

Memorandum 80-51

Subject: Study L-500 - Nonprobate Transfers

At the last meeting, the Commission considered a staff draft of provisions relating to Totten trusts. The Commission concluded that the rules provided in the staff draft would be useful additions to the California statutes but that a more significant contribution would be made by a recommendation that provided for an account payable on request to one person and on his or her death to one or more beneficiaries designated on the account card.

The staff has conducted additional background research on the whole area of deposit accounts. We have concluded that a comprehensive statute covering nonprobate transfers would be a desirable addition to California law. Accordingly, we recommend that the Commission tentatively recommend for enactment in California the substance of the provisions of Article VI of the Uniform Probate Code (Non-Probate Transfers). A copy of this article is attached.

In March 1973, the State Bar of California published "The Uniform Probate Code: An Analysis and Critique." This report points out possible deficiencies in the UPC to justify the conclusion that "a firm and confident 'No'" can be given in answer to the question: Would the code be an improvement in California law?

The portion of the State Bar report which summarizes the objections to Article VI of the Uniform Probate Code is set out as Exhibit 1 to this memorandum. The detailed analysis of this article from the State Bar report is attached as Exhibit 2 to this memorandum.

The State Bar raised two significant objections to the Uniform Probate Code provisions. First, the surviving joint tenant in a joint tenancy bank account is made personally liable (to the extent of the deceased joint tenant's net contribution to the account) for any amounts that the personal representative of the decedent's estate needs to pay creditors' claims, taxes, family allowance, and expenses of administration where the estate is insufficient for the payment of these amounts. Uniform Probate Code § 6-107. No such personal liability apparently now exists under California law. The staff considers this aspect of the UPC

to be a desirable change. The surviving joint tenant should take the interest of the deceased tenant subject to claims against that interest. The depositor should not be able to defeat the rights of creditors by putting the account in joint tenancy. We had considerable favorable comment on our proposal to make a rule comparable to the UPC rule applicable to the case where there is a lien on real property held in joint tenancy and one of two joint tenants dies. We decided to give that proposal further study, primarily because the proposal did not deal with other aspects of property held in joint tenancy and needed to be expanded to justify more fully the proposed rule as applied to real property held in joint tenancy.

The State Bar also objected to the provision of the UPC which would authorize pay on death provisions in bonds, mortgages, promissory notes, and conveyances as well as in other contractual instruments. We already have such provisions for insurance contracts and U.S. savings bonds. Also, in the case of a state employee, there is provision for payment upon death of unpaid wages, state retirement funds, deferred compensation, and the like, to the beneficiary designated in a writing filed by the state employee. If a U.S. savings bond can have a P.O.D. provision, why not a corporate bond? The staff believes that possibility of fraud is greatly outweighed by the convenience of the P.O.D. designation, and we believe that the experience with insurance and U.S. savings bonds show the usefulness of the P.O.D. device.

Even if the Commission is not convinced that the State Bar objections are without merit, we believe that it would be desirable to solicit comments from interested persons and organizations on Article VI of the Uniform Probate Code. It may be that the State Bar will favor its enactment.

Attached is a draft of a letter of transmittal that could be used to send to interested persons and organizations. The letter requests them to review and comment on this portion of the UPC. This tentative recommendation would be a good initial response to the concurrent resolution directing the Commission to make a study to determine whether any portions of the UPC should be enacted in California. This concurrent resolution is a "consent" item that probably will be adopted by the time of the meeting.

Respectfully submitted,

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DRAFT OF LETTER OF TRANSMISSION

To: Persons and Organizations Interested in Probate Law

The Law Revision Commission has been directed by Concurrent Resolution 107 of the 1979-1980 session of the Legislature to study the California Probate Code and to consider whether any provisions of the Uniform Probate Code should be enacted in California.

Pursuant to this directive, the Commission tentatively recommends that California enact the substance of Article VI (Non-Probate Transfers) of the Uniform Probate Code. A copy of this article is attached. The Commission has tentatively concluded that this UPC article should be numbered to follow the existing provisions of the California Probate Code. The Commission recognizes that the UPC article will need technical revisions to conform it to other California statutory provisions and its enactment in California may require the repeal of inconsistent provisions of existing California law.

