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Memorandum 87-51

Subject: Study L-1060 - Multiple-Party Accounts (Review of Staff Draft of Tentative Recommendation)

Attached is a staff draft of a *Tentative Recommendation Relating to Multiple-Party Accounts*. The draft extends to banks and savings and loan associations the existing California Multiple-Party Accounts Law, which now applies only to credit unions and industrial loan companies. According to Larry Cox, Director of Government Relations for the California Credit Union League, credit unions are happy with their experience under the law which has been in effect for nearly four years.

Mutual Fund Accounts

Some time ago, a mutual fund (Benham Capital Management Group of Palo Alto) proposed that mutual funds be included under the Multiple-Party Accounts Law. The National Conference of Commissioners on Uniform State Laws considered and rejected this proposal.

Benham now thinks mutual funds have pay-on-death authority under Probate Code Section 160 (P.O.D. provisions in written instruments). The staff agrees. Accordingly, the draft does not extend the Multiple-Party Accounts Law to mutual funds.

Distribution for Comment

If the Commission approves the draft, the staff will send it for comment to the California Bankers Association, savings and loan associations, and others, with the goal of having a bill for the 1988 session.

Respectfully submitted,

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Staff Draft
TENTATIVE RECOMMENDATION
relating to
MULTIPLE-PARTY ACCOUNTS

In 1983, the Legislature enacted the California Multiple-Party Accounts Law¹ to improve and clarify the law governing rights between parties to multiple-party accounts. The legislation was drawn from the Uniform Probate Code provisions concerning multiple-party accounts² which have been enacted in more than a third of the states.³

As originally introduced, the legislation would have applied to multiple-party accounts in all California financial institutions. But the law as enacted was limited to credit unions and industrial loan companies⁴ because banks and savings and loan associations were

¹ Prob. Code §§ 5100-5407, enacted by 1983 Cal. Stat. ch. 92. The California Multiple-Party Accounts Law was enacted on recommendation of the Law Revision Commission. See *Recommendation Relating to Nonprobate Transfers*, 16 Cal. L. Revision Comm'n Reports 129 (1982).

² Uniform Probate Code §§ 6-101 to 6-113.

³ Twenty-one states have adopted legislation comparable to Article VI of the Uniform Probate Code. See Alaska Stat. §§ 13.31.005 to 13.31.070 (1986); Ariz. Rev. Stat. Ann. §§ 14-6101 to 14-6201 (1975); Colo. Rev. Stat. §§ 15-15-101 to 15-15-201 (1973 & Supp. 1986); Ga. Code Ann. §§ 7-1-810 to 7-1-821 (1982); Haw. Rev. Stat. §§ 560:6-101 to 560:6-113 (1976 & Supp. 1984); Idaho Code §§ 15-6-101 to 15-6-201 (1979); Ind. Code Ann. §§ 32-4-1.5-1 to 32-4-1.5-14 (West 1979); Ky. Rev. Stat. §§ 391.300 to 391.360 (1986); Me. Rev. Stat. tit. 18-A, §§ 6-101 to 6-201 (1981); Mich. Stat. Ann. §§ 23.510(1) to 23.510(14) (1983) (limited to credit unions); Minn. Stat. Ann. §§ 528.01 to 528.14 (West 1975 & Supp. 1987); Neb. Rev. Stat. §§ 30-2701 to 30-2714 (1985); N.J. Stat. Ann. §§ 17:16I-1 to 17:16I-17 (West 1984 & Supp. 1987); N.M. Stat. Ann. §§ 45-6-101 to 45-6-201 (1978); N.D. Cent. Code §§ 30.1-31-01 to 30.1-31-14 (1976 & Supp. 1987); Or. Rev. Stat. §§ 708.600 to 708.656 (1985); 20 Pa. Cons. Stat. Ann. §§ 6301 to 6306 (Purdon 1987 Supp.); S.D. Codified Laws Ann. §§ 30-23-43 to 30-23-55 (Supp. 1987); Tex. Prob. Code §§ 436 to 450 (Vernon 1980 & Supp. 1987); Utah Code Ann. §§ 75-6-101 to 75-6-201 (1978 & Supp. 1987); Va. Code §§ 6.1-125.1 to 6.1-125.14 (1983 & Supp. 1987).

⁴ See Prob. Code § 5101(c).

concerned about possible uncertainty in applying the new law. Since then, experience under the law has been satisfactory. No problems have arisen and the law has functioned smoothly. The law provides clear rules governing rights of parties to multiple-party accounts.

The California Law Revision Commission recommends that the California Multiple-Party Accounts Law be broadened to include banks and savings and loan associations. This will make uniform the law governing rights between parties to multiple-party accounts, whether held by banks, savings and loan associations, credit unions, or industrial loan companies.

Rights During Lifetime

Present law applicable to banks and savings and loan associations presumes that funds in a joint account belong equally to the parties during their lifetimes, without regard to how much each contributed to the account.⁵ This is contrary to the general belief of depositors that their ownership interest during lifetime is based on their contribution. The California Multiple-Party Accounts Law conforms to the common understanding of depositors by presuming that funds in a joint account belong to the parties during lifetime in proportion to their net contributions.⁶

Right of Survivorship

Under present law applicable to banks and savings and loan associations, the right of survivorship in a joint account or Totten trust account may be overcome by a simple preponderance of the evidence that the depositor intended some other disposition of the funds.⁷ The California Multiple-Party Accounts Law strengthens the right of survivorship by requiring clear and convincing evidence of a contrary

⁵ See *Wallace v. Riley*, 23 Cal. App. 2d 654, 667, 74 P.2d 807 (1937).

