

#L-601

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6/13/85

Memorandum 85-62

Subject: Study L-601 - Probate Code - Multiple-Party Accounts

Attached to this Memorandum is a staff draft of a Recommendation Relating to Multiple-Party Accounts which proposes to extend to banks and savings and loan associations the existing California Multiple-Party Accounts Law which now applies only to credit unions and industrial loan companies. At the September 1984 meeting, the Commission asked the staff to contact the affected financial institutions to try to get their support for including them within the California Multiple-Party Accounts Law. The staff has contacted the California Bankers Association, but they have not yet reacted to the proposal.

Possible Application to Mutual Funds

A mutual fund--Benham Capital Management Group of Palo Alto--has contacted the staff to propose expanding the definition of "financial institution" in the California Multiple-Party Accounts Law to include mutual funds. Both the Uniform Probate Code and the attached staff draft are drawn to apply to the traditional form of deposit account, with an ascertainable balance and an immediate right of withdrawal. Of the 20 states which have enacted multiple-party accounts legislation drawn from the Uniform Probate Code, none extend the law to mutual funds. Idaho has enacted the UPC provisions, and an Idaho case has held that the UPC definition of "financial institution" does not include a stock brokerage firm. In re Estate of Bogert, 96 Idaho 522, 531 P.2d 1167 (1975).

If the California Multiple-Party Accounts Law is to be expanded to apply to mutual funds, much of the UPC terminology of the law will have to be adapted to equity share concepts. For this reason, the staff thinks this is a matter that should be considered by the National Conference of Commissioners on Uniform State Laws. The staff will write a letter to the National Conference forwarding the suggestion of Benham Capital Management.

If the Commission approves the attached Recommendation, the staff will send it to the California Bankers Association, representatives of savings and loan associations, and other interested persons for comment, with a view toward having legislation ready for introduction at the 1986 legislative session.

Respectfully submitted,

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Staff Draft

RECOMMENDATION

relating to

MULTIPLE-PARTY ACCOUNTS

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

As originally introduced, the legislation would have applied to multiple-party accounts in all California financial institutions, but

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1. Prob. Code §§ 5100-5407, enacted by 1983 Cal. Stats. ch. 92. The California Multiple-Party Accounts Law was enacted on recommendation of the Law Revision Commission. See Recommendation Relating to Nonprobate Transfers, 16 Cal. L. Revision Comm'n Reports 129 (1982).
 2. Uniform Probate Code §§ 6-101 to 6-113.
 3. Twenty states have adopted legislation comparable to Article VI of the Uniform Probate Code. See Alaska Stat. § 13.31.005-13.31.070 (1972); Ariz. Rev. Stat. Ann. §§ 14-6101 to 14-6201 (1975); Colo. Rev. Stat. §§ 15-15-101 to 15-15-201 (1973); Ga. Code Ann. §§ 7-1-810 to 7-1-821 (1982); Haw. Rev. Stat. §§ 560:6-101 to 560:6-113 (1976); 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. §§ 391.300-391.360 (1978); Me. Rev. Stat. tit. 18-A, §§ 6-101 to 6-201 (1981); Mich. Stat. Ann. §§ 23.510(1)-23.510(15) (West 1983); Minn. Stat. Ann. §§ 528.01-528.16 (West 1975); Neb. Rev. Stat. §§ 30-2701 to 30-2714 (1979); N.J. Stat. Ann. §§ 17:16I-1 to 17:16I-17 (West 1984); 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); Or.
(Footnote continued to page 2)

the legislation as enacted was limited to credit unions and industrial loan companies.⁴ The Commission recommends that the California Multiple-Party Accounts Law be broadened to include banks and savings and loan associations. It is difficult to justify having two separate bodies of law governing the rights between parties to multiple-party accounts, one applicable to accounts held by banks and savings and loan associations, and the other applicable to accounts held by credit unions and industrial loan companies. The California Multiple-Party Accounts Law provides the better set of rules because it conforms more closely to what depositors generally intend, both during lifetime and upon death.