The Commission solicits your views concerning whether California should enact the substance of Article VI of the Uniform Probate Code (as proposed by the Uniform Commissioners or with modifications). In addition, we would appreciate it if you would (1) suggest technical changes that should be made in the UPC article and (2) identify any existing California statutes that should be conformed or repealed if the substance of the UPC article were enacted in California.

EXHIBIT 1

[Excerpt from "Summary of Analysis and Critique,"
State Bar of California, The Uniform Probate
Code: Analysis and Critique, pp. xxxi-xxxiv (March 1973)]

ARTICLE VI:

Article VI, entitled "Nonprobate Transfers," adds new methods and codifies a number of methods presently used for transferring property without a will. However, the UPC substantially changes the rights of a surviving joint tenant in a joint tenancy bank account from those rights as they now exist. Under the UPC the surviving joint tenant is personally liable, to the extent of the fund, for any amounts that the personal representative of the decedent's estate requires to pay creditors claims, taxes, family allowance and expenses of administration in which the estate is insufficient for the payment of these amounts. No such personal liability exists under California law.

Further, the UPC would authorize "pay-on-death" provisions in bonds, mortgages, promissory notes, and conveyances as well as other contractual instruments. Thus, almost any property interest can be made subject to a contractual obligation to be paid to a designated person upon the death of the obligee or owner of the

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interest without any safeguards by way of formalities, witnesses or procedures whereby the significance of the effects of the designation is brought to the attention of the owner in interest. Such a concept has the potential not only for fraud upon the decedent but for the elimination of all protections to the decedent's wife and children which are otherwise accorded to them where the property passes under will or by intestate succession.

* * * * *

CONCLUSION:

The California Legislature has been attentive to the need for constantly updating and modernizing the California Probate Code and, in fact, more than 120 changes and amendments have been made in the California Probate Code in the last five year period. To repeal a system of laws that reflects the public policy of this State, carefully honed and refined over a great number of years, for an Act which, on one hand, strips the system of laws of even minimal safeguards for the persons beneficially interested in a decedent's estate (Article III) and, on the other hand, suffocates the

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system of laws in connection with the appointment of conservators and guardians with unnecessary costs, expense, and delay (Article V), would be a mistake from which it would take California years to recover.

It should be stressed that this Summary was not intended to serve as a basis to determine whether the Uniform Probate Code should be adopted in California. On the one hand, the objections to the UPC cited in this Summary are only the tips of the icebergs of criticism against the adoption of the UPC in this State. On the other hand, it would be misleading to leave one with the impression that there are not a number of worthwhile provisions contained in the UPC, some of which have already formed the basis of legislation to be proposed as modifications to existing California law. The Analysis and Critique relates to California law and is not intended as a condemnation of the UPC. The UPC may well be an improvement over the laws of many of the states of the United States. In each state the question must be: "Will the adoption of the Uniform Probate Code constitute an improvement over the existing probate system?" In California the answer is a firm and confident "No."

EXHIBIT 2

[Excerpt from State Bar of California, The Uniform Probate Code: Analysis and Critique, pp. 183-91 (March 1973)]

ANALYSIS AND CRITIQUE OF ARTICLE VI

- A. [§6.1] GENERAL SUMMARY
- B. PART 1: MULTIPLE-PARTY ACCOUNTS (UPC 601 through 6-113)
 - 1. [§6.2] Analysis
 - a. [§6.3] Definitions
 - b. [§6.4] Relationship Between Co-Depositors
 - c. [§6.5] Rights of Creditors and Dependents of Deceased Depositors
 - 2. [§6.6] Critique
- C. PART 2: PROVISIONS RELATING TO EFFECT OF DEATH (UPC 6-201)
 - 1. [§6.7] Analysis
 - 2. [§6.8] Critique

A. [§6.1] GENERAL SUMMARY

In line with the overall philosophy of the UPC to simplify procedures, particularly for small and non-contested estates, Article VI, entitled Non-Probate Transfers, adds new methods and codifies a number of methods presently used for transferring property without a will. The article, which is divided into two parts, contains numerous provisions

intended to encourage the free flow of funds following the death of a depositor by eliminating any reason that a bank or other financial institution might have to delay transfer of multiple-party accounts.

B. PART 1: MULTIPLE-PARTY ACCOUNTS (UPC 6-101 through 6-113)

1. [\$6.2] Analysis

Part 1 consists of definitions (UPC 6-101) and of rules relating to beneficial ownership between parties of multiple-party accounts that are relevant only to controversies between these parties and their successors (UPC 6-108 through 6-113).

