**§ 5406. Payment of trust account without notice of failure to fit definition**

The provisions of this chapter that apply to the payment of a trust account apply to an account in the name of one or more parties as trustee for one or more other persons if the financial institution has no other or further notice that the account is not a trust account as defined in Section 5101.

(Added by Stats. 1983, c. 92, § 5.)

*Operative July 1, 1984*

**§ 5407. Payment to minor**

If a financial institution is required or permitted to make payment pursuant to this chapter to a person who is a minor:

(a) If the minor is a party to a multiple-party account, payment may be made to the minor or to the minor's order, and payment so made is a valid release and discharge of the financial institution, but this subdivision does not apply if the account is to be paid to the minor because the minor was designated as a P.O.D. payee or as a beneficiary of a trust account.

(b) In cases where subdivision (a) does not apply, payment shall be made as provided in Chapter 2 (commencing with Section 3400) of Part 8 of Division 4.

(Added by Stats. 1983, c. 92, § 5.)

*Operative July 1, 1984*