

Memorandum 81-26

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

Assembly Bill 325 is the Commission-recommended bill that would adopt the essential features of Article VI of the Uniform Probate Code. This article deals with deposit accounts and other nonprobate transfers.

The bill was twice heard by the Assembly Committee on Judiciary. The bill was not approved by that committee because the chairman and at least one other member strongly objected to the provision of the bill which would change the existing law that a surviving joint tenant takes funds on deposit in a joint deposit account free of claims of creditors of the deceased joint tenant. We amended the bill to provide that a surviving spouse takes the funds in the joint account free of claims of creditors, but this did not satisfy the members of the committee.

We have received a letter from the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar concerning Assembly Bill 325. See Exhibit 1 (attached). The Executive Committee in general supports the bill with only two exceptions:

(1) The Committee voted to delete proposed Civil Code Section 6107 (which makes sums on deposit subject to the claims of creditors of a deceased party to a multiple-party account if the estate of the deceased party is inadequate to satisfy the claims of creditors). The staff-proposed amendments (Exhibit 2 attached) amend the section to make it applicable only to P.O.D. accounts and trust accounts and to make it not applicable to joint accounts. The staff-proposed amendments also provide that the rights under prior law of creditors of a deceased party to a joint deposit account after the death of the deceased party are not affected by the bill. The effect of these amendments is that the bill retains the existing law relating to the rights of creditors when a party to a joint account dies but the bill will provide additional protection against the claims of creditors in the case of a P.O.D. account or trust account. Creditors will be able to reach the latter types of accounts only if the decedent's estate is inadequate to satisfy the claims of creditors. The existing law apparently contains no such limitation on the rights of creditors. Apparently, creditors of the

deceased party can now reach the account upon the death of the deceased party.

(2) The Executive Committee objected to Section 6106.5 (presumption that funds on deposit in a joint account of married persons are community property) to the extent that the section would give a married person the right to dispose of such funds by will. The bill has previously been amended to make clear that a married person cannot by will dispose of funds held in a joint account (whether or not community funds) with his or her spouse. The funds go to the surviving spouse and cannot be disposed of by will.

We would like to have the Commission determine whether the staff-proposed amendments (which deal with the objection from the State Bar Section and the Assembly Judiciary Committee) are satisfactory. The California Bankers Association is planning (so we are advised) to make a careful study of the bill and to suggest any technical amendments that are needed. Assuming that the technical amendments (if any are proposed by the Bankers) involve no significant policy issue, we plan to make them before the bill is heard in January 1982.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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April 20, 1981

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8207-9-3

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Room D-2
4000 Middlefield Road
Palo Alto, California 94306

Re: Assembly Bill 325 (Nonprobate Transfers)

Dear John:

The full Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section has now considered A.B. 325 (Nonprobate Transfers) at length. The purpose of this letter is to advise you of the conclusions reached by the Executive Committee.

The Executive Committee in general supports the bill with only two exceptions. The first exception is with respect to proposed Civil Code §6107. The committee voted to recommend that such section be deleted from the bill in its entirety. The committee did consider the proposed amendments which you forwarded to me by your letter of March 18 and notwithstanding such proposed amendments the committee took the action indicated.

Basically the Executive Committee does not feel a compelling need to change the existing law by which monies received by a survivor of a multiple party account are free of the decedent's debts and expenses of administration. Such accounts are not free of death taxes and the Probate Code sections dealing with the proration and collection of death taxes with respect to monies in a multiple party account appear to be adequate. The members of the committee observed that if there is a problem with respect to a creditor's ability to reach the funds in a multiple party account the problem also exists with respect to real estate, securities and other property held in joint names. If this problem is perceived to exist the feeling was that it would be better to attack the problem with legislation dealing with all joint tenancy situations and not merely with respect to cash funds.

The other portion of the bill which the committee does not favor is proposed Civil Code §6106.5 at least to the extent that such section would enable a deceased spouse to dispose by will of one-half of any funds in a multiple party account which constituted community property. One of the amendments which you forwarded to me by your letter of March 18 took care of this problem by inserting a paragraph C. While this amendment would appear to solve the problems expressed by members of the Executive Committee I really wonder myself whether it would not be better to eliminate entirely Section 6106.5. Among the points which members of the Executive Committee effectively made in opposition to Section 6106.5 was the same observation as mentioned above, namely that if there is a desire to grant a spouse the right to dispose of one-half of assets held in joint tenancy then one should deal with the problem not only with respect to cash funds but also real estate, securities, etc.

I will be pleased to answer any questions you may have concerning the views of the Executive Committee.

With best regards,



REG:jch Ronald E. Gother
c: Charles A. Collier, Jr.
John L. McDonnell, Jr.
Matthew S. Rae, Jr.
Ralph F. Simoni

Exhibit 2

AMENDMENTS TO ASSEMBLY BILL NO. 325 AS AMENDED IN ASSEMBLY
MARCH 26, 1981

Amendment 1

On page 12, line 8, of the printed bill as amended in Assembly March 26, 1981, strike out "multiple-party" and insert:
P.O.D. account or trust .

Amendment 2

On page 12, line 15, strike out "surviving party, P.O.D. payee," and insert:
P.O.D. payee

Amendment 3

On page 12, line 16, strike out "multiple-party" and insert:
P.O.D. account or trust

Amendment 4

On page 12, line 32, strike out "multiple-party" and insert:
P.O.D. accounts or trust

Amendment 5

On page 12, strike out lines 37 to 40, inclusive

Amendment 6

On page 13, strike out lines 1 to 6, inclusive, and insert:
6107.5. Nothing in this chapter affects the law existing prior to the enactment of this chapter relating to the rights of creditors of the deceased party to sums remaining on deposit at the death of a party to a joint account.

Amendment 7

On page 17, line 10, strike out "January" and insert:

July