Basically, Part 1 sets out three types of bank accounts designed for transmission of property at death: (a) the familiar joint tenancy account; (b) the "totten" trust account (statutory recognition is given to a method of transmission that has been widely used in California); and (c) the P.O.D. account (this payable-on-death concept added by the UPC is similar to the payment of government bonds, Series E). The P.O.D. accounts reflects the erroneous understanding of many lay persons of the effect that the creation

of a joint tenancy account has no effect until death.

a. [§6.3] Definitions

The definitions of fifteen terms used throughout the other twelve sections of Part 1 are set out in UPC 6-101. Among these definitions are the following:

(1) "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.

(2) "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.

(3) "P.O.D. account" means an account payable on request to one person during lifetime and on his 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.

(4) "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.

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

b. [§6.4] Relationship Between Co-Depositors

UPC 6-103 clarifies the ownership rules regarding multiple-party accounts while the original depositor is living. In joint tenancy accounts, the UPC adopts the gift tax rule of the Internal Revenue Service instead of the property law principle that has heretofore governed. Under the common law, a

joint tenancy account belongs equally to the co-depositors, since either of them can withdraw the whole account. For gift tax purposes, however, the Internal Revenue Service has taken the position that no completed gift occurs upon the opening of the account, but rather that the gift occurs when the nondepositing tenant makes a withdrawal.

UPC 6-103 provides:

(1) 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.

(2) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, rights as between them are governed during their lifetimes by the provisions of paragraph 1 above. Only the trustee has the power to make withdrawals during his lifetime.

c. [§6.5] Rights of Creditors and Dependents
of Deceased Depositors

UPC 6-107 provides that no multiple-party account will be effective against an estate of a deceased

party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children, and dependent children, if other assets of the estate are insufficient. This is accomplished by making the recipient of the multiple-party account, in effect, a constructive trustee and by giving the personal representative of the deceased depositor rights to trace the proceeds of the account into the hands of the recipient. Following its overall in personam approach, the UPC makes it clear that this is a personal liability from the recipient to the executor or administrator of the estate of the deceased depositor, and that the bank or other financial institution is free to release the multiple-party accounts in accordance with its deposit contract unless before payment the institution has been served with process in a proceeding by the personal representative.

2. [§6.6] Critique

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. Giving the personal representative of an estate the ability to utilize the decedent's interest in joint tenancy bank accounts (as well as the other multi-party accounts) to pay creditors' claims, taxes, family allowance, and expenses of administration represents a significant departure from California law, which presently insulates such funds from these obligations. The broadening of the P.O.D. concept from government bonds to bank accounts appears desirable, but the retention of "trust accounts" appears redundant. Further, the UPC in its effort to promote the free flow of funds out of financial institutions has empowered persons to obtain funds without adequate safeguards for the rights of others who have a bona fide claim to the proceeds. Also a survivor collecting a multi-party account can be misled into changing his economic position on the receipt of funds he may later be required to surrender.

C. PART 2: PROVISIONS RELATING TO EFFECT OF DEATH (UPC 6-201)

1. [§6.7] Analysis

Part 2 consists of one section, UPC 6-201. It contains one of the more novel provisions of the UPC. UPC 6-201 authorizes "non-testamentary" pay-on-death provisions in bonds, mortgages, promissory notes, and conveyances, as well as other contractual instruments. In particular, the statute validates contractual provisions that money or other benefits payable to or owned by the decedent may be paid after his death "to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently." It should be noted that the statute does not contain any monetary limitation on such quasi-testamentary arrangements. While the rights of creditors are protected, the owner's estate is not.

2. [§6.8] Critique

Part 2 of Article VI authorizing pay-on-death provisions in bonds, mortgages, promissory notes, and conveyances, as well as other contractual instruments, affords no apparent protection to the owner's estate, particularly to his spouse and dependent children. Further it broadens the existing potential trap for the unsophisticated obligor who is not aware that he may become personally liable

for the owner's death taxes if he makes payment without appropriate releases. The entire concept of contractual arrangements operative at death encourages piecemeal estate planning which may be detrimental to the owner and the objects of his bounty. Finally, the lack of formality, such as the absence of a requirement of a delivery of the writing, is conducive to fraud.