Rights During Lifetime

The California Multiple-Party Accounts Law conforms to what depositors generally want during their lifetimes by presuming that funds on deposit in a joint account belong to the parties in proportion to their respective net contributions.⁵ Under present law applicable to banks and savings and loan associations, funds in a joint account with a right of survivorship are presumed to belong equally to the parties, without regard to how much each has

(Footnote continued from page 1)

Rev. Stat. §§ 708.600-708.661 (1981); 20 Pa. Cons. Stat. Ann. §§ 6301-6306 (Purdon 1984 Supp.); Tex. Prob. Code §§ 436-450 (Vernon 1980); Utah Code Ann. §§ 75-6-101 to 75-6-201 (1978); Va. Code §§ 6.1-125.1 to 6.1-125.16 (1983).

4. See Prob. Code § 5101(c).

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

contributed to the account.⁶

Rights at Death

The California Multiple-Party Accounts Law increases the likelihood that the surviving party will receive multiple-party account funds on the death of the other party: It strengthens the presumed right of survivorship by requiring clear and convincing evidence to overcome the presumption,⁷ and by providing that survivorship cannot be changed or defeated by a party's will.⁸ Under present law applicable to banks and savings and loan associations, survivorship in a joint account may be overcome by a mere preponderance of evidence,⁹ and survivorship in a Totten trust account may be overcome by flimsy or circumstantial evidence that the depositor intended some other disposition of the funds.¹⁰

Community Property

Where the parties to an account are married to each other, the California Multiple-Party Accounts Law permits the husband and wife to retain the benefits of community property during their lifetimes by presuming that the funds remain community property notwithstanding the

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

7. Prob. Code § 5302.

8. Prob. Code § 5302(e).

9. See *Schmedding v. Schmedding*, 240 Cal. App.2d 312, 315-16, 49 Cal. Rptr. 523 (1966) (presumption rebuttable); Evid. Code § 115 (except as otherwise provided by law, burden of proof requires preponderance of evidence); Comment to Evid. Code § 606 (ordinarily party against whom a rebuttable presumption operates must overcome the presumption by a preponderance of the evidence).

10. See 7 B. Witkin, *Summary of California Law Trusts* § 18, at 5380-82 (8th ed. 1974).

form of the account,¹¹ and protects the right of survivorship at death by providing that survivorship cannot be changed or defeated by will.¹² Under present law applicable to banks and savings and loan associations, one of the parties may dispose of half of community property funds on deposit by will and defeat the right of survivorship.¹³ The rule of the California Multiple-Party Accounts Law conforms to what married persons generally intend: Most married persons who deposit community property funds into a survivorship account want the benefits of community property during their lifetimes and want the funds to pass by survivorship at death so that delay and expense can be avoided.¹⁴

Protection of Financial Institutions From Liability

The California Multiple-Party Accounts Law authorizes credit unions and industrial loan companies to pay out funds on deposit

11. Prob. Code § 5305. This provision applies to all accounts in financial institutions, not merely joint accounts, P.O.D. accounts, and Totten trust accounts. Thus, the presumption of community property applies, for example, to a husband and wife who have funds on deposit in a partnership account. See the Comment to Prob. Code § 5305. The presumption may be rebutted during lifetime by tracing the account funds from separate property or by proof of a written agreement that the funds are not community property. Prob. Code § 5305.

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

13. See Prob. Code § 6101(b).

14. Griffith, Community Property in Joint Tenancy Form, 14 Stan. L. Rev. 87, 87, 90, 95, 108 (1961). Among the advantages of community property over joint tenancy are: (1) An attempted gift or other transfer by one spouse without consent of the other causes no

(Footnote continued to page 5)

according to the terms of the account and protects them from liability in so doing.¹⁵ They have no duty to inquire as to the source or proposed application of the funds withdrawn.¹⁶ This is consistent with existing law applicable to banks and savings and loan associations,¹⁷ except that the California Multiple-Party Accounts Law provides a more appropriate rule for making payment to a minor than does the law applicable to banks: On death of a trustee of a Totten trust account, a bank may pay account funds directly to a minor beneficiary,¹⁸ while the California Multiple-Party Accounts Law requires that payment be made to the minor's parent or guardian or be deposited in a court-controlled account.¹⁹ The California Multiple-Party Accounts Law provides the better rule and is consistent with general California law concerning payment to a minor.²⁰

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

(Footnote continued from page 4)

severance, but may be set aside on discovery, and (2) the property is divisible on dissolution of marriage. Id. at 93-94. The principal advantage of a joint tenancy account is the automatic survivorship feature which avoids the delay and expense of probate. Id. at 90, 108.

