

Memorandum 88-75

Subject: Study L-1060 - Multiple-Party Accounts (Estate of Propst)

Background on Previous Recommendations

The Commission submitted a recommendation on this subject in 1982. See *Recommendation Relating to Nonprobate Transfers*, 16 Cal. L. Revision Comm'n Reports 129 (1982).

A separate bill (AB 53) was introduced in 1983 to effectuate this recommendation. The bill as introduced applied to all types of financial institutions. The bill was amended to limit its application so that it applied only to credit unions and industrial loan companies. This amendment was made at the request of the banks which were concerned that the bill might create administrative problems for them. The bill became law with its application limited to credit unions and industrial loan companies.

A letter dated April 27, 1983, from Charles Collier to Peter Jensen, Legislative Representative of the State Bar of California, states:

The Estate Planning, Trust and Probate Law Section supported AB 53 as introduced. The amendments to that bill on March 22, 1983, limited its applicability to credit unions and industrial loan companies with multiple party accounts. It no longer would apply to banks, savings and loan associations or other type of financial institution.

Because of its very limited scope, the Executive Committee has voted to withdraw its support of this bill. As amended on March 22, it would simply add confusion because of the different sets of rules applicable to accounts held in credit unions or industrial loan companies.

As a result of a discussion with Charles Collier, it was agreed that, although the State Bar Section no longer supported the bill, the Section would not actively oppose the bill. As a result of this compromise, the bill passed the Legislature with the strong support of the credit unions and industrial loan companies and was signed by the Governor.

The banks have made a further study of the law as enacted and no longer oppose extending the law to banks. The Estate Planning, Trust and Probate Law Section has recently reviewed a staff draft of a recommendation to extend the law to banks and savings and loan associations and opposed the draft, apparently on the mistaken assumption that the Section previously had opposed the concept of the law. The staff has revised the previous draft of the recommendation in an effort to take care of the problems the Executive Committee had with the prior draft.

The Propst Case

In Estate of Propst, 201 Cal. App. 3d 512 (May 1988), the court held that a joint tenant of a bank account could not sever the joint tenancy without the consent of the other joint tenant. A copy of the opinion in this case is attached. The court reheard the case and refiled its original opinion. The staff is advised that the Supreme Court refused to review the decision but ordered that the opinion not be published in the official reports.

In the *Propst* case, the decedent was survived by his wife and a daughter from a previous marriage. Shortly before his death, decedent executed a will leaving his entire estate to the daughter. In addition, he removed funds from a joint bank account and allegedly used the proceeds to purchase cashier's checks payable to himself. He also endorsed an apparent joint tenancy certificate of deposit in favor of his attorney as trustee.

The surviving wife claimed that the cashier's checks and certificate of deposit passed to her as surviving joint tenant. The trial court ruled in favor of the wife. The appellate court affirmed with respect to the certificate of deposit, but remanded the case to the trial court to determine whether the cashier's checks were in fact purchased with joint tenancy funds. If so, the wife will be entitled to the checks.

The primary issue on appeal was whether a joint tenant may unilaterally sever a joint tenancy in a bank account. Based on a line of appellate court cases, the court ruled that there cannot be a unilateral severance. The court noted that joint tenancies in real

property can be unilaterally severed. Additionally, the court states in substance that this problem does not exist under the Multiple-Party Accounts Law, since that law permits unilateral severance and provides that the parties retain their interest in the funds on deposit in accordance with their contribution to the account. But, as the court notes, the Multiple-Party Accounts Law applies only to credit unions and industrial loan companies and not to bank accounts generally.

Urgent Need for Clarification of Law

The *Propst* case has made practitioners aware of the rule created by a line of appellate cases that hold that a right of survivorship in a joint bank account can be terminated only with the consent of all the parties to the account. There is concern that this rule creates undesirable results in family law cases and in probate cases. Not only is there a need to have the ability to terminate the rights of survivorship during the lifetime of the joint tenants but also there is uncertainty as to the ownership interests in the joint account during the lifetimes of the joint tenants.

Staff Suggested Approach to Clarification of Law

Fortunately, legislation already exists that deals with the problem of termination of rights of survival on joint accounts and the incidental problems in connection therewith, including rights of the owners of joint accounts when the joint account is terminated. This legislation--the Multiple-Party Accounts Law--does not, however, apply to banks and savings and loan association accounts.

The Multiple-Party Account Law contains provisions designed to deal adequately with the problem presented by the decision:

(1) The Multiple-Party Accounts Law permits unilateral severance of rights of survival by a party having a present right of withdrawal. Section 5303 (pages 29-31 of the draft tentative recommendation attached) provides that the right of survivorship is determined by the form of the account "at the death of a party." The section states the methods by which the terms of the account can be changed, including closing the account and reopening it under different terms. The staff would add a new subdivision to this section to provide specifically

that the terms of the account that can be so changed include eliminating or adding rights of survivorship and that rights of survivorship can be eliminated by withdrawing the funds from the account and closing the account. This would not be a substantive change in the Multiple-Party Accounts Law, but in view of the recent decision it may be a desirable addition.

(2) The Multiple-Party Accounts Law preserves the ownership rights to the funds in the account notwithstanding that the rights of survival are terminated by one of the parties to the account. If the funds are withdrawn and the account closed or the terms of the account are changed to eliminate the right of survivorship, what are the ownership rights (during lifetime and upon death of a party) to the funds in the account or the withdrawn funds? The existing rule is that the parties to a joint bank account own the funds in the account equally. This is true even if the deposit was the property of only one of the parties to the account. This equal ownership can be rebutted by establishing that the joint bank account containing the funds of one party was created for convenience only; and, if married persons establish a joint account, it may be possible to persuade the court that they really intended the funds to remain community property rather than to become true joint tenancy property.

The Multiple-Party Accounts Law contains clear and reasonable rules governing ownership during the lifetime of the parties to a joint account. During lifetime, each party's share of the funds in the account is determined by his or her net contributions to the account, and absent proof of a different share, the parties are presumed to own equal shares. When married persons have deposited funds in a joint account, the funds are presumed to be their community property unless it is shown that the source of the funds was not community property. These rules will apply should one party terminate the rights of survivorship by withdrawing the funds from the joint account.

Dealing With the Problem of Language of Forms

The primary problem that concerned the State Bar Committee when this matter was earlier considered was that confusion might result because there was nothing in the draft concerning the language that

would create the relationship of joint account. To deal with this concern, the staff proposes to add a new section to the Multiple-Party Accounts Law. Section 5203 (page 24 of the attached draft) contains form language that creates a joint account or a P.O.D. account. In addition, a joint account or P.O.D. account can be created by any other language that establishes substantially the same relationship between the parties. For example, joint account with the right of survivorship would be established for the purposes of the statute by use of the language "John DeMouly and Mary DeMouly, as joint tenants with the right of survivorship." The new section should clarify the question of form language that may be used under the new statute. The staff draft also provides for an optional form for a power of attorney for accounts in financial institutions. This may encourage use of a power of attorney for a convenience account in place of a joint account.

Staff Recommendation

The banks no longer oppose extending the Multiple-Party Accounts Law to banks. More than half the states have enacted substantially similar statutes. Extending the statute to all financial institutions would result in one uniform body of law, would deal with the problem created by the recent case, and would permit elimination of duplicative and inconsistent language in various statutes.

Most of the attached draft contains technical and clarifying revisions of the Multiple-Party Accounts Law. The only significant substantive change is to extend the coverage of the statute to banks and savings and loan associations. With respect to those financial institutions, the draft would make clear that the right of survivorship can be terminated by a party having the unilateral right of withdrawal from the account without the consent of the other party (absent a separate enforceable agreement not to terminate the right of survivorship).

The staff believes that legislation is urgently needed to deal with the problem of severing joint tenancy bank accounts. The attached draft would do this. We recommend that the Commission consider the draft with a view to submitting a recommendation to the 1989 legislative session.