ARTICLE VI

NON-PROBATE TRANSFERS

PART 1

MULTIPLE-PARTY ACCOUNTS

Section

- 6-101. [Definitions.]
- 6-102. [Ownership As Between Parties, and Others; Protection of Financial Institutions.]
- 6-103. [Ownership During Lifetime.]
- 6-104. [Right of Survivorship.]
- 6-105. [Effect of Written Notice to Financial Institution.]
- 6-106. [Accounts and Transfers Nontestamentary.]
- 6-107. [Rights of Creditors.]
- 6-108. [Financial Institution Protection; Payment on Signature of One Party.]
- 6-109. [Financial Institution Protection; Payment After Death or Disability; Joint Account.]
- 6-110. [Financial Institution Protection; Payment of P.O.D. Account.]
- 6-111. [Financial Institution Protection; Payment of Trust Account.]
- 6-112. [Financial Institution Protection; Discharge.]
- 6-113. [Financial Institution Protection; Set-off.]

PART 2

PROVISIONS RELATING TO EFFECT OF DEATH

- 6-201. [Provisions for Payment or Transfer at Death.]

PART 1

MULTIPLE-PARTY ACCOUNTS

Section 6-101. [Definitions.]

In this part, unless the context otherwise requires:

(1) "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;

(2) "beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee;

(3) "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions;

(4) "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;

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

(6) "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 him, less all withdrawals made by or for him which 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;

(7) "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 him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conserva-

tor, personal representative, or assignee, including an attaching creditor, of a party. It 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 he has a present right of withdrawal;

(8) "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;

(9) "proof of death" includes a death certificate or record or report which is prima facie proof of death under Section 1-107;

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on his 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;

(11) "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;

(12) "request" means a proper request for withdrawal, or a check or order for payment, which 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;

(13) "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;

(14) "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; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client;

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

COMMENT

This and the sections which follow are designed to reduce certain questions concerning many forms of joint accounts and the so-called Totten trust account. An account "payable on death" is also authorized.

As may be seen from examination of the sections that follow, "net contribution" as defined by subsection (f) 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.

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 to whom an account is presently payable without regard for whose signature may be required for a "request."

Library References

Banks and Banking § 129.
Joint Tenancy § 1 et seq.

C.J.S. Banks and Banking § 283 et seq.
C.J.S. Joint Tenancy § 1.

Section 6-102. [Ownership As Between Parties, and Others; Protection of Financial Institutions.]

The provisions of Sections 6-103 to 6-105 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. The provisions of Sections 6-108 to 6-113 govern the liability of financial institutions who make payments pursuant thereto, and their set-off rights.

COMMENT

This section organizes the sections which follow into those dealing with the relationship between parties to multiple-party accounts, on the one hand, and those relating to the financial institution-depositor (or party) relationship, on the other. By keeping these relationships separate, it is possible to achieve the degree of definiteness that financial institutions must have in order to be induced to offer multiple-party accounts for use by

their customers, while preserving the opportunity for individuals involved in multiple-party accounts to show various intentions that may have attended the original deposit, or any unusual transactions affecting the account thereafter. The separation thus permits individuals using accounts of the type dealt with by these sections to avoid unconsidered and unwanted definiteness in regard to their relationship with each other. In a sense, the

approach is to implement a layman's wish to "trust" a co-depositor by leaving questions that may arise between them essentially unaffected by the form of the account.

Library References

Banks and Banking §120.
Joint Tenancy §1 et seq.

C.J.S. Banks and Banking § 285 et seq.
C.J.S. Joint Tenancy § 1.

Section 6-103. [Ownership During Lifetime.]

(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 lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.

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

COMMENT

This section reflects the assumption that a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, he usually intends no present change of beneficial ownership. The assumption may be disproved by proof that a gift was intended. Read with Section 6-101(6) which defines "net contributions," the section permits parties to certain kinds of multiple-party accounts to be as definite, or as indefinite, as they wish in respect to the matter of how beneficial ownership should be apportioned

between them. It is important to note that the section is limited to describe ownership of an account while original parties are alive. Section 6-104 prescribes what happens to beneficial ownership on the death of a party. The section does not undertake to describe the situation between parties if one withdraws more than he is then entitled to as against the other party. Sections 6-108 and 6-112 protect a financial institution in such circumstances without reference to whether a withdrawing party may be entitled to less than he withdraws as against another party. Presumably, overwithdrawal leaves the

party making the excessive withdrawal liable to the beneficial owner as a debtor or trustee. Of course, evidence of intention by one to make a gift to the other of any sums withdrawn by the other in excess of his ownership should be effective.