⁶ Prob. Code § 5301(a). The presumption may be overcome by clear and convincing evidence that the parties had some other intention. *Id.*

⁷ See *Schmedding v. Schmedding*, 240 Cal. App. 2d 312, 315-16, 49 Cal. Rptr. 523 (1966) (presumption rebuttable); 7 B. Witkin, *Summary of California Law Trusts* § 18, at 5380-82 (8th ed. 1974) (Totten trust account may be defeated by flimsy or circumstantial evidence).

intent,⁸ and by providing that survivorship cannot be changed or defeated by a party's will.⁹

Community Property

Where parties to an account are married to each other, present law applicable to banks and savings and loan associations permits one spouse to dispose by will of half of the community property funds on deposit, thereby defeating the right of the other spouse to take the funds by survivorship.¹⁰ The California Multiple-Party Accounts Law protects the right of the survivor by providing that survivorship rights cannot be changed or defeated by will.¹¹ The rule of the California Multiple-Party Accounts Law conforms to the intent of married persons generally to retain the benefits of community property during their lifetimes and to pass the funds at death to the survivor with a minimum of delay and expense.¹²

Rights of Creditors

Under existing law, if an account in a financial institution is a true joint tenancy account and one joint tenant dies, the surviving joint tenant takes the funds free of claims of the deceased joint tenant's creditors.¹³ This rule gives the surviving joint tenant an

8 Prob. Code § 5302.

9 Prob. Code § 5302(e).

10 See Prob. Code § 6101(b).

11 Prob. Code § 5305(c). This provision applies to all accounts in financial institutions, not merely joint accounts, P.O.D. accounts, and Totten trust accounts. Thus the rule that survivorship of community property funds cannot be changed by will applies, for example, to a husband and wife who have funds on deposit in a partnership account. See the Comment to Prob. Code § 5305.

12 Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87, 87, 90, 95, 108 (1961).

13 See *Kilfoy v. Fritz*, 125 Cal. App.2d 291, 294, 270 P.2d 579 (1954); cf. *People v. Nogarr*, 164 Cal. App.2d 591, 330 P.2d 858 (1958) (real property); *Zeigler v. Bonnell*, 52 Cal. App.2d 217, 126 P.2d 118 (1942) (real property). If the funds, although held in joint tenancy form, are in fact community property, rights of creditors are the same as in other community property. See generally Prob. Code §§ 13550-13554 (liability for debts of

unjustified windfall at the expense of the deceased joint tenant's creditors. It would be fairer to creditors of the deceased joint tenant to permit them to reach the latter's share of joint account funds, particularly in view of the modern and widespread use of credit cards and charge accounts.¹⁴

The Uniform Probate Code requires the surviving party, P.O.D. payee, or beneficiary to pay over to a deceased party's personal representative the amount of the deceased party's share of the account needed to pay debts, taxes, expenses of administration, and family allowance, if other assets of the estate are insufficient.¹⁵ The UPC rule is consistent with California law which in a number of situations subjects nonprobate assets to claims against the decedent's estate.¹⁶

The Commission recommends adoption of the UPC rule permitting decedent's personal representative to reach all multiple-party account funds to the extent the estate is insufficient. This will protect creditors and avoid giving the surviving party a windfall.

(fn. 13, cont'd)
deceased spouse where no probate). California law is unclear whether a creditor may reach funds in a Totten trust account or P.O.D. account after the depositor's death. See Chillag, *Creditors' Rights to Reach Nonprobate Assets*, 5 CEB Estate Planning & California Probate Reporter 1, 5 (August 1983). In New York, creditors may reach Totten trust accounts after death of the depositor if the probate estate is insufficient. *In re Halbauer's Estate*, 34 Misc. 2d 458, 228 N.Y.S. 2d 786 (1962).

¹⁴ See Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87, 96-97 (1961).

¹⁵ Uniform Probate Code § 6-107. Of the 21 states that have enacted legislation comparable to Article VI of the Uniform Probate Code (see note 3 *supra*), 16 adopted the substance of UPC Section 6-107. The five states that omitted UPC Section 6-107 from their multiple-party accounts legislation are Georgia, Kentucky, Michigan, Oregon, and Pennsylvania.

¹⁶ See, e.g., Prob. Code § 18201 (revocable inter vivos trust); Civ. Code § 1390.3(b) (property subject to general testamentary power of appointment); Chillag, *Creditors' Rights to Reach Nonprobate Assets*, 5 CEB Estate Planning & California Probate Reporter 1 (August 1983) (property transferred in fraud of creditors).

Payments to Minors

On death of a trustee of a Totten trust account, a bank may pay account funds directly to a minor beneficiary.¹⁷ The California Multiple-Party Accounts Law requires that payment be made to the minor's parent or guardian or be deposited in a court-controlled account.¹⁸ The California Multiple-Party Accounts Law provides a more appropriate rule and is consistent with general California law concerning payment to a minor.¹⁹

17 Fin. Code § 853.

18 Prob. Code § 5407. The proposed law also revises the California Multiple-Party Accounts Law to authorize payment to a custodian pursuant to the California Uniform Transfers to Minors Act (Prob. Code §§ 3900-3925).

19 See Prob. Code §§ 3400-3413.

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The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 683 of the Civil Code, to amend Sections 6804, 6805, 6855, and 14860 of, to repeal Sections 852.5, 853, 6801, 6802, 6803, 6853, 6854, 14854.5, and 18318.5 of, and to repeal and add Sections 852 and 6800 of, the Financial Code, to amend Sections 20, 5306, 5406, and 5407 of, to add an article heading immediately preceding Section 5100 of, to add Article 2 (commencing with Section 5120) to Chapter 1 of Part 1 of Division 5 of, to add Section 5307 to, and to repeal Section 5101 of, the Probate Code, relating to multiple-party accounts.

The people of the State of California do enact as follows:

Civil Code § 683 (amended), Joint tenancy

SECTION 1. Section 683 of the Civil Code is amended to read:

683. (a) A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from a husband and wife, when holding title as community property or otherwise to themselves or to themselves and others or to one of them and to another or others, when expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument, or agreement.