Personal Property Generally

The staff also recommends that the Commission give consideration to the matter of termination of rights of survivorship in personal property generally. It may be difficult to draft a statute covering all other types of personal property, since we have no existing statute that deals with personal property generally. The staff can prepare a memorandum concerning the extent to which a problem exists for other types of personal property and, if a problem exists, what approaches might be taken to deal with severance of joint tenancies in these other types of personal property.

Application of Statute to Existing Accounts

One question to be considered by the Commission is whether it would be constitutional to give a party to an existing account the right to unilaterally eliminate the survivorship right of another party to a joint account.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Staff Draft

TENTATIVE RECOMMENDATION RELATING TO MULTIPLE-PARTY ACCOUNTS

Introduction

The California Multiple-Party Accounts Law (CAM-PAL) was enacted in 1983.¹ CAM-PAL improved and clarified the law governing rights between parties to a multiple-party account² and protects the financial institution from liability when it makes payment according to the terms of the account.³ CAM-PAL enacted the substance of Part 1 of Article VI of the Uniform Probate Code.⁴ At least 26 states have

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1. Prob. Code §§ 5100-5407, enacted by 1983 Cal. Stat. ch. 92.
 2. Prob. Code §§ 5301-5306. The statute recognizes three types of multiple-party accounts:
 - (1) The joint account. This is an account payable on request to one or more of two or more parties.
 - (2) The P.O.D. account. This is an account payable on request (i) to one person during lifetime and on the death of that person to one or more P.O.D. payees or (ii) to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.
 - (3) The Totten trust account. This is an account in the name of one or more persons as trustee for one or more beneficiaries where (i) the relationship is established by the form of the account and the deposit agreement with the financial institution and (ii) there is no subject of the trust other than the sums on deposit in the account.
 3. Prob. Code §§ 5401-5407.
 4. Uniform Probate Code §§ 6-101 to 6-113 (1982). The California statute omits Section 6-107 of the Uniform Probate Code (rights of creditors) and adds a new provision (Prob. Code § 5305) creating a community property presumption when community property is deposited by married persons. Although the Commission believes that the rule stated in UPC Section 6-107 is a desirable one, the section is not included in this recommendation. The Commission is giving further study to creditors' rights against nonprobate assets of the decedent, how liability for debts may be allocated fairly among such assets, and what the procedure should be for creditors to reach them.

enacted legislation drawn from this article of the Uniform Probate Code.⁵

CAM-PAL was enacted upon recommendation of the California Law Revision Commission.⁶ The bill that proposed CAM-PAL would have applied the statute to multiple-party accounts in all California financial institutions. But the bill was amended to make the statute apply only to credit unions and industrial loan companies.⁷

A 1988 California court of appeal decision demonstrated the need to include banks and savings and loan associations under CAM-PAL. In

5. Alaska Stat. §§ 13.31.005 to 13.31.070 (1985); Ariz. Rev. Stat. Ann. §§ 14-6101 to 14-6201 (1975); Cal. Prob. Code §§ 5100 to 5407 (West Supp. 1987); Colo. Rev. Stat. §§ 15-15-101 to 15-15-201 (1974 & Supp. 1986); Ga. Code Ann. §§ 7-1-810 to 7-1-821 (1982); Hawaii Rev. Stat. §§ 560:6-101 to 560:6-113 (1985); 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 (1978); 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); Nev. Rev. Stat. §§ 678.570-678.650 (19--)(limited to credit unions); 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. tit. 20, §§ 6301 to 6306 (Purdon Supp. 1987); S.C. Code Ann. §§ 62-6-101 to 62-6-201 (Law. Co-op. 1987); S.D. Codified Laws Ann. §§ 30-23-43 to 30-23-55 (Supp. 1987); Tex. Prob. Code Ann. §§ 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); Wash. Rev. Code Ann. §§ 30.22.010-30.22-900 (19--); Wis. Stat. Ann. §§ 705.01 to 705.08 (West 1981 & Supp. 1987). Two of these states--South Carolina and South Dakota--enacted their statutes after the California Multiple-Party Accounts Law was enacted in 1983.

6. See *Recommendation Relating to Nonprobate Transfers*, 16 Cal. L. Revision Comm'n Reports 129 (1982). An earlier study of the Uniform Probate Code by the State Bar of California reached the following conclusion: "The provisions of Part 1 of Article VI clarifying the rights and obligations of the financial institution and depositors in multiple-party accounts have considerable merit, and their addition to California's present statutory scheme would be beneficial." State Bar of California, *The Uniform Probate Code: Analysis and Critique* 188-89 (1973).

7. See Prob. Code § 5101(c).

Estate of Propst,⁸ the court held that one joint tenant could not sever a joint tenancy bank account without the consent of the other joint tenant. The court held that property purchased with funds withdrawn from the joint tenancy bank account was subject to the survivorship rights of the nonconsenting joint tenant.⁹ The *Propst* decision followed a line of previously decided cases.¹⁰

Family law practitioners are concerned about the limitation on the ability of one spouse to eliminate survivorship rights in a joint

8. 201 Cal. App. 3d 512, ___ Cal. Rptr. ___ (May 1988). The court granted a rehearing in this case (6-20-88) and refiled the same opinion after rehearing. Review by the California Supreme Court was denied, and the Supreme Court directed that the appellate court opinion not be published in the official reports.

9. See *Cordasco v. Scalero*, 203 Cal. App. 2d 95, 105, 21 Cal. Rptr. 339 (1962) ("where community personal property or any other personal property, no matter what its original form might have been, has been changed by the parties to joint ownership during the joint lives of the owners, the funds so changed to joint tenancy, or any property acquired from the funds held in joint tenancy, will remain joint tenancy in character, unless there has been a change in the character of the property by some agreement between the parties."). The court in *Estate of Propst*, *supra*, note 8, stated that this was the rule that prevailed in California.

10. *Fish v. Security-First Nat. Bank*, 31 Cal. 2d 378, 387, 189 P.2d 10 (1948) ("proceeds of joint tenancy property, in the absence of contrary agreement, retain the character of the property from which they are acquired"); *Estate of Drucker*, 152 Cal. App. 3d 509, 512, 199 Cal. Rptr 345 (1984) (dictum); *Cordasco v. Scalero*, 203 Cal. App. 2d 95, 105, 21 Cal. Rptr. 339 (1962); *Estate of McCoin*, 9 Cal. App. 2d 480, 50 P.2d 114 (1935). See also *Estate of Harris*, 9 Cal. 2d 649, 72 P.2d 873 (1937); *In re Kessler*, 217 Cal. 32, 35, 17 P.2d 117 (1932); *Estate of Harris*, 169 Cal. 725, 147 P. 967 (1915); *Estate of Zeisel*, 143 Cal. App. 3d 516, 523-524, 192 Cal. Rptr. 25 (1983); *Taylor v. Crocker-Citizens Nat. Bank*, 258 Cal. App. 2d 682, 688, 65 Cal. Rptr. 771 (1968); *Doran v. Hibernia Savings & Loan Soc.*, 80 Cal. App. 2d 790, 795, 182 P.2d 630 (1947); *Wallace v. Riley*, 23 Cal. App. 2d 654, 665, 74 P.2d 807 (1937). In *Bliss v. Martin*, 74 Cal. App. 2d 500, 515, 169 P.2d 61 (1946), Justice Peters, dissenting, states: "I personally believe that the rule in California is wrong If there is to be a change in that rule at this late date it should be accomplished by the Supreme Court and not by a lower appellate court."

Where it is shown that the account is a convenience account rather than a true joint tenancy account, rights of survivorship are terminated when the owner of the funds withdraws the funds from the account and deposits them in a new account. E.g., *Patterson v. Comastri*, 39 Cal. 2d 66, 244 P.2d 902 (1952).

account held by a married couple in a bank or savings and loan association. Where the spouses are estranged, one spouse cannot by unilateral action terminate the rights of survivorship with respect to funds in a joint account. As a result, after the death of one spouse, the surviving spouse may make a claim based on the survivorship right to funds withdrawn from a joint account by the deceased spouse or to property the deceased spouse acquired with those funds.