The final Code contains no provision dealing with division of the account when the parties fail to prove net contributions. The omission is deliberate. Undoubtedly a court would divide the account equally among the parties to the extent that net contributions cannot be proven; but a statutory section explicitly embodying the rule might undesirably narrow the possibility of proof

of partial contributions and might suggest that gift tax consequences applicable to creation of a joint tenancy should attach to a joint account. The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals; the right of survivorship which attaches unless negated by the form of the account really is a right to the values theretofore owned by another which the survivor receives for the first time at the death of the owner. That is to say, the account operates as a valid disposition at death rather than as a present joint tenancy.

Library References

Banks and Banking § 129.
Joint Tenancy § 1 et seq.

C.J.S. Banks and Banking § 283 et seq.
C.J.S. Joint Tenancy § 1.

Section 6-104. [Right of Survivorship.]

(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 at the time the account is created. If there are 2 or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 6-103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his 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 2 or more original payees the rights to any sums remaining on deposit are governed by subsection (a);

(2) on death of the sole original payee or of the survivor of two or more original payees, 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; if 2 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 2 or more trustees, the rights to any sums remaining on deposit are governed by subsection (a);

(2) On death of the sole trustee or the survivor of 2 or more trustees, 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 evidence of a contrary intent; if 2 or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account on 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 his 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

The effect of (a) of this section, when read with the definition of "joint account" in 6-101(4), is to make an account payable to one or more of two or more parties a survivorship arrangement unless "clear and convincing evidence of a different contention" is offered.

The underlying assumption is that most persons who use joint accounts want the survivor or survivors to have all balances remaining at death. This assumption may be questioned in states like Michigan where existing statutes and decisions do not provide any safe and wholly practical method of establishing a joint account which is not survivorship. See *Leib v. Genesee Merchants Bank*, 371 Mich. 89, 123 N.W. (2d) 140 (1962). But, use of a form negating survivorship would make (d) of this section applicable. Still, the financial institution which paid after the death of a party would be protected by 6-108 and 6-109. Thus, a safe nonsurvivorship account form is provided. Consequently, the presumption stated by this section

should become increasingly defensible.

The section also is designed to apply to various forms of multiple-party accounts which may be in use at the effective date of the legislation. The risk that it may turn nonsurvivorship accounts into unwanted survivorship arrangements is meliorated by various considerations. First of all, there is doubt that many persons using any form of multiple name account would not want survivorship rights to attach. Secondly, the survivorship incidents described by this section may be shown to have been against the intention of the parties. Finally, it would be wholly consistent with the purpose of the legislation to provide for a delayed effective date so that financial institutions could get notices to customers warning them of possible review of accounts which may be desirable because of the legislation.

Subsection (c) accepts the New York view that an account opened by "A" in his name as "trustee for B" usually is intended by A to be an informal will of any bal-

ance remaining on deposit at his death. The section is framed so that accounts with more than one "trustee," or more than one "beneficiary" can be accommodated. Section 6-103(c) would apply to such an account during the lifetimes of "all parties." "Party" is defined by 6-101(7) so as to exclude a beneficiary who is not described by the account as having a present right of withdrawal.

In the case of a trust account for two or more beneficiaries, the section prescribes a presumption that all beneficiaries who survive the last "trustee" to die own equal and undivided interests in

the account. This dovetails with Sections 6-111 and 6-112 which give the financial institution protection only if it pays to all beneficiaries who show a right to withdraw by presenting appropriate proof of death. No further survivorship between surviving beneficiaries of a trust account is presumed because these persons probably have had no control over the form of the account prior to the death of the trustee. The situation concerning further survivorship between two or more surviving parties to a joint account is different.

Comment

In 1975, the Joint Editorial Board recommended expansion of subsections (b) and (c) so that the subsections now deal explicitly with cases involving mul-

multiple original payees in P.O.D. accounts, and multiple trustees in trust accounts. These changes were conceived to clarify, rather than to change, the text.

