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Memorandum 88-6

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

Attached is a *Tentative Recommendation Relating to Multiple-Party Accounts*. Consistent with the Commission's decision at the last meeting, Probate Code Section 5306 on page 14 of the TR is amended so there will be no right of survivorship in a tenancy in common account, whenever established, unless the terms of the account or deposit agreement expressly provide for survivorship.

The Commission recognized the need for a comprehensive procedure for an insolvent estate to reach nonprobate assets, including revocable trusts, property subject to a power of appointment, and survivorship bank accounts. Concern was expressed that the proposed new section allowing the decedent's insolvent estate to reach multiple-party account funds was not in satisfactory form, and should address the procedural questions more clearly. The staff agrees with Kenneth Klug that it would be better not to include this section in the present proposal, but rather to work on an improved section in connection with a separate recommendation concerning nonprobate assets generally. Accordingly, the staff has deleted this section from the attached TR. Does the Commission approve the deletion?

Respectfully submitted,

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Staff Counsel

TENTATIVE RECOMMENDATION
relating to
MULTIPLE-PARTY ACCOUNTS

Introduction

The California Multiple-Party Accounts Law was enacted in 1983.¹ This new law improves and clarifies 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 The new law enacts the substance of Article VI of

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

2. The new law 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 (1) to one person during lifetime and on the death of that person to one or more P.O.D. payees or (2) 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 (1) the relationship is established by the form of the account and the deposit agreement with the financial institution and (2) there is no subject of the trust other than the sums on deposit in the account.

3. See *Recommendation Relating to Nonprobate Transfers*, 16 Cal. L. Revision Comm'n Reports 129 (1982).

the Uniform Probate Code.⁴ At least 24 states have enacted legislation drawn from this article of the Uniform Probate Code.⁵

The bill that proposed the new law would have applied to multiple-party accounts in all California financial institutions. But the bill was amended to make the new law apply only to credit unions and industrial loan companies.⁶ Banks and savings and loan associations asked to be excluded because they were concerned about possible uncertainty in applying the new law.

4. Uniform Probate Code §§ 6-101 to 6-113. 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 thinks that UPC Section 6-107 states a desirable rule, 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.

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); 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); 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 Prob. Code § 5101(c).

The Commission has reviewed the experience under the new law. The credit unions are satisfied with the new law.⁷ The new law serves credit union members well by offering several types of accounts that serve particular savings or transaction needs.⁸ At the same time, the new law gives the credit union substantial protection when it transacts business with members who are parties to a multiple-party account.⁹ The credit unions have had no difficulty in implementing the new law or in operating under it.

7. 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).

8. 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):

It should also be noted that the relationship between a "depositor" and his or her financial institution is changing. The types of accounts and the services offered by a financial institution have increased significantly. For example, a financial institution now spends more time with the depositor to determine the purpose of the depositor in establishing a savings or transaction account to determine the type of account that is suited to the depositor's needs. For example, a depositor may want to make a gift to a third person, segregate funds in an account that is used for short term personal needs, or begin to build a long term savings plan. The financial institution may also want to encourage the depositor to utilize the financial institution's financial planning service. This usually does not take place in the teller's line, but rather in a more private setting such as a desk or booth. The point is that financial institutions are now involved in a more extensive counseling role with depositors at the time an account is opened and as a part of their regular business and their expanding role in providing financial services to the public. The [California Multiple-Party Accounts Law] has not extended nor did it complicate the process of account administration.

9. 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 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. The provisions governing rights of the parties to the account are relevant only to controversies between the parties and their creditors and other successors, and have no bearing on the duties of the financial institution.¹⁰ Extending the law to banks and savings and loan associations will give them the same protection against liability that credit unions and industrial loan companies now have.¹¹

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.¹² But a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable present gift of any part of the funds deposited,¹³ and many people believe that

10. 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.

11. See Prob. Code §§ 5401-5407.

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

13. Uniform Probate Code § 6-103 comment.

depositing funds in a joint account in a bank or savings and loan association has no effect on ownership of the funds until death.¹⁴

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.¹⁵ 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.¹⁶

Right of Survivorship

Under present law applicable to banks and savings and loan associations, the right of survivorship in a joint account or Totten trust account may be defeated by flimsy or circumstantial evidence.¹⁷ The California Multiple-Party Accounts Law strengthens the right of survivorship by requiring clear and convincing evidence of a contrary intent,¹⁸ and by providing that survivorship cannot be changed or defeated by a party's will.¹⁹ Most people who use a joint account or Totten trust account want the survivor or survivors to have all

14. 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).

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

16. Treas. Reg. § 25.2511-1 (1958).

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

18. Prob. Code § 5302.

19. Prob. Code § 5302(e).

balances remaining at death.²⁰ The California Multiple-Party Accounts Law gives effect to this intent and minimizes the likelihood that litigation will be brought to defeat the right of survivorship.