(b) Provisions of this section do not apply to a joint account in a financial institution if Part 1 (commencing with Section 5100) of Division 5 of the Probate Code applies to such account.

~~(e) Provisions of this section shall not restrict the creation of a joint tenancy in a bank deposit as provided for in the Bank Act.~~

Comment. Subdivision (c) of Section 683 is deleted to reflect the expansion of the California Multiple-Party Accounts Law to include banks, savings and loan associations, and other like organizations. See Prob. Code § 5126 ("financial institution" defined). Thus banks will now be governed by subdivision (b).

Financial Code § 852 (repealed). Joint bank accounts

SEC. . Section 852 of the Financial Code is repealed.

~~852. When a deposit is made in a bank in the names of two or more persons, whether minor or adult, in such form that the moneys in the account are payable to the survivor or survivors then such deposit and all additions thereto shall be the property of such persons as joint tenants. The moneys in such account may be paid to or on the order of any one of such persons during their lifetimes or to or on the order of any one of the survivors of them after the death of any one or more of them. By written instructions given to the bank by the depositor or depositors, the signatures of more than one of such persons during their lifetimes or of more than one of the survivors after the death of any one of them may be required on any check, receipt, or withdrawal order in which case the bank shall pay the moneys in the account only in accordance with such instructions but no such instructions shall limit the right of the survivor or survivors to receive the moneys in the account.~~

~~Payment of all or any of the moneys in such account as provided in the preceding paragraph of this section shall discharge the bank from liability with respect to the moneys so paid, prior to receipt by the particular office or branch office of the bank where such account is carried of a written notice from any one of them directing the bank not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such notice, a bank may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties.~~

Comment. The first sentence of former Section 852 is superseded by Probate Code Sections 5128 ("joint account" defined) and 5301 (ownership during lifetime). The second sentence is superseded by Probate Code Sections 5302 (right of survivorship), 5402 (payment of joint account), and 5407 (payment to minor). The third sentence is

superseded by Probate Code Section 5401(b) (payment from multiple-party accounts).

The fourth and fifth sentences are superseded by Probate Code Sections 5144 ("receives" defined) and 5405(a) and (c) (payment as discharge). These provisions protect the bank from liability whether or not payment is consistent with the beneficial ownership of the account, unless the bank has been served with a court order restraining payment or has received written notice from a party that withdrawals should not be permitted. Thus the new provisions give the bank at least as much protection as it had under former law.

Financial Code § 852 (added). Multiple-party accounts

SEC. . Section 852 is added to the Financial Code, to read:

852. A bank account that is a multiple-party account as defined in Section 5130 of the Probate Code is governed by Part 1 (commencing with Section 5100) of Division 5 of the Probate Code.

Comment. Section 852 makes reference to the California Multiple-Party Accounts Law, which applies to banks. See also Fin. Code § 102 ("bank" defined).

Financial Code § 852.5 (repealed). Pay-on-death accounts

SEC. _____. Section 852.5 of the Financial Code is repealed.

~~852.5. (a) As used in this section, "pay on death provision" means:~~

~~(1) A provision of a bank account agreement for an account which is in the name of one person, which provides that upon the death of that person the moneys in the account shall become the property of and are payable to, one or more designated payees.~~

~~(2) A provision of a bank account agreement for an account which is in the name of two or more persons, which provides that upon the death of all of such persons the moneys in the account shall become the property of, and are payable to, one or more designated payees.~~

~~(b) Any transfer of property to the designated payee or payees pursuant to the terms of a pay on death provision shall be given effect under the terms of the bank account agreement and shall not be deemed to be a testamentary disposition of property. The right of the designated payee or payees to receive such property shall not be denied, abridged, or affected on the grounds that the 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.~~

~~(e) The bank shall make payment in accordance with the terms of
the pay on death provision, and such payment shall discharge the bank
from liability with respect to the moneys so paid, unless prior to the
payment the bank has been served with a court order restraining the
payment.~~

Comment. Subdivision (a) of former Section 852.5 is continued in
substance in Probate Code Section 5138 ("P.O.D. account" defined).
Subdivisions (b) and (c) are continued in substance in Probate Code
Sections 5304 (transfers nontestamentary) and 5405 (payment as
discharge) respectively, which are newly applied to banks by Probate
Code Section 5126 ("financial institution" defined).

Financial Code § 853 (repealed). Trust accounts

SEC. _____. Section 853 of the Financial Code is repealed.

~~853. Whenever any deposit is made in a bank by any person which
in form is in trust for another, but no other or further notice of the
existence and terms of a legal and valid trust is given in writing to
the bank, in the event of the death of the trustee, the deposit or any
part thereof may be paid to the person for whom the deposit was made,
whether or not such person is a minor.~~

Comment. Former Section 853 is superseded by Sections 5404, 5406,
and 5407 of the Probate Code.

Financial Code § 6800 (repealed). Joint tenants

SEC. _____. Section 6800 of the Financial Code is repealed.

~~6800. When a savings account is maintained in any association or
federal association in the names of two or more persons, whether minor
or adult, in which the moneys in the account are payable to any of
those persons or the survivor or survivors, the account and all
additions to it shall be the property of the persons as joint tenants
with rights of survivorship.~~

Comment. Former Section 6800 is superseded by Part 1 (commencing
with Section 5100) of Division 5 of the Probate Code relating to
multiple-party accounts.

Financial Code § 6800 (added). Multiple-party accounts

SEC. _____. Section 6800 is added to the Financial Code, to read:

6800. An account in an association or federal association that is a multiple-party account as defined in Section 5130 of the Probate Code is governed by Part 1 (commencing with Section 5100) of Division 5 of the Probate Code.