Library References

Joint Tenancy § 6.

C.J.S. Joint Tenancy §§ 1, 2.

Section 6-105. [Effect of Written Notice to Financial Institution.]

The provisions of Section 6-104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

COMMENT

It is to be noted that only a "party" may issue an order blocking the provisions of Section 6-104. "Party" is defined by Section 6-101(7). Thus if there is a

trust account in the name of A or B in trust for C, C cannot change the right of survivorship because he has no present right of withdrawal and hence is not a party.

Library References

Banks and Banking § 129.
Joint Tenancy § 1 et seq.

C.J.S. Banks and Banking § 285 et seq.
C.J.S. Joint Tenancy § 1.

Section 6-106. [Accounts and Transfers Nontestamentary.]

Any transfers resulting from the application of Section 6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles I through IV, except as provided in Sections 2-201 through 2-207, and except as a consequence of, and to the extent directed by, Section 6-107.

COMMENT

The purpose of classifying the transactions contemplated by Article VI as nontestamentary is to bolster the explicit statement that their validity as effective modes of transfers at death is not to be determined by the requirements for wills. The section is consistent with Part 2 of Article VI.

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The closing reference to Article II, Part 2, and to 6-107 was added in 1975 at the recommendation of the Joint Editorial Board to clarify the intention of the original text.

Library References

Wills C-87, S9.

C.J.S. Wills § 136 et seq.

Section 6-107. [Rights of Creditors.]

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor or one acting for a minor or dependent child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution has been served with process in a proceeding by the personal representative.

COMMENT

The sections of this Article authorize transfers at death which reduce the estate to which the surviving spouse, creditors and minor children normally must look for protection against a decedent's gifts by will. Accordingly, it seemed desirable to provide a

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remedy to these classes of persons which should assure them that multiple-party accounts cannot be used to reduce the essential protection they would be entitled to if such accounts were deemed to permit a special form of specific devise. Under this Section a surviving spouse is automatically assured of some protection against a multiple-party account if the probate estate is insolvent; rights are limited, however, to sums needed for statutory allowances. The phrase "statutory allowances" includes the homestead allowance under Section 2-401,

the family allowance under Section 2-403, and any allowance needed to make up the deficiency in exempt property under Section 2-402. In any case (including a solvent estate) the surviving spouse could proceed under Section 2-201 et seq. to claim an elective share in the account if the deposits by the decedent satisfy the requirements of Section 2-202 so that the account falls within the augmented net estate concept. In the latter situation the spouse is not proceeding as a creditor under this section.

Library References

Banks and Banking §129.
Joint Tenancy §12.

C.J.S. Banks and Banking § 285 et seq.
C.J.S. Joint Tenancy § 14 et seq.

Section 6-108. [Financial Institution Protection; Payment on Signature of One Party.]

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

Library References

Banks and Banking §129, 133.

C.J.S. Banks and Banking §§ 285 et seq., 290 et seq.

Section 6-109. [Financial Institution Protection; Payment After Death or Disability; Joint Account.]

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving

party or unless there is no right of survivorship under Section 6-104.

Library References

Banks and Banking § 129, 133.

C.J.S. Banks and Banking §§ 285 et seq., 290 et seq.

Section 6-110. [Financial Institution Protection; Payment of P.O.D. Account.]

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

Library References

Banks and Banking § 129, 133.

C.J.S. Banks and Banking §§ 285 et seq., 290 et seq.

Section 6-111. [Financial Institution Protection; Payment of Trust Account.]

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

Library References

Banks and Banking § 130(1), 133.

C.J.S. Banks and Banking §§ 276 et seq., 290 et seq.

Section 6-112. [Financial Institution Protection; Discharge.]

Payment made pursuant to Sections 6-108, 6-109, 6-110 or 6-111 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection

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here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

Library References

Banks and Banking §129, 133.

C.J.S. Banks and Banking §§ 285 et seq., 290 et seq.

Section 6-113. [Financial Institution Protection; Set-off.]

Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

Library References

Banks and Banking §134(1, 7).

C.J.S. Banks and Banking §§ 296 et seq., 304.

Section 8-101. [Time of Taking Effect; Provisions for Transition.]

(a)

(b) Except as provided elsewhere in this Code, on the effective date of this Code:

. . . .

(5) any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent;

. . . .