In addition, in a marriage dissolution proceeding, it is unclear whether the deposit of separate property funds in a joint account will be held to be a gift of one half of the funds to the other spouse or whether the interests of the spouses in the funds deposited in the account can be shown by tracing the funds in the account to a separate property source.

Estate planning also is hampered by the inability of one party to a joint account in a bank or savings and loan association to eliminate survivorship rights by either changing the terms of the account or withdrawing funds from the account.¹¹ Moreover, if a joint tenant cannot eliminate the right of survivorship by withdrawing the funds from the joint account, the likelihood of litigation is increased for that joint tenant will attempt to defeat the right of survivorship by seeking to establish that the account was not a true joint tenancy account.¹²

For these reasons, practitioners generally agree that remedial legislation is urgently needed (1) to permit a joint tenant having a present right of withdrawal to eliminate survivorship rights in a joint tenancy bank account without the consent of the other joint tenants and (2) to clarify the ownership of funds deposited in a joint bank account.

11. See IX CEB Estate Planning and California Probate Reporter 146 (1988).

12. If the account is a convenience account rather than a true joint tenancy account, rights of survivorship can be terminated by withdrawing the funds from the account and depositing them in another account in the name of the owner of the funds. E.g., *Patterson v. Comastri*, 39 Cal. 2d 66, 244 P.2d 902 (1952).

Extension of CAM-PAL to all banks and savings and loan associations would provide the appropriate rules governing these matters. Under CAM-PAL, the right of survivorship can be terminated by the unilateral act of a party having a present right of withdrawal from the account.¹³ In addition, the source of the funds deposited is taken into account in determining the interests in funds deposited in or withdrawn from a joint account.¹⁴

Banks and savings and loan associations asked to be excluded from CAM-PAL in 1983 because they were concerned about possible uncertainty in applying the new law.¹⁵ The Commission has reviewed the experience under CAM-PAL since its enactment in 1983. The credit unions are satisfied with the statute.¹⁶ It serves credit union members well by offering several types of accounts that serve particular savings or transaction needs.¹⁷ At the same time, the statute gives the credit union substantial protection when it transacts business with members who are parties to a multiple-party account.¹⁸ The credit unions have had no difficulty in implementing the statute or in operating under it.

13. Under CAM-PAL, rights of survivorship are determined by the form of the account at the death of a party, and a joint tenant with a present right of withdrawal can change the terms of the account to eliminate rights of survival. Prob. Code § 5303.

14. See Prob. Code § 5301(a). See also Prob. Code § 5305.

15. CAM-PAL applies only to credit unions and industrial loan companies; it does not apply to banks and savings and loan associations. See Prob. Code § 5101(c) (defining "financial institution").

16. Letter from Larry J. Cox, Director of Governmental Relations, California Credit Union League, to John H. DeMouilly (Dec. 26, 1985) (on file in office of Law Revision Commission).

17. The California Multiple-Parties Account Law gives the financial institution a greater ability to provide the appropriate form of account for the parties to a multiple-party account. See letter from Larry J. Cox, Director of Governmental Relations, California Credit Union League, to John H. DeMouilly (Dec. 26, 1985) (on file in office of Law Revision Commission).

18. See Prob. Code §§ 5401-5407.

The Commission recommends that the California Multiple-Party Accounts Law be broadened to include banks and savings and loan associations. This will provide a carefully drafted solution to the problem revealed by the *Propst* case. It will make uniform the law governing rights between parties to multiple-party accounts, whether the account is held by a bank, savings and loan association, credit union, or industrial loan company. Broadening CAM-PAL to include banks and savings and loan associations would not create operational problems for these financial institutions; the CAM-PAL provisions governing rights of the parties to the account are relevant only to controversies between the parties and their creditors and other successors, and these provisions have no bearing on the duties of the financial institution.¹⁹ Extending the CAM-PAL to banks and savings and loan associations will give them the same protection against liability that credit unions and industrial loan companies now have.²⁰

Right of Survivorship

Under present law applicable to banks and savings and loan associations, the right of survivorship in a joint tenancy account cannot be terminated without the consent of the other joint tenants, and property purchased with funds withdrawn from the joint tenancy account remains subject to the survivorship rights of the nonconsenting

19. Prob. Code § 5201. Section 5201 provides:

5201. (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.

20. See Prob. Code §§ 5401-5407.

joint tenant.²¹ Extending CAM-PAL to banks and savings and loan associations would change this rule to permit a joint tenant having a present right of withdrawal to eliminate survivorship rights in a joint tenancy account without the consent of the other joint tenants. In addition, this extension would make applicable the provisions of CAM-PAL that govern the rights during lifetime to funds deposited in and withdrawn from a joint account.²²

CAM-PAL also strengthens the right of survivorship by requiring clear and convincing evidence of a contrary intent,²³ and by providing that survivorship cannot be changed or defeated by a party's will.²⁴ Most people who use a joint account or Totten trust account want the survivor or survivors to have all balances remaining at death.²⁵ CAM-PAL gives effect to this intent and minimizes the likelihood that litigation will be brought to defeat the right of survivorship.

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.²⁶ But a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable present gift of

21. See *supra* note 10.

22. See Prob. Code §§ 5301, 5305.

23. Prob. Code § 5302. Under existing law applicable to bank and savings and loan association accounts, it is a difficult burden to overcome the presumption of survivorship intent. See, e.g., *In re Marriage of Mahone*, 123 Cal. App. 3d 17, 176 Cal. Rptr. 274 (1981); *Sims, Consequences of Depositing Separate Property in Joint Bank Accounts*, 54 Cal. St. B.J. 452 (1979).

24. Prob. Code § 5302(e).

25. Uniform Probate Code § 6-104 comment; Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87, 90, 95, 108 (1961).

26. See *Wallace v. Riley*, 23 Cal. App. 2d 654, 664, 74 P.2d 807 (1937).

any part of the funds deposited,²⁷ and many people believe that depositing funds in a joint account in a bank or savings and loan association has no effect on ownership of the funds until death.²⁸

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.²⁹ This rule is consistent with the federal gift tax rule that no completed gift occurs when the account is opened; instead the gift occurs when the nondepositing party withdraws funds from the account.³⁰

Agency Accounts

All too frequently, an uninformed person will select a joint tenancy account as a convenience account. The person will deposit his or her funds in the account and make a friend or relative a joint tenant so that the friend or relative will be able to make withdrawals from the account for the use or benefit of the person making the deposit. A well advised person will open an account in his or her own name and give the friend or relative a power of attorney to make withdrawals from the account. This avoids giving the attorney-in-fact (agent) an apparent ownership right to the funds in the account, but permits the agent to make any necessary transactions with respect to the account. To encourage use of an agency account where appropriate, the proposed legislation adds to CAM-PAL a provision for a special

27. Uniform Probate Code § 6-103 comment.

28. State Bar of California, *The Uniform Probate Code: Analysis and Critique* 184-85 (1973). See generally Griffith, *Community Property in Joint Tenancy Form*, 14 *Stan. L. Rev.* 87 (1961).

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

30. Treas. Reg. § 25.2511-1 (1958).

power of attorney for account transactions.³¹ This provision will not affect or limit the use of other powers of attorney in connection with accounts in financial institutions.

Tenancy in Common Accounts

Under existing law, if a joint account was established as a "tenancy in common" account before the operative date of the California Multiple-Party Accounts Law, no right of survivorship arises from the terms of the account or under the provisions of the law.³² This is consistent with common law, under which a tenancy in common did not include a right of survivorship.³³

However, if a tenancy in common account is established after the operative date of the California Multiple-Party Accounts Law,³⁴ it is subject to the rule that a joint account carries with it a right of survivorship unless there is clear and convincing evidence of a

31. Other states have added a similar provision to their version of this portion of the Uniform Probate Code. E.g., Minn. Stat. Ann. § 528.16 (West 1975 & Supp. 1987); Or. Rev. Stat. § 708.661 (1985); Utah Code Ann. § 75-6-115 (1978 & Supp. 1987); Wash. Rev. Code Ann. § 30.22.170 (19--); Wis. Stat. Ann. § 705.05 (West 1981 & Supp. 1987).