Comment. Section 6800 refers to the California Multiple-Party Accounts Law (Probate Code §§ 5100-5407) which applies to savings and loan associations. See also Fin. Code § 5102 ("association" and "federal association" defined).

Financial Code § 6801 (repealed). Payments to joint tenants

SEC. _____. Section 6801 of the Financial Code is repealed.

~~6801. The moneys in a joint tenancy account may be paid to or on the order of any one of the joint tenants during their lifetimes or to or on the order of any one of the survivors of them after the death of any one or more of them, subject to the provisions of Section 14345 of the Revenue and Taxation Code. An association or federal association continues to have the power to change the tenancy of a joint tenancy account on the written instructions of any one of the joint tenants during their lifetimes or on the written instructions of any one of the survivors of them after the death of any one or more of them.~~

Comment. Former Section 6801 is superseded by Part 1 (commencing with Section 5100) of Division 5 of the Probate Code relating to multiple-party accounts. The first sentence of former Section 6801 is superseded by Sections 5301, 5302, 5401, 5402, and 5407 of the Probate Code. The former reference to Section 14345 of the Revenue and Taxation Code is not continued. Section 14345 of the Revenue and Taxation Code was repealed by 1982 Cal. Stat. ch. 1535, § 14. The second sentence of former Section 6801 is superseded by Section 5303 of the Probate Code.

Financial Code § 6802 (repealed). Conclusive evidence of ownership

SEC. _____. Section 6802 of the Financial Code is repealed.

~~6802. The opening of a joint tenancy account shall be conclusive evidence in any action or proceeding to which either the association or federal association or the survivor or survivors is a party, of the intention of all the parties to the account to vest title to the account and the additions to it in the survivor or survivors.~~

Comment. Former Section 6802 is superseded by Part 1 (commencing with Section 5100) of Division 5 of the Probate Code relating to multiple-party accounts. The conclusive presumption of former Section 6802 has been replaced by a rebuttable presumption under Section 5302 of the Probate Code: The presumption of survivorship may be rebutted by clear and convincing evidence of a different intention. Prob. Code § 5302. However, the financial institution is protected from liability if it pays the account to the survivor. See Prob. Code §§ 5402, 5405.

Financial Code § 6803 (repealed). Multiple signatures; discharge of association

SEC. _____. Section 6803 of the Financial Code is repealed.

~~6803. (a) By written instructions given to the association or federal association at the office where the account is maintained by all the parties to a joint tenancy account, the signatures of more than one of the joint tenants during their lifetimes or of more than one of the survivors after the death of any one of them may be required on any check, receipt, record change order, or withdrawal order, in which case the association or federal association shall pay the moneys in the account only in accordance with the instructions, but no instructions shall limit the right of the survivor or survivors to receive the moneys in the account.~~

~~(b) Payment of all or any of the moneys in the account as provided in this article shall discharge the association or federal association from liability with respect to the moneys so paid, prior to receipt by the association or federal association of a written notice from any one of the joint tenants directing the association or federal association not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of the notice an association or federal association may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties.~~

~~(c) Rights of the parties may be determined under subdivision (b) by any one of the following:~~

~~(1) Decree by a court.~~

~~(2) A written agreement signed by each of the joint tenants, setting forth their respective rights.~~

~~(3) A written revocation of the notice made under subdivision (b), signed by the joint tenant that made it.~~

Comment. Former Section 6803 is superseded by Division 5 (commencing with Section 5100) of the Probate Code relating to multiple-party accounts. Subdivision (a) of former Section 6803 is continued in substance in subdivision (b) of Section 5401 of the Probate Code. Subdivisions (b) and (c) are superseded by Section 5405 of the Probate Code.

Financial Code § 6804 (technical amendment). Nonliability for taxes

SEC. _____. Section 6804 of the Financial Code is amended to read:

6804. ~~Except as provided under Section 14347 of the Revenue and Taxation Code, no~~ No association or federal association paying any survivor in accordance with the provisions of ~~this article~~ Part 1 (commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.

Comment. Section 6804 is amended to reflect the repeal of Section 14347 of the Revenue and Taxation Code (see 1982 Cal. Stat. ch. 1535, § 14), and the replacement of the former provision of this article that governed payment to a survivor by the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407).

Financial Code § 6805 (amended). Pledge or hypothecation of joint account

SEC. _____. Section 6805 of the Financial Code is amended to read:

6805. (a) The pledge or hypothecation to any association or federal association of all or part of a joint tenancy account signed by any one or more ~~tenants,~~ of the parties, whether minor or adult, upon whose signature or signatures withdrawals may be made from the account shall, unless the terms of the account provide specifically to the contrary, be a valid pledge and transfer to the association or federal association of that part of the account pledged or hypothecated, and shall not operate to sever or terminate the joint and survivorship tenancy of all or any part of the account.

(b) As used in this section:

(1) "Joint account" has the meaning given that term in Section 5128 of the Probate Code.

(2) "Party" has the meaning given that term in Section 5134 of the Probate Code.

Comment. Section 6805 is amended to replace the former reference to joint tenancy with a reference to "joint account" as defined in Section 5128 of the Probate Code, and to replace the former references to joint tenants with a reference to "parties" as defined in Section 5134 of the Probate Code. This expands the application of Section 6805 to include joint accounts in form other than the traditional common law joint tenancy account.

Financial Code § 6853 (repealed). Totten trust account

SEC. _____. Section 6853 of the Financial Code is repealed.