15. See Prob. Code §§ 5401-5405.

16. Prob. Code § 5401(c).

17. See Fin. Code §§ 852, 6803.

18. Fin. Code § 853.

19. Prob. Code § 5407. See also Probate Code § 3413 (transfer of money to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act).

20. See Prob. Code §§ 3400-3413.

An act to amend Section 683 of the Civil Code, to amend Sections 6804, 6805, 6852, 6855, 14854, and 14854.5 of, to repeal Sections 6801, 6802, 6803, and 6853 of, and to repeal and add Sections 852 and 6800 of, the Financial Code, to amend the heading for Division 5 (commencing with Section 5100) of, to amend Sections 5100, 5101, 5202, and 5304 of, and to repeal the heading for Part 1 (commencing with Section 5100) of Division 5 of, the Probate Code, relating to multiple-party accounts.

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

Civil Code § 683 (amended). Joint interest defined; creation of joint tenancy in personal property

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

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

(b) Provisions of this section do not apply to a joint account in a financial institution if ~~Part 1~~ Division 5 (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. Section 683 is amended to revise subdivision (b) to reflect the making of the California Multiple-Party Accounts Law into a division of the Probate Code, instead of a part as formerly, and to repeal subdivision (c) in view of the expansion of the California Multiple-Party Accounts Law to apply to banks, savings and loan as-

sociations, and other financial institutions. See Prob. Code § 5101(c).

Financial Code § 852 (repealed). Joint accounts

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

§ 852.1. Where a deposit is made in a bank in the names of two or more persons, whether jointly or jointly, in such form that the moneys in the account are payable to the survivor or survivors then such deposit, and all the bank's checks thereon, shall be the property of such persons as joint tenants. The moneys in such account may be paid to or by the order of any one of such persons during their lifetimes or to or by the order of any one of the survivors of the death of any one of the moneys. 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. 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 in respect to the moneys so paid, prior to receipt by the particular office or branch 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. Former Section 852 is superseded by Division 5 (commencing with Section 5100) of the Probate Code relating to multiple-party accounts. The first two sentences of former Section 852 are superseded by Sections 5301, 5302, 5401, 5402, and 5407 of the Probate Code. The third sentence of former Section 852 is continued in Section 5401 of the Probate Code.

The fourth and fifth sentences of former Section 852 are superseded by Sections 5101(1) and 5405 of the Probate Code which protect the bank from liability whether or not payment is consistent with the beneficial ownership of the account, unless the bank has been

served with a court order restraining payment or has received written notice from a party that withdrawals should not be permitted. Thus the new provisions give the bank at least as much protection as it had under former law.

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

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

852. A bank account that is a multiple-party account as defined in Section 5101 of the Probate Code is governed by Division 5 (commencing with Section 5100) of the Probate Code.

Comment. Section 852 makes reference to the California Multiple-Party Accounts Law (Probate Code §§ 5100-5407) which applies to banks. See also Fin. Code § 102 ("bank" 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 some case is a trust for another, but no other or further notice of the existence and terms of a legal and valid trust is given in writing to the bank, in the event of the death of the trustee, the deposit or any part thereof may be paid to the person for whom the deposit was made, whether or not such person is a minor.~~

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

Financial Code § 6800 (repealed). Joint tenants

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

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

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

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

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

6800. An account in an association or federal association that is a multiple-party account as defined in Section 5101 of the Probate Code is governed by Division 5 (commencing with Section 5100) of the Probate Code.