32. Prob. Code § 5306.

33. Cf. 4 B. Witkin, *Summary of California Law Real Property* § 262, at 463-64 (9th ed. 1987) (real property).

34. The standard account card form used by credit unions under the California Multiple-Party Accounts Law does not use the technical "tenancy in common" language. Instead the standard form indicates whether the depositor wants an account "[w]ith right of survivorship (all shares shall pass to the surviving parties on the account)," or that "[u]pon the death of a party, that party's interest shall be paid to his/her designated beneficiary." Since there is no need to use "tenancy in common" language under the California Multiple-Party Accounts Law, the banks and savings and loan associations may follow the sound credit union practice of using clear, lay language to dispose of account funds at death. If so, the "tenancy in common" account will become a relic of history. The proposed law does not, however, preclude a bank or savings and loan association from continuing to offer "tenancy in common" accounts, so there may be tenancy in common accounts established after the proposed law goes into effect.

different intention.³⁵ It is not clear whether establishment of the account as a tenancy in common account is clear and convincing evidence of an intention not to have survivorship.

The Commission recommends that tenancy in common accounts be treated as nonsurvivorship accounts, whether established before or after the operative date of the California Multiple-Party Accounts Law (July 1, 1984), unless the terms of the account or deposit agreement expressly provide for survivorship. Thus, the decedent's share of the account will be paid into the decedent's estate to be administered with the decedent's other property. This is probably consistent with what most depositors intend when they establish a tenancy in common account.

Community Property

Married persons may deposit community funds in a joint account, Totten trust account, or P.O.D. account in a financial institution. Under existing California law, if the account is held by a bank or savings and loan association, a presumption arises that the deposit of community funds in a joint account transmutes the funds into a true common law joint tenancy.³⁶ However, if the presumption is overcome, the funds are treated as community property notwithstanding the joint tenancy form of the account. The result is a hybrid kind of property:

35. Prob. Code § 5302(a).

36. See Estate of McCoin, 9 Cal. App.2d 480, 50 P.2d 114 (1935) (presumption of transmutation); Schmedding v. Schmedding, 240 Cal. App.2d 312, 49 Cal. Rptr. 523 (1966) (presumption rebuttable).

community property in joint tenancy form.³⁷ Litigation may be necessary to determine whether the funds in the account are true common law joint tenancy funds or community property in joint tenancy form.

Extending CAM-PAL to multiple-party accounts in a bank or savings and loan association would make it easier for married persons simultaneously to have the advantages of community property and the survivorship feature of joint tenancy property as they generally intend. The extension would eliminate the unrealistic presumption of transmutation that now applies to bank and savings and loan association accounts. This presumption would be replaced with a rebuttable³⁸ 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.

Extending CAM-PAL to accounts of married persons in banks and savings and loan associations also would make clear that a right of survivorship arising from the express terms of the account or by virtue

37. Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87 (1961). Courts in finding property to be community property notwithstanding its ostensible joint tenancy form have reached the following results: (1) The first spouse to die may dispose of his or her half by will; (2) creditors of the deceased spouse may reach the property to the same extent that they could reach any other community property; (3) tax authorities must treat the property as community, not joint tenancy, for all tax purposes; (4) an attempted gift or other transfer by one spouse without consent of the other causes no severance but may be set aside on discovery. *Id.* at 93-94. However, the property does not lose all the characteristics of joint tenancy since a bona fide purchaser is protected. See *id.* at 94.

38. Under the California Multiple-Party Accounts Law (Prob. Code § 5305), the presumption may be rebutted (1) by tracing the funds from separate property (absent an agreement expressing a clear intent to transmute the funds to community property) or (2) by an agreement separate from the deposit agreement which expressly provides that the funds are not community property. If separate funds have been so commingled with community funds that it is no longer possible to segregate one from the other, the separate funds will lose their separate character and be treated as community funds. See 7 B. Witkin, *Summary of California Law Community Property* §§ 33-34, at 5126-28 (8th ed. 1974).

of the statute cannot be changed by will.³⁹ Existing 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.⁴⁰ CAM-PAL protects the right of the survivor by providing that survivorship rights cannot be changed or defeated by will.⁴¹ Adopting this rule for accounts held by banks and savings and loan associations will conform to the intent of most married persons: Married persons who deposit community funds in a survivorship account, whether a joint, P.O.D., or Totten trust account, generally want to keep 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.⁴²

The Commission also recommends that it be made clear that an agreement between the spouses that funds on deposit traceable to separate property are instead community property must be in writing. This is consistent with the requirement that an agreement that the

39. This provision--Prob. Code § 5305(c)--is consistent with the general rule under the California Multiple-Party Accounts Law that, although changes may be made in the deposit agreement during the lifetime of the depositors, the right of survivorship cannot be changed by will. Prob. Code § 5302(e).

40. 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 evidence that the depositor intended some other disposition of the funds. *Supra* note 22. Under the law applicable to banks and savings and loan associations, if it is shown that the funds on deposit are community property despite the joint, Totten trust, or P.O.D. form of the account, each spouse may dispose of his or her half by will. See Prob. Code § 6101(b); *Brucks v. Home Federal Savings & Loan Ass'n*, 36 Cal. 2d 845, 852-53, 228 P.2d 545 (1951) (testamentary plan wholly inconsistent with terms of Totten trust revokes the trust).

41. Prob. Code § 5305(c).

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

funds are not community property must be in writing,⁴³ and with the general requirement that transmutation agreements must be in writing.⁴⁴

Payments to Minors

On death of a trustee of a Totten trust account, a bank may pay account funds directly to a minor beneficiary.⁴⁵ CAM-PAL does not permit payment directly to a minor beneficiary; it requires that payment be made to the minor's parent or guardian or be deposited in a court-controlled account.⁴⁶ The law will be improved by making the CAM-PAL rule applicable to banks.⁴⁷ That rule is the better rule and one that is consistent with general California law concerning payment to a minor.⁴⁸

Transitional Provision

So that the extension of CAM-PAL will impose no significant financial burden on banks and savings and loan associations, the proposed legislation includes a transitional provision that makes clear that a financial institution has no duty to inform depositors and others of the enactment of the proposed legislation. A similar provision was included in CAM-PAL when it was enacted in 1983.⁴⁹

43. Prob. Code § 5305.

44. Civ. Code § 5110.730.

45. Fin. Code § 853.

46. Prob. Code § 5407.

47. The recommended legislation 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).

48. See Prob. Code §§ 3400-3413.

49. 1983 Cal. Stat. ch. 92, § 6.

PROPOSED LEGISLATION

REVISION OF THE CALIFORNIA MULTIPLE-PARTY ACCOUNTS LAW

Probate Code § 5100 (article heading added)

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 5126 ("beneficiary" defined) without substantive change.

Subdivision (c) is superseded by Section 5128. Subdivision (c) defined "financial institution" to mean a credit union or industrial loan company. Under new Section 5128, "financial institution" also includes a bank, savings and loan association, and other like organization. See the Comment to Section 5128.

Subdivision (d) is continued without change in Section 5130. The first sentence of subdivision (e) is restated in Section 5132 without substantive change. The second sentence of subdivision (e) is restated without substantive change in subdivision (b) of Section 5122. Subdivision (f) is restated in Section 5134 without substantive change. Subdivision (g) is restated in Section 5136 without substantive change. Subdivision (h) is restated in Section 5138 without substantive change. Subdivision (i) is continued without change in Section 5140. Subdivision (j) is continued without change in Section 5142. Subdivision (k) is continued without change in Section 5144. Subdivision (l) is continued without change in Section 5146. Subdivision (m) is restated in Section 5148 without substantive change. Subdivision (n) is restated in Section 5150 without substantive change. The first, second, and fourth sentences of subdivision (o) are continued without substantive change in Section 5152. The substance of the third sentence of subdivision (o) (added by 1987 Cal. Stat. ch. 1045) is continued in Section 14868 of the Financial Code. Subdivision (p) is restated in Section 5154 without substantive change.