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.²¹ This is consistent with common law, under which a tenancy in common did not include a right of survivorship.²²

However, if a tenancy in common account is established after the operative date of the California Multiple-Party Accounts Law,²³ 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 different intention.²⁴ It is not clear whether establishment of the

20. Uniform Probate Code § 6-103 comment; Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87, 90, 95, 108 (1961).

21. Prob. Code § 5306.

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

23. 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, it seems likely that if the law is applied to banks and savings and loan associations, they will 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, however, permit banks and savings and loan associations to continue to use old account forms under the new law, so to this limited extent there may be tenancy in common accounts established under the new law.

24. Prob. Code § 5302(a).

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, 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.²⁵ 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: community property in joint tenancy form.²⁶ 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.

25. See *In re 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).

26. 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.

Extending the California Multiple-Party Accounts Law 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 rebuttable²⁷ 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 the California Multiple-Party Accounts Law 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 of the statute cannot be changed by will.²⁸ 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.²⁹ The California

27. 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).

28. 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).

29. 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 flimsy or circumstantial evidence that the depositor intended some other disposition of the funds. *Supra* note 14. 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,

Multiple-Party Accounts Law protects the right of the survivor by providing that survivorship rights cannot be changed or defeated by will.³⁰ Adopting this rule 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.³¹

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 funds are not community property must be in writing,³² and with the general requirement that transmutation agreements must be in writing.³³

Payments to Minors

On death of a trustee of a Totten trust account, a bank may pay account funds directly to a minor beneficiary.³⁴ The California Multiple-Party Accounts Law does not permit payment directly to a minor beneficiary; it requires that payment be made to the minor's parent or

852-53, 228 P.2d 545 (1951) (testamentary plan wholly inconsistent with terms of Totten trust revokes the trust).

30. 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.

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

32. Prob. Code § 5305.

33. Civ. Code § 5110.730.

34. Fin. Code § 853.

guardian or be deposited in a court-controlled account.³⁵ The law will be improved by making the California Multiple-Party Accounts Law rule applicable to banks.³⁶ That rule is the better rule and one that is consistent with general California law concerning payment to a minor.³⁷

Transitional Provisions

So that the extension of the California Multiple-Party Accounts Law will impose no significant financial burden on banks and savings and loan associations, the proposed legislation includes the transitional provisions described below.

No duty to inform

A financial institution has no duty to inform any of the following of the enactment of the proposed legislation:

(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.

The proposed legislation further provides that no liability shall be imposed on a financial institution for failing to inform any person designated above of the enactment of the proposed legislation.

These provisions are designed to avoid any expense to financial institutions of advising existing depositors concerning the enactment of the proposed legislation. The act that enacted the California Multiple-Party Accounts Law³⁸ included a comparable provision.

35. Prob. Code § 5407.

36. 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).

37. See Prob. Code §§ 3400-3413.

38. 1983 Cal. Stat. ch. 92, § 6.

No duty to reprint forms

The proposed legislation permits a financial institution to continue to use forms printed before the operative date of the proposed legislation (July 1, 1989). The proposed legislation further provides that no liability shall be imposed on a financial institution for continuing to use forms printed before July 1, 1989, after the enactment of the proposed legislation.

These provisions avoid the need for banks and savings and loan associations to print new forms when the expansion of the California Multiple-Party Accounts Law becomes operative on July 1, 1989. Despite these provisions, the California Multiple-Party Accounts Law will govern multiple-party accounts established by a financial institution before or after July 1, 1989.

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 5124 ("beneficiary" defined) without substantive change.

Subdivision (c) is superseded by Section 5126. Subdivision (c) defined "financial institution" to mean a credit union or industrial

loan company. Under new Section 5126, "financial institution" also includes a bank, savings and loan association, and other like organization. See the Comment to Section 5126.

Subdivision (d) is continued without change in Section 5128. Subdivision (e) is restated in Section 5130 without substantive change. Subdivision (f) is restated in Section 5132 without substantive change. Subdivision (g) is restated in Section 5134 without substantive change. Subdivision (h) is continued without change in Section 5136. Subdivision (i) is continued without change in Section 5138. Subdivision (j) is continued without change in Section 5140. Subdivision (k) is continued without change in Section 5142. Subdivision (l) is continued without change in Section 5144. Subdivision (m) is restated in Section 5146 without substantive change. Subdivision (n) is continued without change in Section 5148.

The first, second, and fourth sentences of subdivision (o) are continued without substantive change in Section 5150. The third sentence of subdivision (o) (added by 1987 Cal. Stat. ch. 1045) is continued in paragraph (3) of subdivision (b) of Section 14860 of the Financial Code.

Subdivision (p) is continued without change in Section 5152.

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

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

Article 2. Definitions

§ 5120. Application of definitions

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

Comment. Section 5120 restates without substantive change the introductory portion of former Section 5101. Section 5120 is consistent with the introductory clause of Uniform Probate Code Section 6-101. The general Probate Code definitions do not apply to this part. See Section 20.