Comment. Section 6800 makes reference 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 of them, subject to the provisions of Section 14345 of the Revenue and Taxation Code, in 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 of them.~~

Comment. Former Section 6801 is superseded by Division 5 (commencing with Section 5100) 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. Stats. 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 survivorship

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 of survivors is a party, of the intention of all the parties to the account to vest~~

title / of / the / account / and / the / additions / to / it / in / the / survivor / of / survivors /

Comment. Former Section 6802 is superseded by Division 5 (commencing with Section 5100) 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 / of / 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 / or / any / duly / receipt, / record / change / order, / or / withdrawal / order, / in / which / case / the / association / or / federal / association / shall / pay / the / moneys / in / the / account / only / in / accordance / with / the / instructions, / but / no / instructions / shall / limit / the / right / of / the / survivor / or / survivors / to / receive / the / moneys / in / the / account /

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

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

(1) / Decree / by / a / court /

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

~~(3) In written subdivision 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~~ Division 5 (commencing with Section 5100) 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. Stats. ch. 1535, § 14), the replacement of the former provision of this article that governed payment to a survivor by the California Multiple-Party Accounts Law (Prob. Code §§ 5100-5407).

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

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

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

(b) As used in this section, "joint account" and "parties" have the meaning given those terms under Section 5101 of the Probate Code.

Comment. Section 6805 is amended to replace the former reference to joint tenancy with a reference to "joint account" as defined in Section 5101 of the Probate Code, and to replace the former references to joint tenants with a reference to "parties" as defined in Section 5101 of the Probate Code. This expands the application of Section 6805 to include joint accounts in form other than the traditional common law joint tenancy account.

Financial Code § 6852 (amended). Payment on death of fiduciary

SEC. _____. Section 6852 of the Financial Code is amended to read:

6852. (a) ~~Whenever~~ Except as provided in subdivision (b), whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to an association and the association has no written notice of any other disposition of the beneficial estate, the withdrawal value of the account, and interest on it, or other rights relating to it, may, at the option of an association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries.

(b) Subdivision (a) does not apply when the person holding the account is a trustee of a "trust account" as defined in Section 5101 of the Probate Code or is a guardian or conservator appointed in this state.

~~(b)~~ (c) In the absence of written notice to the contrary an association may presume that each beneficiary of an account with two or more beneficiaries has an undivided equal beneficial interest in the account.

Comment. Section 6852 is amended to add subdivision (b), and to redesignate former subdivision (b) as subdivision (c). Subdivision (b) recognizes that tentative or Totten trust accounts are governed by the California Multiple-Party Accounts Law. See, e.g., Prob. Code § 5404 (payment on death of trustee). Subdivision (b) also recognizes that guardianship and conservatorship accounts are governed by the Guardianship-Conservatorship Law. See, e.g., Prob. Code § 1860 and Comment thereto (conservatorship of the estate does not terminate on the death of the conservator).

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, executor, administrator or otherwise without 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 shall be 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 acknowledgment signed by the beneficiary, beneficiaries, or designated person from 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 make 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 debts on an account under this section shall be the property of the donor until the death of the donor, at which time it shall become part of the estate of the donor.

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

(g) At the death of the beneficiary as a whole or the time of the death of the trustee the association may pay the withdrawal value of the account to the estate of the trustee.

Comment. Subdivision (a) of former Section 6853 is superseded by Sections 5302 and 5404 of the Probate Code. The provision in former subdivision (a) concerning interest is superseded by subdivision (f) of Section 5101 of the Probate Code. Former subdivision (b) is superseded by Section 5405 of the Probate Code. Former subdivision (c) is superseded by subdivision (o) of Section 5101 of the Probate Code ("trust account" defined). Former subdivision (d) is superseded by subdivision (c) of Section 5301 of the Probate Code. Former subdivision (e) is continued in substance in Probate Code Sections 5101(f), 5301, and 5302. Former subdivision (f) is superseded by Section 5302 of the Probate Code. Former subdivision (g) is superseded by Section 5404 of the Probate Code.