~~6853. (a) Whenever an account is opened by any person as trustee for another and no other or further notice of the existence and terms of a valid trust has been given in writing to the association, in the event of the death of the person described as trustee, the withdrawal value of the account or any part of it, together with the interest, may be paid to the person or persons for whom the account was opened.~~

~~(b) The payment or delivery to the beneficiary, beneficiaries, or designated person, or a receipt or acquittance signed by the beneficiary, beneficiaries, or designated person for the payment or delivery is a sufficient release of an association for the payment or delivery.~~

~~(c) An account opened under this section may be designated as a tentative or Totten trust account.~~

~~(d) The trustee of an account opened under this section shall, until death, retain retain the power to hold, manage, pledge, and invest the funds in the account and may revoke the tentative trust, in whole or in part, at any time by delivering to the association a request for withdrawal of all or part of the account.~~

~~(e) All unpaid interest on an account under this section shall be the property of the trustee until the death of the trustee, at which time it shall become part of the corpus of the trust.~~

~~(f) If more than one person is named as trustee under this section the tentative trust shall continue until the death of all the trustees.~~

~~(g) If no beneficiary is living at the time of the death of the trustee the association may pay the withdrawal value of the account to the estate of the trustee.~~

Comment. Subdivision (a) of former Section 6853 is superseded by Sections 5302 and 5404 of the Probate Code. The provision in former subdivision (a) concerning interest is superseded by Section 5132 of the Probate Code ("net contribution" defined). Former subdivision (b)

is superseded by Section 5405 of the Probate Code. Former subdivision (c) is superseded by Section 5150 of the Probate Code ("trust account" defined). Former subdivision (d) is superseded by subdivision (c) of Section 5301 of the Probate Code. Former subdivision (e) is continued in substance in Probate Code Sections 5132, 5301, and 5302. Former subdivision (f) is superseded by Section 5302 of the Probate Code. Former subdivision (g) is superseded by Section 5404 of the Probate Code.

Financial Code § 6854 (repealed). Pay-on-death accounts

SEC. _____. Section 6854 of the Financial Code is repealed.

~~6854. (a) As used in this section, "pay-on-death-provision" means:~~

~~(1) A provision or term of a savings account which is in the name of one person, which provides that upon the death of that person the savings account shall become the property of one or more designated payees.~~

~~(2) A provision or term of a savings account which is in the name of two or more persons which provides that upon the death of all of such persons the savings account shall become the property of one or more designated payees.~~

~~(b) Any transfer of property to the designated payee or payees pursuant to the terms of a pay-on-death-provision shall be given effect under the terms of the savings account and shall not be deemed to be a testamentary disposition of property. The right of the designated payee or payees to receive such property shall not be denied, abridged, or affected on the grounds that the 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.~~

~~(c) Except as provided in Section 6661, the association shall make payment in accordance with the pay-on-death-provision, and such payment shall discharge the association from liability with respect to the moneys so paid.~~

Comment. Subdivision (a) of former Section 6854 is continued in substance in Probate Code Section 5138 ("P.O.D. account" defined). Subdivisions (b) and (c) are continued in substance in Probate Code Sections 5304 (transfers nontestamentary) and 5405 (payment as discharge) respectively, which are newly applied to savings and loan associations by Probate Code Section 5126 ("financial institution" defined).

Note. Subdivision (c) is superseded by Probate Code Section 5304, which permits an adverse claimant to serve the financial institution with a court order restraining payment to a beneficiary. However, subdivision (c) refers to Financial Code Section 6661 which has specific claim procedures applicable to savings and loan associations. Should we preserve this law?

Financial Code § 6855 (technical amendment). Nonliability for taxes

SEC. _____. Section 6855 of the Financial Code is amended to read:

~~6855. Except as provided under Section 14347 of the Revenue and Taxation Code, no~~ No association paying any fiduciary, beneficiary, or designated person in accordance with the provisions of this article shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.

Comment. Section 6855 is amended to reflect the repeal of Section 14347 of the Revenue and Taxation Code. See 1982 Cal. Stat. ch. 1535, § 14.

Financial Code § 14854.5 (repealed). Pay-on-death accounts

SEC. _____. Section 14854.5 of the Financial Code is repealed.

~~14854.5. (a) As used in this section, "pay-on-death provision"~~
means+

~~(1) A provision or term of a credit union share or certificate for funds which is in the name of one person, which provides that upon the death of that person the account shall become the property of one or more designated payees.~~

~~(2) A provision or term of a credit union share or certificate for funds which is in the name of two or more persons, which provides that upon the death of all of such persons the account shall become the property of one or more designated payees as provided in the California Multiple-Party Accounts Law, Part 1 (commencing with Section 5100) of Division 5 of the Probate Code.~~

~~(b) Any transfer of property to the designated payee or payees pursuant to the terms of a pay-on-death provision shall be given effect under the terms of the share or certificate and shall not be deemed to be a testamentary disposition of property. The right of the designated payee or payees to receive such property shall not be denied, abridged, or affected on the grounds that the 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.~~

~~(e) The credit union shall make payment in accordance with the pay-on-death provision, and such payment shall discharge the credit union from liability with respect to the moneys so paid, unless prior to the payment the credit union has been served with a court order restraining the payment.~~

Comment. Former Section 14854.5 is repealed because the section duplicated provisions in the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407). Subdivision (a) is continued in substance in Probate Code Section 5138 ("P.O.D. account" defined). Subdivisions (b) and (c) are continued in substance in Probate Code Sections 5304 (transfers nontestamentary) and 5405 (payment as discharge) respectively.

Financial Code § 14860 (amended). Trust powers

SEC. _____. Section 14860 of the Financial Code is amended to read:

14860. Except as provided in this section and Part 1 (commencing with Section 5100) of Division 5 of the Probate Code, no credit union shall exercise trust powers except upon qualifying as a trust company pursuant to Division 1 (commencing with Section 99).