Probate Code §§ 5120-5154 (added). Definitions

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. Section 5120 is consistent with the introductory clause of Uniform Probate Code Section 6-101 (1982).

§ 5122. Account

5122. (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) "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. Subdivision (a) of Section 5122 restates subdivision (a) of former Section 5101 without change and is the same in substance as subsection (1) of Section 6-101 of the Uniform Probate Code (1982). Subdivision (b) of Section 5122 restates the second sentence of subdivision (e) of former Section 5101 without substantive change and is the same in substance as the second sentence of subsection (5) of Section 6-101 of the Uniform Probate Code (1982).

§ 5124. Agent

5124. "Agent" means a person who has a present right, subject to request, to payment from the account as an attorney in fact under a power of attorney.

Comment. Section 5124 is a new provision. See Section 5204 (power of attorney with respect to accounts at financial institutions).

Note. *The new definition of "agent" is needed because the new statute provides for a special power of attorney with respect to accounts in financial institutions. See Section 5204.*

§ 5126. Beneficiary

5126. "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

Comment. Section 5126 restates subdivision (b) of former Section 5101 without substantive change and is the same in substance as subsection (2) of Section 6-101 of the Uniform Probate Code (1982). See Section 5152 defining "trust account." The effect of the definition of "trust account" in Section 5152 is to give that term the meaning of what is commonly known as a Totten trust account. As used in this part, "trustee" means the trustee of a Totten trust account.

§ 5128. Financial institution

5128. "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 5128 supersedes subdivision (c) of former Section 5101. The term "financial institution" as defined in subdivision (c) of former Section 5101 was limited to credit unions and industrial loan companies. The new definition in Section 5128 applies as well to banks, savings and loan associations, and other like organizations. See Section 40 ("financial institution" defined).

Subdivision (a) of Section 5128 is comparable to subsection (3) of Section 6-101 of the Uniform Probate Code (1982). Subdivision (b) of Section 5128 continues a portion of subdivision (c) of former Section 5101.

Note. The change in the definition of "financial institution" in Section 5128 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 application of the Multiple-Party Accounts Law was limited to credit unions and industrial loan companies when the law 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.

Regulatory statutes applicable to banks and savings and loan associations are now more settled, and credit unions and industrial loan companies have had several years of experience under the Multiple-Party Accounts Law without problems. Representatives of banks recently advised the Commission that they are no longer opposed to having the Multiple-Party Accounts Law apply to them.

This draft does not extend the scope of the statute to cover bank account substitutes such as money market accounts carried by brokerage firms and other entities not traditionally considered "financial institutions." Some of these types of entities have advised the Commission that they would like to be covered by the multiple-party account statute; their general authority to enter into contracts governing disposition of property at death is not sufficient because these entities need the same type of protection given financial institutions by the multiple-party account statute if they make payments pursuant to the statute. The Uniform Law Commissioners are drafting a separate statute to cover these accounts and also to provide for a transfer-on-death (or pay-on-death) provision in a security registration.

§ 5130. Joint account

5130. "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 5130 continues subdivision (d) of former Section 5101 without change and is the same in substance as subsection (4) of Section 6-101 of the Uniform Probate Code (1982).

§ 5132. Multiple-party account

5132. A "multiple-party account" is any of the following types of account:

- (a) A joint account.

(b) A P.O.D. account.

(c) A trust account.

Comment. Section 5132 restates the first sentence of subdivision (e) of former Section 5101 without substantive change, and is the same in substance as the first sentence of subsection (5) of Section 6-101 of the Uniform Probate Code (1982).

§ 5134. Net contribution

5134. (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 earned, whether or not 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 5134 restates subdivision (f) of former Section 5101 with the substitution of "whether or not included in the current balance" for the former phrase "included in the current balance."

Subdivision (a) of Section 5134 is the same in substance as subsection (6) of Section 6-101 of the Uniform Probate Code (1982). As may be seen from examination of the provisions of this part, "net contribution" as defined in Section 5134 has no application to the financial institution-depositor relationship. Rather, it is relevant only to controversies that may arise between parties to a multiple-party account.

Subdivision (b) of Section 5134 is not found in the Uniform Probate Code. This subdivision provides a clear rule concerning the amount of "net contribution" in the absence of proof of a different amount.

§ 5136. Party

5136. (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 other than as an agent. Unless the context otherwise requires, "party" includes a guardian, conservator, personal representative, or assignee, including a levying creditor, of a party.

(b) A P.O.D. payee is a party only after the account becomes payable to the payee by reason of surviving all persons named as original payees.

(c) "Party" includes a person identified as a trustee of a trust 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. A beneficiary of a trust account is a party after the account becomes payable to the beneficiary by reason of surviving all persons named as trustees.

Comment. Section 5136 restates subdivision (g) of former Section 5101 without substantive change and is the same in substance as subsection (7) of Section 6-101 of the Uniform Probate Code (1982). The phrase "other than as an agent" in the first sentence of subdivision (b) makes clear that the person named as an agent (attorney in fact under a power of attorney) is not a "party" for the purposes of the statute. See Section 5124 (defining "agent").

§ 5138. Payment

5138. "Payment" of sums on deposit includes all of the following:

(a) A withdrawal, including payment on check or other directive of a party.

(b) A pledge of sums on deposit.

(c) A set-off, reduction, or other disposition of all or part of an account pursuant to a pledge.

Comment. Section 5138 continues subdivision (h) of former Section 5101 without substantive change and is the same in substance as subsection (8) of Section 6-101 of the Uniform Probate Code (1982).

§ 5140. P.O.D. account

5140. "P.O.D. account" means any of the following:

(a) 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.

(b) An account payable on request 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 5140 continues subdivision (i) of former Section 5101 without substantive change and is the same in substance as subsection (10) of Section 6-101 of the Uniform Probate Code (1982).

§ 5142. P.O.D. payee

5142. "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 5142 continues subdivision (j) of former Section 5101 without change and is the same in substance as subsection (11) of Section 6-101 of the Uniform Probate Code (1982).

§ 5144. Proof of death

5144. "Proof of death" includes any of the following:

(a) An original or attested or certified copy of a death certificate.

(b) A 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 5144 continues subdivision (k) of former Section 5101 without substantive change and is consistent with subsection (9) of Section 6-101 of the Uniform Probate Code (1982).

§ 5146. Receives

5146. 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.

Comment. Section 5146 continues subdivision (l) of former Section 5101 without change. There is no comparable provision in the Uniform Probate Code.

§ 5148. Request

5148. "Request" means a proper request for withdrawal, including 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.

Comment. Section 5148 restates subdivision (m) of former Section 5101 without substantive change and is the same in substance as subsection (12) of Section 6-101 of the Uniform Probate Code (1982). Various signature requirements may be involved in order to meet the withdrawal requirements of the account. A "request" involves compliance with these requirements. A "party" is one (other than an agent) to whom an account is presently payable without regard for whose signature may be required for a "request."

§ 5150. Sums on deposit

5150. "Sums on deposit" means both of the following:

(a) The balance payable on an account, including interest and dividends earned, whether or not included in the current balance.

(b) Any life insurance proceeds added to the account by reason of the death of a party.

Comment. Section 5150 continues subdivision (n) of former Section 5101 without substantive change and is the same in substance as subsection (13) of Section 6-101 of the Uniform Probate Code (1982).

§ 5152. Trust account

5152. (a) "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.

(b) A trust account does not include either of the following:

(1) A regular trust account under a testamentary trust or a trust agreement that has significance apart from the account.

(2) A fiduciary account arising from a fiduciary relation such as attorney-client.

Comment. Section 5152 continues subdivision (o) of former Section 5101 without change and is the same in substance as subsection (14) of Section 6-101 of the Uniform Probate Code (1982).

§ 5154. Withdrawal

5154. "Withdrawal" includes payment to a third person pursuant to a check or other directive of a party or an agent.