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

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

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

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

Financial Code § 14854 (technical amendment). Multiple-party accounts

SEC. _____. Section 14854 of the Financial Code is amended to read:

14854. Subject to Section 14860, a credit union share account that is a multiple-party account, as defined in Section 5101 of the Probate Code, is governed by ~~Part A~~ Division 5 (commencing with Section 5100) ~~of Division 5~~ of the Probate Code.

Comment. Section 14854 is amended to reflect the making of the California Multiple-Party Accounts Law into a division of the Probate Code, instead of a part as formerly.

Financial Code § 14854.5 (amended). Pay-on-death account

SEC. _____. Section 14854.5 of the Financial Code is amended to read:

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 11 (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. Section 14854.5 is amended to delete the former reference to the California Multiple-Party Accounts Law. The former reference might have had the undesirable effect of requiring the provision or term of the credit union share or certificate for funds to refer to the California Multiple-Party Accounts Law in order to establish a pay-on-death account. This possible effect of the former language was not intended by Section 14854.5 as originally enacted. See 1982 Cal. Stats. ch. 269. This amendment brings Section 14854.5 into line with the pay-on-death provisions applicable to banks (Fin. Code § 852.5), savings and loan associations (Fin. Code § 6854), and industrial loan companies (Fin. Code § 18318.5).

Heading for Division 5 (commencing with Section 5100) of the Probate Code (amended)

SEC. _____. The heading for Division 5 (commencing with Section 5100) of the Probate Code is amended to read:

DIVISION 5. ~~NONPROBATE/TRANSFERS~~ MULTIPLE-PARTY ACCOUNTS

Heading for Part 1 (commencing with Section 5100) of Division 5 of the Probate Code (repealed)

SEC. _____. The heading for Part 1 (commencing with Section 5100) of Division 5 of the Probate Code is repealed.

~~PART 11 MULTIPLE-PARTY ACCOUNTS~~

Probate Code § 5100 (technical amendment). Short title

SEC. _____. Section 5100 of the Probate Code is amended to read:

5100. This ~~part~~ division may be cited as the California Multiple-Party Accounts Law.

Comment. Section 5100 is amended to reflect the making of the California Multiple-Party Accounts Law into a division of the Probate Code, instead of a part as formerly.

Probate Code § 5101 (amended). Definitions

SEC. _____. Section 5101 of the Probate Code is amended to read:

5101. In this ~~part~~ division, 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;~~

(c) "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, credit unions, and industrial loan companies 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. 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. Subdivision (c) of Section 5101 is amended to expand the definition of "financial institution" to include banks and savings and loan associations. This has the effect of making the California Multiple-Party Accounts Law (Sections 5100-5407) applicable to banks, savings and loan associations, credit unions, and industrial loan companies, not merely credit unions and industrial loan companies as formerly.

Probate Code § 5202 (technical amendment). Transfers in fraud of creditors

SEC. _____. Section 5202 of the Probate Code is amended to read:

5202. Nothing in this ~~part~~ division affects the law relating to transfers in fraud of creditors.

Comment. Section 5202 is amended to reflect the making of the California Multiple-Party Accounts Law into a division of the Probate Code, instead of a part as formerly.

Probate Code § 5304 (technical amendment). Transfers nontestamentary

SEC. _____. Section 5304 of the Probate Code is amended to read:

5304. Any transfers resulting from the application of Section 5302 are effective by reason of the account contracts involved and this ~~part~~ division and are not to be considered as testamentary. The right under this ~~part~~ division of a surviving party to a joint account, or of a beneficiary, or of a P.O.D. payee, to the sums on deposit on the death of a party to a multiple-party account shall not be denied, abridged, or affected because such right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

Comment. Section 5304 is amended to reflect the making of the California Multiple-Party Accounts Law into a division of the Probate Code, instead of a part as formerly.

Duty of Financial Institutions

SEC. _____. (a) As used in this section, the terms "account," "beneficiary," "financial institution," "P.O.D. account," "P.O.D. payee," and "trust account" have the same meaning as defined in Section 5101 of the Probate Code.

(b) A financial institution 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.

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

Comment. Section ____ is included to avoid any expense to financial institutions of advising existing depositors concerning the enactment of this act.