(a) Notwithstanding any other provisions of law relating to trusts and trust authority, subject to the regulations of the commissioner, a credit union may act as a trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States which is a part of a pension plan for its members or groups or organizations of its members, which qualifies or has qualified for specific tax treatment under Section 401 or Section 408 of the Internal Revenue Code, Title 26 of the United States Code, or any deferred compensation plan for the benefit of the credit union's employees, provided the funds received pursuant to these plans are invested as provided in Section 16040 of the Probate Code. All funds held by a credit union trustee or in a custodial capacity shall be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The credit union shall maintain individual records

for each participant or beneficiary which show in detail all transactions relating to the funds of each participant or beneficiary.

The trust instrument or agreement shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in his or her capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the commissioner that the credit union is unwilling or unable to continue to act as trustee or custodian.

(b) Shares may be issued in a revocable or irrevocable trust subject to the following:

(1) When shares are issued in a revocable trust, the settlor shall be a member of the credit union issuing the shares in his or her own right.

(2) When shares are issues in an irrevocable trust, the settlor or the beneficiary shall be a member of ~~this~~ the credit union in his or her own right. For purposes of this section, shares issued pursuant to a pension plan authorized by this section shall be treated as an irrevocable trust unless otherwise indicated in rules and regulations issued by the commissioner.

(3) In the case of a trust account as defined in Section 5150 of the Probate Code, the deposit agreement shall indicate the current address of any beneficiary as defined in Section 5124 of the Probate Code.

~~(3)~~ (4) This subdivision does not apply to trust accounts established prior to the effective date of this subdivision.

Comment. Section 14860 is amended to add a new paragraph (3) to subdivision (b) and to renumber former paragraph (3) as paragraph (4). New paragraph (3) continues the substance of the third sentence of former subdivision (o) of Probate Code Section 5101.

Note. The proposed amendment and Comment to Section 14860 is based on the assumption that AB 1679 will be enacted.

Financial Code § 18318.5 (repealed). Pay-on-death accounts

SEC. _____. Section 18318.5 of the Financial Code is repealed.

~~18318.5. (a) As used in this section, "pay on death provision"~~
means+

~~(1) A provision or term of an investment or thrift certificate which is in the name of one person, which provides that upon the death of that person the investment or thrift certificate shall become the property of one or more designated payees.~~

~~(2) A provision or term of an investment or thrift certificate which is in the name of two or more persons which provides that upon the death of all of such persons the investment or thrift certificate shall become the property of one or more designated payees.~~

~~(b) Any transfer of property to the designated payee or payees pursuant to the terms of a pay on death provision shall be given effect under the terms of the investment or thrift certificate and shall not be deemed to be a testamentary disposition of property. The right of the designated payee or payees to receive such property shall not be denied, abridged, or affected on the grounds that the 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.~~

~~(c) The company shall make payment in accordance with the pay on death provision, and such payment shall discharge the industrial loan company from liability with respect to the moneys so paid, unless prior to the payment the company has been served with a court order restraining the payment.~~

Comment. Former Section 18318.5 is repealed because the section duplicated provisions in the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407). Subdivision (a) is continued in substance in Probate Code Section 5138 ("P.O.D. account" defined). Subdivisions (b) and (c) are continued in substance in Probate Code Sections 5304 (transfers nontestamentary) and 5405 (payment as discharge) respectively.

Financial Code § 18318.5 (added). Multiple-party accounts

SEC. _____. Section 18318.5 is added to the Financial Code, to read:

18318.5. An investment or thrift certificate that is a multiple-party account as defined in Section 5130 of the Probate Code is governed by Part 1 (commencing with Section 5100) of Division 5 of the Probate Code.

Comment. Section 18318.5 makes reference to the California Multiple-Party Accounts Law, which applies to industrial loan companies.

Probate Code § 20 (amended). Scope of definitions

SEC. . Section 20 of the Probate Code is amended to read:

20. Unless the provision or context otherwise requires, the definitions in this part govern the construction of Division 1 (commencing with Section 1), Division 2 (commencing with Section 100), Chapter 22 (commencing with Section 1200) and Chapter 22.5 (commencing with Section 1280) of Division 3, Division 5 (commencing with Section 5100), Division 6 (commencing with Section 6100), Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), Division 9 (commencing with Section 15000), Division 10 (commencing with Section 20100), and Division 11 (commencing with Section 21100).

Comment. Section 20 is amended to extend the definitions in this part to Division 5 (commencing with Section 5100), relating to multiple-party accounts and other nonprobate transfers. As used in Division 5, the terms "account," "beneficiary," and "financial institution" have specialized meanings. See Sections 5122 ("account" defined), 5124 ("beneficiary" defined), and 5126 ("financial institution" defined).

Probate Code § 5100 (article heading)

SEC. . An article heading is added immediately preceding Section 5100 of the Probate Code, to read:

Article 1. Short Title

Probate Code § 5101 (repealed). Definitions

SEC. . Section 5101 of the Probate Code is repealed.

~~5101. 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 sum 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, dividends, 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. [The deposit agreement shall indicate the current address of any beneficiary.] 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.~~

Comment. The introductory portion of former Section 5101 is restated without substantive change in Section 5120 (application of definitions).

Subdivision (a) is restated without substantive change in Section 5122 ("account" defined).

Subdivision (b) is restated in Section 5124 ("beneficiary" defined) without substantive change.

Subdivision (c) is superseded by Section 5126. Subdivision (c) defined "financial institution" to mean a credit union or industrial loan company. Under new Section 5126, "financial institution" also includes a bank, savings and loan association, and other like organization. See the Comment to Section 5126.

Subdivision (d) is continued without change in Section 5128. Subdivision (e) is restated in Section 5130 without substantive change. Subdivision (f) is restated in Section 5132 without substantive change. Subdivision (g) is restated in Section 5134 without substantive change. Subdivision (h) is continued without change in Section 5136. Subdivision (i) is continued without change in Section 5138. Subdivision (j) is continued without change in Section 5140. Subdivision (k) is continued without change in Section 5142. Subdivision (l) is continued without change in Section 5144. Subdivision (m) is restated in Section 5146 without substantive change. Subdivision (n) is continued without change in Section 5148. [The first, second, and fourth sentences of] subdivision (o) are restated in Section 5150 without substantive change. [The third sentence of subdivision (o) is continued in paragraph (3) of subdivision (b) of Section 14860 of the Financial Code.] Subdivision (p) is continued without change in Section 5152.