Comment. Section 5154 continues subdivision (p) of former Section 5101 with the addition of the reference to payment to "an agent." See Section 5124 (defining "agent"). See also Section 5204 (power of attorney with respect to accounts at financial institutions). Section 5154 is the same in substance as subsection (15) of Section 6-101 of the Uniform Probate Code (1982), except that the UPC provision does not include the reference to payment to "an agent."

Probate Code § 5203 (added). Creation of multiple-party relationship

SEC. _____. Section 5203 is added to the Probate Code to read:

5203. (a) The following words contained in a signature card, passbook, contract, or instrument evidencing an account, or words to the same effect, executed before, on, or after July 1, 1990, create the following accounts:

(1) Joint account: "This account/certificate of deposit is jointly owned by the named parties. On the death of any of them, ownership passes to the survivor(s)."

(2) P.O.D. account with single party: "This account/certificate of deposit is owned by the named party. Upon the death of that party, ownership passes to the named P.O.D. payee(s)."

(3) P.O.D. account with multiple parties: "This account is jointly owned by the named parties. Upon the death of any of them, ownership passes to the survivor(s). Upon the death of all of the parties, ownership passes to the named P.O.D. beneficiary(ies)."

(b) Use of the form language provided in this section is not necessary to create an account that is governed by this part. A contract of deposit using language that is not substantially the form language provided in this section is nevertheless governed by the provisions of this part that govern that type of account if the contract of deposit creates substantially the same relationship between the parties as an account created using the form language provided in this section. By way of illustration and not of limitation, (1) a joint account has rights of survivorship as provided in this part even though no mention is made of any right of survivorship unless there is clear and convincing evidence of a different intent and (2) a P.O.D. account with multiple parties may be combined with an agency account described in Section 5204.

Comment. Section 5203 is a new provision drawn in part from Section 705.02 of Wisconsin Statutes Annotated (West 1981 & Supp.

1987). The section provides form language for multiple-party accounts. The form language need not be used, however, and a contract of deposit that does not use the form language is nevertheless governed by this part if the contract of deposit provides for substantially the same relationship between the parties. For example, an account held by two persons as "joint tenants with right of survivorship" is treated as a joint account under this part. Likewise, an account payable on request to one or more of two or more parties is treated as a joint account under this part even though no mention is made of any right of survivorship. See Section 5130 ("joint account" defined). An account treated as a joint account belongs to the parties in proportion to their net contributions and passes to the survivors unless there is clear and convincing evidence of a different intent. See Sections 5301 (ownership during lifetime) and 5302 (right of survivorship). But see Section 5306 (tenancy in common accounts). Although this part does not govern the rights during lifetime and upon death of the parties to a tenancy in common account, a party to a tenancy in common account can designate a P.O.D. beneficiary to receive that tenant's share of the account upon the tenant's death, and the provisions of this part would be applicable with respect to the P.O.D. designation.

Section 5203 does not provide form language for a trust account (as defined in Section 5152), since the P.O.D. account serves the same function. However, a trust account is authorized and is governed by the provisions of this part that apply to trust accounts.

Note. Section 5203 is a new provision that provides form language that may be used for the purposes of this statute. Use of the form language is optional, and any other language that creates substantially the same relationship between the parties may be used.

The introductory clause of subdivision (a) of Section 5203 makes the section applicable to accounts opened before or after July 1, 1990 (the operative date of the amended statute). Should the phrase "executed before, on, or after July 1, 1990" which appears in the introductory clause of subdivision (a) be omitted so that the section does not expressly seek to apply the act to accounts in existence on that date? Can we constitutionally permit the survivorship right under an existing account to be terminated by a withdrawal of the funds from a joint tenancy account by a party having a unilateral right of withdrawal? There is a constitutional question if the existing rule is that the right of survivorship in a joint tenancy account cannot be terminated by the unilateral act of one party to the account, but can be terminated only by agreement of all the parties to the account. Are we depriving a nonconsenting party of a vested right--the survivorship right--which the party may have under existing law? The staff is inclined to include the phrase "executed before, on, or after July 1, 1990," in the section to make the act apply expressly to existing accounts, leaving to the courts the separate question whether the right of survivorship in existing accounts can be terminated under Section 5303 (after the amended statute becomes operative) by the unilateral act of one party to the account.

Probate Code § 5204 (added), Power of attorney with respect to accounts at financial institution

SEC. _____. Section 5204 is added to the Probate Code to read:

5204. (a) In addition to a power of attorney otherwise authorized by law, a separate power of attorney is authorized under this section with respect to any account at a financial institution. For the purposes of this section, account includes checking accounts, savings accounts, certificates of deposit, savings certificates, and any other depository relationship with the financial institution.

(b) The separate power of attorney under this section shall be in writing, signed by the person or persons giving the power of attorney, and shall explicitly identify the attorney in fact or attorneys in fact, the financial institution, and the account or accounts subject to the power. Language in substantially the following form is sufficient to create a power of attorney under this section: "Transactions regarding this account/certificate of deposit may be made by the named agent(s). No present or future ownership or right of survivorship is conferred by this designation. This agency is governed by Section 5204 of the California Probate Code." Nothing in this section prevents the attorney in fact from also being designated as a P.O.D. payee.

(c) The power of attorney granted under this section shall endure as between the grantor and grantee of the power until the earlier to happen of the following:

- (1) Revocation by the grantor of the power.
- (2) Termination of the account.
- (3) Death of the grantor of the power.

(4) Appointment of a guardian or conservator of the estate of the grantor of the power.

(d) A financial institution may rely upon the validity of the power of attorney granted under this section and shall be held harmless from any liability for doing so. Payment made in reliance upon the validity of the power of attorney granted under this section discharges the financial institution from all claims for the amounts so paid. The protection provided by this subdivision does not extend to payments made after written notice is received by the financial institution as to any of the events of termination of the power under subdivision

(c). No other notice or any other information shown to have been available to the financial institution shall affect its right to the protection provided by this subdivision.

(e) The attorney in fact acting under the power of attorney granted under this section shall maintain such books or records as will permit an accounting of the acts of the attorney in fact if an accounting is requested by a legal representative of the grantor of the power.

(f) The attorney in fact acting under a power of attorney granted under this section is liable for any disbursement other than a disbursement to or for the benefit of the grantor of the power, unless the grantor has authorized the disbursement in writing.

(g) Any power of attorney granted under this section, not signed in the presence of an authorized person at the financial institution, may be rejected by the financial institution until the grantor of the power has satisfied the financial institution of the validity of the power.

(h) Nothing in this section limits the use or effect of any other form of power of attorney for transactions with a financial institution.

Comment. Section 5204 is a new provision drawn from a Minnesota statute. See Minn. Stat. Ann. § 528.16 (West 1975 & Supp. 1987). Naming a person as agent--technically giving the person named as agent a power of attorney with respect to account transactions--is commonly used for convenience and permits the agent to make withdrawals from the account. Even though the account is presently payable to the agent, the account belongs to the parties to the account, and the power of attorney gives the agent no ownership or survivorship right in the account.

Probate Code § 5301 (amended). Ownership during lifetime

SEC. _____. Section 5301 of the Probate Code is amended to read:

5301. (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 ~~either~~ clear and convincing evidence of a different intent or 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.

Comment. The introductory clause of subdivision (c) of Section 5301 is revised to conform to language used in other provisions of this part.

Probate Code § 5302 (amended). Right of survivorship

SEC. _____. Section 5302 of the Probate Code is amended to read:

5302. (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~~ intent. 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~~ different 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, 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.

Comment. Section 5302 is amended to make technical, nonsubstantive revisions in the first sentence of subdivision (a) and in subdivision (c)(2) to conform to language used in other provisions of this part.

Under subdivision (a) of Section 5303, rights of survivorship are determined by the form of the account at the death of a party. Under that section, a party having the right of withdrawal can eliminate survivorship rights, for example, by closing out the account having the survivorship rights and opening a new account without survivorship rights. See the Comment to Section 5303.

Probate Code § 5303 (amended). Rights of survivorship determined by form of account at time of death; methods for change of terms of account

SEC. _____. Section 5303 of the Probate Code is amended to read:

5303. (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.

(4) As provided in subdivision (c) of Section 5405.

(c) During the lifetime of a party, the terms of the account may be changed as provided in subdivision (b) to eliminate or to add rights of survivorship upon the death of the party. Withdrawal of funds from the account by a party with a present right of withdrawal during the lifetime of a party also eliminates rights of survivorship upon the death of that party with respect to the funds withdrawn.

Comment. Section 5303 is amended to add subdivision (c), which is a clarifying, nonsubstantive provision. Under subdivision (a), rights of survivorship are determined by the form of the account at the death of a party. Subdivision (c) makes clear that the terms of the account that can be changed include terms relating to rights of survivorship. For example, under subdivision (b), a party having the right of withdrawal can eliminate survivorship rights by closing out the account having the survivorship rights and opening a new account without survivorship rights. See the original opinion in Estate of Propst, 201 Cal. App. 3d 512, _____ Cal. Rptr _____ (1988), rehearing granted June 20, 1988, stating that a decedent could unilaterally sever joint tenancies in accounts covered by Sections 5303 and 5305 by closing the accounts and reopening them in his name alone. The court noted, however, that Sections 5303 and 5305 were applicable only to credit unions and industrial loan companies and not to bank or savings and loan association accounts. Accordingly, the court held that the decedent could not eliminate the rights of survivorship created by joint tenancy bank and savings and loan association accounts by closing the accounts and opening other accounts or purchasing other property with the funds withdrawn. The extension of this part to cover accounts in banks and savings and loan associations changes this holding and permits the decedent unilaterally to sever joint tenancies in accounts in bank and savings and loan associations if the decedent has the unilateral right of withdrawal from the accounts. Withdrawal of the

funds from the accounts will not, however, change the other rights of the parties to the moneys withdrawn. See Section 5301 (ownership during lifetime), 5305 (presumption of community property). See also the Comment to Section 5305.

Note. Subdivision (c) is not essential because subdivision (a) states that rights of survival are determined by the form of the account at the death of a party. But it may be useful to add subdivision (c) even though it is not in the Uniform Act to make clear that the section changes the California case law which indicates that a right of survival in joint tenancy property may not be terminated without the consent of the other joint tenants.

Probate Code § 5305 (amended). Presumption that sums on deposit are community property

SEC. _____. Section 5305 of the Probate Code is amended to read:

5305. (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 a written 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.

Comment. Paragraph (1) of subdivision (b) of Section 5305 is amended to require that the community property agreement be in writing. This is consistent with paragraph (2) of subdivision (b) and with Civil Code Section 5110.730.

During the lifetimes of the married persons, the terms of the contract of deposit may be changed as provided in Section 5303 to eliminate or to add rights of survivorship. If there is a survivorship right in the surviving spouse at the time of the other spouse's death, the surviving spouse takes the share of the deceased spouse by right of survivorship. See subdivision (c) of Section 5305. If there is no survivorship right in the surviving spouse at the time of the other spouse's death and the account consists of community property, the will of the deceased spouse may dispose of the deceased spouse's share of the account.

If a spouse has the unilateral right to withdraw funds from the account, that spouse may terminate all rights of survivorship by withdrawing the funds from the account and depositing them in another account that does not give the spouses rights of survivorship. Either spouse could then dispose of his or her share of the funds in the new account by will. One spouse may not, however, deprive the other spouse of community property rights by unilateral action with respect to funds in a multiple-party account created with community property funds. For example, if a spouse withdraws community property funds from a multiple-party account and deposits the funds withdrawn in an account in his or her name, this does not change the community property interest of the other spouse in the funds so deposited. See subdivision (d).

Likewise, for example, if the funds in a joint account of a married couple have their source in the separate property of the wife, the husband can eliminate survivorship rights by closing out the account and opening another account in his own name, but absent an agreement of the husband and wife this would not change the ownership interest of the wife in the funds withdrawn. See Section 5301 (joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions of each to the sums on deposit, unless there is clear and convincing evidence of a different intent).

Probate Code § 5306 (amended). Tenancy in common accounts

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

5306. ~~For~~ Notwithstanding Section 5302, for the purposes of this chapter, if a ~~joint account~~ was established before July 1, 1984, and the account was an account is established as a "tenancy in common" account, no right of survivorship arises from the terms of the account or under Section 5302 unless the terms of the account or deposit agreement expressly provide for survivorship.

Comment. Section 5306 is amended to make it apply to all tenancy in common accounts, whenever established, and to add an exception where the terms of the account or deposit agreement expressly provide for survivorship. For example, a party to a tenancy in common account may designate a P.O.D. beneficiary to receive that tenant's share of the account upon the tenant's death.

Probate Code § 5401 (amended). Financial institutions protection; multiple party accounts; terms; requirements

SEC. _____. Section 5401 of the Probate Code is amended to read:

5401. (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 or agents.

(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~~ is not 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.

Comment. Section 5401 is amended to add the reference to agents in subdivision (a). See Section 5124 (defining "agent"). See also Section 5204 (power of attorney with respect to accounts at financial institutions).

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~~ 5152.

Comment. Section 5406 is amended to substitute a reference to Section 5152 in place of the former reference to Section 5101. The definition of "trust account" is now found in Section 5152.

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. Under the Uniform Act, if there has been no nomination of a custodian, \$10,000 or less may be transferred to an adult member of the minor's family or to a trust company without the need for a court order. Section 3907. In addition, the court may order that all or part of the money be paid to a custodian under the Uniform act for the benefit of the minor. See Section 3413.

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Civil Code § 683 (amended). Joint tenancy

SEC. _____. Section 683 of the Civil Code is amended.

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.

~~(c) 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 § 5128 ("financial institution" defined). Banks are now 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 particuar-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 5130 ("joint account" defined), 5301 (ownership during lifetime), and 5407 (minor as party to a multiple-party account). The second sentence is superseded by Probate Code Sections 5302 (right of survivorship), 5402 (payment of joint account), and 5407 (payment to minor). The substance of the third sentence is continued in Probate Code Section 5401(b) (payment from multiple-party accounts).

The fourth and fifth sentences are superseded by Probate Code Sections 5146 ("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. 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 5132 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.~~

~~(c) 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. Former Section 852.5 is repealed because the section duplicated provisions in the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407). Subdivision (a) of former Section 852.5 is continued in substance in Probate Code Section 5140 ("P.O.D. account" defined). Subdivision (b) is continued in substance in Probate Code Section 5304 (transfers nontestamentary). Subdivision (c) is continued in substance in Probate Code Section 5405 (payment as discharge). These sections now apply to banks. See Probate Code Section 5128 ("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. The substance of former Section 853 is continued in Section 5406 of the Probate Code, except that Section 5407 of the Probate Code imposes restrictions on payment of multiple-party account funds to a minor.

Note. Section 853 of the Financial Code, like Section 6853 of the Financial Code, requires notice that the account is a conventional trust account rather than a Totten trust to be given "in writing." However, Probate Code Section 5406 does not require a writing. Should Section 5406 be amended to add the requirement that notice be "in writing"?

Financial Code § 6661 (technical amendment), Notice of adverse claim to savings account or personal property

SEC. _____. Section 6661 of the Financial Code is amended to read:

6661. Notice to an association or federal association of an adverse claim to a savings account of, or to personal property held for the account of, any person shall be disregarded, and the association or federal association, notwithstanding the notice, shall honor withdrawal applications and shall pay withdrawals and interest to the person or persons to whose credit the account stands or shall deliver the property to or upon the order of the person for whose account the property is held, without any liability on the part of the association or federal association; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the association or federal association at the office at which the account is carried or the property held an affidavit of the claimant stating that of the claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the claimant has reason to believe the fiduciary is about to misappropriate the account or the property, and stating the facts upon which the claim of fiduciary relationship and the belief are founded, the association or federal association shall

refuse to pay withdrawals or interest on the account and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the association or federal association received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the association or federal association at the office at which the account is carried or the property held a restraining order, injunction, or other appropriate order against the association or federal association from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the account stands or for whose account the property is held are the parties, the association or federal association shall comply with the order or injunction, without liability on its part.