Note. The bracketed material in subdivision (o) of Section 5101 and in the Comment is based on the assumption that AB 1679 will be enacted.

Probate Code §§ 5120-5152. Definitions (added)

SEC. . Article 2 (commencing with Section 5120) is added to Chapter 1 of Part 1 of Division 5, to read:

Article 2. Definitions

§ 5120. Application of definitions

5120. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

Comment. Section 5120 restates without substantive change the introductory portion of former Section 5101. For other relevant definitions, see Part 2 (commencing with Section 20) of Division 1. E.g., Sections 21 ("account" defined),

§ 5122. Account

5122. "Account" means:

(a) An account as defined in Section 21.

(b) A like arrangement with an industrial loan company as defined in Section 18003 of the Financial Code.

Comment. Section 5122 restates subdivision (a) of former Section 5101 without substantive change.

§ 5124. Beneficiary

5124. "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

Comment. Section 5124 restates subdivision (b) of former Section 5101 without substantive change. "Beneficiary" is used here in a specialized sense. Compare Section 24 ("beneficiary" defined).

CROSS-REFERENCES

Definitions

Party § 5134

Person § 56

Trust account § 5150

Trustee § 84

§ 5126. Financial institution

5126. "Financial institution" includes:

(a) A financial institution as defined in Section 40.

(b) An industrial loan company as defined in Section 18003 of the Financial Code.

Comment. Section 5126 supersedes subdivision (c) of former Section 5101. The former provision was limited to credit unions and industrial loan companies. The new provision applies as well to banks, savings and loan associations, and other like organizations. Section 40 ("financial institution" defined).

Note. The change in the definition of "financial institution" in Section 5126 expands the Multiple-Party Accounts Law to apply to banks and savings and loan associations. Now it applies only to credit unions and industrial loan companies.

The reason for the limited application of the Multiple-Party Accounts Law is that when it was enacted in 1983, banks and savings and loan associations were trying to assimilate substantial changes in their regulatory statutes, and did not want to have to cope with more new law. Also, the Multiple-Party Accounts Law was untried in California, and banks and savings and loan associations were cautious about it.

The arguments given in 1983 by banks and savings and loan associations for not applying the Multiple-Party Accounts Law to them have lost their force: Regulatory statutes applicable to banks and savings and loan associations are settled, and credit unions and industrial loan companies have had several years of experience under the Multiple-Party Accounts Law without problems.

§ 5128. Joint account

5128. "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.

Comment. Section 5128 continues subdivision (d) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

Account § 21

Party § 5134

§ 5130. Multiple-party account

5130. (a) A "multiple-party account" is any of the following types of account:

- (1) A joint account.
- (2) A P.O.D. account.
- (3) A trust account.

(b) A "multiple-party account" does not include:

(1) An account established for deposit of funds of a partnership, joint venture, or other association for business purposes.

(2) An account controlled by one or more persons as the duly

authorized agent or trustee for a corporation, unincorporated association, or charitable or civic organization.

(3) A regular fiduciary or trust account where the relationship is established other than by deposit agreement.

Comment. Section 5130 restates subdivision (e) of former Section 5101 without substantive change.

CROSS-REFERENCES

Definitions

Account § 21
Joint account § 5128
P.O.D. account § 5138
Trust account § 5150

§ 5132. Net contribution

5132. (a) "Net contribution" of a party to a joint account as of any given time is the sum 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.

(b) 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.

Comment. Section 5132 restates subdivision (f) of former Section 5101 without substantive change.

CROSS-REFERENCES

Definitions

Joint account § 5128
Party § 5134
Withdrawal § 5152

§ 5134. Party

5134. (a) "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.

(b) 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.

Comment. Section 5134 restates subdivision (g) of former Section 5101 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 5124
Multiple-party account § 5130
Person § 56
Personal representative § 58
P.O.D. payee § 5140
Trust account § 5150

§ 5136. Payment

5136. "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.

Comment. Section 5136 continues subdivision (h) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

Party § 5134
Sums on deposit § 5148
Withdrawal § 5152

§ 5138. P.O.D. account

5138. "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.

Comment. Section 5138 continues subdivision (i) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

Account § 21

P.O.D. payee § 5140

§ 5140. P.O.D. payee

5140. "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.

Comment. Section 5140 continues subdivision (j) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

P.O.D. account § 5138

§ 5142. Proof of death

5142. "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.

Comment. Section 5142 continues subdivision (k) of former Section 5101 without change.

§ 5144. Receives

5144. A financial institution "receives" an order or notice under this part when it is recieved by the particular office or branch office of the financial institution where the account is carried.

Comment. Section 5144 continues subdivision (l) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

Account § 21

Financial institution § 5126

§ 5146. Request

5146. "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. 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.

Comment. Section 5146 restates subdivision (m) of former Section 5101 without substantive change.

CROSS-REFERENCES

Definitions

Account § 21
Financial institution § 5126
Withdrawal § 5152

§ 5148. Sums on deposit

5148. "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any life insurance proceeds added to the account by reason of the death of a party.

Comment. Section 5148 continues subdivision (n) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

Multiple-party account § 5130
Party § 5134

§ 5150. Trust account

5150. "Trust account" means "Totten trust account" as defined in Section 80.

Comment. Section 5150 restates subdivision (o) of former Section 5101 without substantive change.