(c) The provisions of this section shall be applicable even though the name of the person appearing on the books to whose credit the account stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent," "trustee," or other word or phrase indicating that the person may hold the account or property in a fiduciary capacity.

(d) Nothing in the California Multiple-Party Accounts Law, Part 1 (commencing with Section 5100) of Division 5 of the Probate Code, limits the applicability of this section.

Comment. Subdivision (d) is added to Section 6661 to make clear that Section 6661 applies notwithstanding any provision of the California Multiple-Party Accounts Law.

Financial Code § 6800 (article heading amended)

SEC. _____. The article heading for Article 6 (commencing with Section 6800) of Chapter 5 of Division 2 of the Financial Code is amended to read:

Article 6. Joint-Tenancy Multiple-Party Accounts

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 these 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 Chapter 3 (commencing with Section 5301) of Part 1 of Division 5 of the Probate Code relating to multiple-party accounts. See also Probate Code Section 5407 (payment to minor).

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 5132 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~~

~~net 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.~~

~~(e) 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 by the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407) of the former provisions of this article that governed payment to a survivor.

Note. The reference to the provisions of "this article" is deleted from Section 6804 because, of the six sections in this article (Fin. Code §§ 6800-6805), all are to be repealed except Section 6804. (A new Section 6800 is added which makes a cross-reference to the California Multiple-Party Accounts Law.) This contrasts with the retention in Financial Code Section 6855, *infra*, of the reference to "the provisions of this article" because, of the seven sections in that article (*id.* §§ 6850-6856), only two (*id.* §§ 6853, 6854) are to be repealed.

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 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, 5404, and 5406 of the Probate Code. The provision in former subdivision (a) concerning interest is superseded by Section 5150 of the Probate Code ("sums on deposit" defined). Former subdivision (b) is superseded by Section 5405 of the Probate Code. Former subdivision (c) is superseded by Section 5152 of the Probate Code ("trust account" defined). Former subdivision (d) is superseded by subdivision (c) of Section 5301 of the Probate Code and by Section 5303 of the Probate Code. Former subdivision (e) is continued in substance in Probate Code Sections 5150, 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.

Note. Section 6853 of the Financial Code, like Section 853 of the Financial Code, requires notice that the account is a conventional trust account rather than a Totten trust to be given "in writing." However, Probate Code Section 5406 does not require a writing. Should Section 5406 be amended to add the requirement that notice be "in writing"?

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. Former Section 6854 is repealed because the section duplicated provisions in the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407). Subdivision (a) of former Section 6854 is continued in substance in Probate Code Section 5140 ("P.O.D. account" defined). Subdivision (b) is continued in substance in Probate Code Section 5304 (transfers nontestamentary). Subdivision (c) is continued in substance in Probate Code Section 5405 (payment as discharge). These sections now apply to savings and loan associations. See Probate Code Section 5128 ("financial institution" defined).

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 or of the California Multiple-Party Accounts Law, 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 6855 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 by the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407) of some of the former provisions of this article that governed payment to a survivor. See Section 6800 (multiple-party accounts governed by California Multiple-Party Accounts Law).

Note. The reference to "the provisions of this article" is kept in Section 6855 because, of the seven sections in this article (Fin. Code §§ 6850-6856), only two (id. §§ 6853, 6854) are to be repealed. This contrasts with the deletion from Financial Code Section 6804, supra, of the reference to the provisions of "this article" because, of the six sections in that article (id. §§ 6800-6805), all are to be repealed except Section 6804. (A new Section 6800 is added which makes a cross-reference to the California Multiple-Party Accounts Law.)

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.~~

~~(c) 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 5140 ("P.O.D. account" defined). Subdivision (b) is continued in substance in Probate Code Section 5304 (transfers nontestamentary). Subdivision (c) is continued in substance in Probate Code Section 5405 (payment as discharge).

Financial Code § 14868 (added). Current address of Totten trust beneficiary

SEC. _____. Section 14868 is added to the Financial Code, to read:
14868. (a) As used in this section:

(1) "Beneficiary" has the meaning given that term in Section 5126 of the Probate Code.

(2) "Trust account" has the meaning given that term in Section 5152 of the Probate Code.

(b) In the case of a trust account, the deposit agreement shall indicate the current address of each beneficiary.

Comment. Section 14868 continues the substance of the third sentence of former subdivision (c) of Probate Code Section 5101 (as amended by 1987 Cal. Stat. ch. 1045).

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 5140 ("P.O.D. account" defined). Subdivision (b) is continued in substance in Probate Code Section 5304 (transfers nontestamentary). Subdivision (c) is continued in substance in Probate Code Section 5405 (payment as discharge).

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 5132 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 § 269 (technical amendment). P.O.D. account

SEC. _____. Section 269 of the Probate Code is amended to read:

269. "P.O.D. account" means an account subject to a pay-on-death provision as provided in Section ~~852.5, 7604.5, 11203.5, 14854.5, or 18318.5~~ of the Financial Code has the meaning given that term in Section 5140.

Comment. Section 269 is amended to delete the former reference to Sections 852.5, 7604.5, 11203.5, 14854.5, and 18318.5 of the Financial Code which have been repealed, and to substitute the cross-reference to the definition of "P.O.D. account" in Section 5140.

Probate Code § 6600 (technical amendment). Decedent's estate defined

SEC. _____. Section 6600 of the Probate Code is amended to read:

6600. (a) Subject to subdivision (b), for the purposes of this chapter, "decedent's estate" means all the decedent's personal property, wherever located, and all the decedent's real property located in this state.

(b) For the purposes of this chapter:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, shall be excluded in determining the estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. As used in this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" have the same meaning as given those terms by ~~Section 5101~~ Sections 5132, 5136, 5142, and 5126, respectively.

Comment. Section 6600 is amended to replace the former reference to Section 5101, which has been repealed, with a reference to the new sections where the defined terms are found.

Probate Code § 13050 (technical amendment). Property excluded in determining property or estate of decedent or its value

SEC. _____. Section 13050 of the Probate Code is amended to read:

13050. (a) For the purposes of this part:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 13500, shall be excluded in determining the property or estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. As used in this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" have the same meaning as given those terms by ~~Section 5101~~ Sections 5132, 5136, 5142, and 5126, respectively .

(b) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) For the purposes of this part, the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the armed forces of the United States.

(2) The amount, not exceeding five thousand dollars (\$5,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

Comment. Section 13050 is amended to replace the former reference to Section 5101, which has been repealed, with a reference to the new sections where the defined terms are found.

TRANSITIONAL PROVISION AND OPERATIVE DATE

Section ____ . Uncodified Transitional Provision - No duty to inform persons of enactment of act

SEC. ____ . (a) A financial institution (as defined in Section 5128 of the Probate Code) has no duty to inform any of the following of the enactment of this act:

(1) Any depositor holding an account on the operative date of this act.

(2) Any beneficiary named in a trust account on the operative date of this act.

(3) Any P.O.D. payee designated on a P.O.D. account on the operative date of this act.

(3) Any agent designated on an agency account on the operative date of this act.

(b) No liability shall be imposed on a financial institution for failing to inform any person designated in subdivision (a) of the enactment of this act.

Comment. Section ____ is designed to avoid any expense to financial institutions of advising existing depositors concerning the enactment of this act. The act that enacted the California Multiple-Party Accounts Law included a comparable provision. 1983 Cal. Stat. ch. 92, § 6.

Operative Date

SEC. ____ . This act shall become operative on July 1, 1990, and shall apply to accounts in existence on that date, and accounts thereafter established.

Comment. The operative date of this act is delayed until July 1, 1990, so that banks and savings and loan associations will have time to take any necessary action to operate under the provisions of the act and so persons who have accounts in existence on the effective date (January 1, 1990) will have time to make any changes in the deposit agreement that they believe are desirable in view of the enactment of this act.