CROSS-REFERENCES

Definitions

Account § 21
Beneficiary § 5124
Financial institution § 5126
Party § 5134
Payment § 5136
Sums on deposit § 5148
Trust § 82

§ 5152. Withdrawal

5152. "Withdrawal" includes payment to a third person pursuant to a check or other directive of a party.

Comment. Section 5152 continues subdivision (p) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

Party § 5134

Payment § 5136

Probate Code § 5306 (amended). Transitional provision

SEC. . Section 5306 of the Probate Code is amended to read:

5306. 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 in the following circumstances:

(a) The account was established before July 1, 1984, with any organization authorized to do business under state or federal laws relating to credit unions or with any industrial loan company as defined in Section 18003 of the Financial Code.

(b) The account was established before July 1, 1989, with any financial institution other than a financial institution described in subdivision (a).

Comment. Section 5306 is amended to recognize the expansion of the California Multiple-Party Accounts Law to include other financial institutions besides credit unions and industrial loan companies.

Probate Code § 5307 (added). Liability for debts of deceased party

SEC. . Section 5307 is added to the Probate Code, to read:

5307. (a) As used in this section, "debt" means debt as defined in Section 11401 [added by AB 708].

(b) No multiple-party account is effective against an estate of a deceased party to transfer to a survivor amounts needed to pay debts if other property in the estate is insufficient to pay the debts.

(c) A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased

party is liable to the personal representative of the decedent for amounts the decedent owned beneficially immediately before the decedent's death to the extent necessary to pay debts remaining unpaid after exhaustion of the decedent's estate. No proceeding to assert the liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or person acting for a minor or dependent child of the decedent, and no proceeding shall be commenced more than two years after the decedent's death. Amounts recovered by the personal representative shall be administered as part of the decedent's estate.

(d) This section does not affect the right of a financial institution to make payment on a multiple-party account according to the terms of the account, or make the financial institution liable to the estate of a deceased party, unless before payment the financial institution has been served with process in a proceeding by the personal representative.

(e) If parties to a multiple-party account are married to each other and the sums on deposit are transferred to one spouse upon the death of the other by right of survivorship under Section 5302, subdivisions (b), (c), and (d) of this section apply notwithstanding that the sums on deposit were community property.

Comment. Section 5307 is the same in substance as Section 6-107 of the Uniform Probate Code, with the addition of subdivisions (a) and (e).

Subdivision (a) incorporates the definition of "debt" from Section 11401 (payment of debts):

11401. "Debt" means:

(a) A claim that is established under Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

Section 5307 authorizes the invasion of multiple-party account funds needed by the estate to pay debts, taxes, and expenses of administration. This changes former law with respect to a true joint tenancy account. It was the former rule that the surviving joint tenant took the funds free of claims of the deceased joint tenant's creditors. See *Kilfoy v. Fritz*, 125 Cal. App.2d 291, 294, 270 P.2d 579 (1954); *cf.* *People v. Nogarr*, 164 Cal. App.2d 591, 330 P.2d 858 (1958) (real property); *Zeigler v. Bonnell*, 52 Cal. App.2d 217, 126 P.2d 118 (1942) (real property).

When the personal representative of the deceased party obtains multiple-party account funds pursuant to this section, the funds are subject to the rules for priority of payment under Section 11420.

When multiple-party account funds are community property (see Section 5305), subdivision (e) requires that creditors of the deceased spouse look first to assets in the estate of the deceased spouse for satisfaction. If estate assets are insufficient for this purpose, creditors of the deceased spouse may pursue community funds in a multiple-party account. Under former law, when community property funds were deposited into a joint account, the result depended upon whether or not the account was a true joint tenancy account. If the funds were transmuted into joint tenancy property (see *In re McCoin*, 9 Cal. App. 2d 480, 50 P.2d 114 (1935)), on the death of one spouse, creditors of that spouse could no longer reach the funds. See *Kilfoy v. Fritz*, *supra*; *cf. People v. Nogarr*, *supra*; *Zeigler v. Bonnell*, *supra*. On the other hand, if the funds were shown to be community property, then the rights of creditors were the same as in the other community property of the spouses. See generally Sections 13550-13554 (liability for debts of deceased spouse). Nothing in subdivision (e) affects the right of a creditor to recover from the property of the surviving spouse if the surviving spouse is personally liable to the debtor.

If the personal representative of a deceased party brings a proceeding to assert liability under Section 5307 and the financial institution is served before it makes payment from the multiple-party account, then under subdivision (d) the financial institution may not thereafter make payment according to the terms of the account. This specific provision controls over the general provisions of Financial Code Sections 952, 7612, and 11211.

Note. This section on creditor rights against multiple-party accounts was included in the Commission's recommendation of December 1980, but was withdrawn for further study. The Commission has now embarked on a program of consistently providing for creditor access to nonprobate assets to the extent the estate of the decedent is insufficient. See, e.g., Prob. Code § 18201 (revocable inter vivos trust); Civ. Code § 1390.3(b) (general testamentary power of appointment).

Probate Code § 5406 (technical amendment). Payment of account held in trust form where financial institution has no notice that account is not a "trust account"

SEC. . Section 5406 of the Probate Code is amended to read:

5406. 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~~ 5150.

Comment. Section 5406 is amended to revise the cross-reference to former Section 5101 which has been repealed. "Trust account" is now defined in Section 5150.

Probate Code § 5407 (amended). Payment to minor

SEC. . Section 5407 of the Probate Code is amended to read:

5407. 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 pursuant to the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900) of Division 4, or as provided in Chapter 2 (commencing with Section 3400) of Part 8 of Division 4.

Comment. Section 5407 is amended to authorize payment by a financial institution under the Uniform Transfers to Minors Act. This may include a transfer of \$10,000 or less to an adult member of the minor's family or to a trust company if there has been no nomination of a custodian. Section 3907. The court may appoint a custodian if necessary under Section 3413.