§ 5122. Account

5122. "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.

Comment. Section 5122 restates subdivision (a) of former Section 5101 without change and is the same in substance as subdivision (1) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Financial institution § 5126

§ 5124. Beneficiary

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

Comment. Section 5124 restates subdivision (b) of former Section 5101 without substantive change and is the same in substance as subdivision (2) of Uniform Probate Code Section 6-101. See Section 5150 defining "trust account." The effect of the definition of "trust account" in Section 5150 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.

CROSS-REFERENCES

Definitions

Account § 5122

Party § 5134

Trust account § 5150

§ 5126. Financial institution

5126. "Financial institution" includes:

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

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

Comment. Section 5126 supersedes subdivision (c) of former Section 5101. The 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 5126 applies as well to banks, savings and loan associations, and other like organizations. See Section 40 ("financial institution" defined).

Subdivision (a) of Section 5126 is comparable to subdivision (3) of Uniform Probate Code Section 6-101. Subdivision (b) of Section 5126 continues a portion of subdivision (c) of former Section 5101.

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

The 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.

§ 5128. Joint account

5128. "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

Comment. Section 5128 continues subdivision (d) of former Section 5101 without change and is the same in substance as subdivision (4) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Account § 5122
Party § 5134
Request § 5146

§ 5130. Multiple-party account

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

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

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

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

(2) An account controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, or charitable or civic organization.

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

Comment. Section 5130 restates subdivision (e) of former Section 5101 without substantive change, and is the same in substance as subdivision (5) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Account § 5122
Joint account § 5128
P.O.D. account § 5138
Trust account § 5150

§ 5132. Net contribution

5132. (a) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for the party, less all withdrawals made by or for the party that have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(b) In the absence of proof otherwise, only parties who have a present right of withdrawal shall be considered as having a net contribution and the net contribution of each of the parties having a present right of withdrawal is deemed to be an equal amount.

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

Subdivision (a) of Section 5132 is the same in substance as subdivision (6) of Uniform Probate Code Section 6-101. As may be seen from examination of the provisions of this part, "net contribution" as defined in Section 5132 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 5132 is not found in the Uniform Probate Code. This subdivision provides a clear rule concerning the amount of "net contribution" in a case where the actual amount cannot be established.

CROSS-REFERENCES

Definitions

Joint account § 5128

Party § 5134

Withdrawal § 5152

§ 5134. Party

5134. "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 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.

Comment. Section 5134 restates subdivision (g) of former Section 5101 without substantive change and is the same in substance as subdivision (7) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Beneficiary § 5124
Multiple-party account § 5130
Payment § 5136
P.O.D. payee § 5140
Request § 5146
Trust account § 5150
Withdrawal § 5152

§ 5136. Payment

5136. "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

Comment. Section 5136 continues subdivision (h) of former Section 5101 without change and is the same in substance as subdivision (8) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Account § 5122
Party § 5134
Sums on deposit § 5148
Withdrawal § 5152

§ 5138. P.O.D. account

5138. "P.O.D. account" means an account payable on request to one person during the person's lifetime and on the person's death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

Comment. Section 5138 continues subdivision (i) of former Section 5101 without change and is the same in substance as subdivision (10) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Account § 5122
P.O.D. payee § 5140
Request § 5146

§ 5140. P.O.D. payee

5140. "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

Comment. Section 5140 continues subdivision (j) of former Section 5101 without change and is the same in substance as subdivision (11) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

P.O.D. account § 5138
Request § 5146

§ 5142. Proof of death

5142. "Proof of death" includes an original or attested or certified copy of a death certificate or record or report that is prima facie evidence of death under Section 10577 of the Health and Safety Code, Sections 1530 to 1532, inclusive, of the Evidence Code, or another statute of this state.

Comment. Section 5142 continues subdivision (k) of former Section 5101 without change and is consistent with subdivision (9) of Uniform Probate Code Section 6-101.

§ 5144. Receives

5144. 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 5144 continues subdivision (1) of former Section 5101 without change.

CROSS-REFERENCES

Definitions

Account § 5122
Financial institution § 5126

§ 5146. Request

5146. "Request" means a proper request for withdrawal, or a check or order for payment, that complies with all conditions of the account (including special requirements concerning necessary signatures) and regulations of the financial institution; 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 5146 restates subdivision (m) of former Section 5101 without substantive change and is the same in substance as subdivision (12) of Uniform Probate Code Section 6-101. 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."

CROSS-REFERENCES

Definitions

Account § 5122
Financial institution § 5126
Payment § 5136
Withdrawal § 5152

§ 5148. Sums on deposit

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

Comment. Section 5148 continues subdivision (n) of former Section 5101 without substantive change and is the same in substance as subdivision (13) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Multiple-party account § 5130
Party § 5134

§ 5150. Trust account

5150. (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 5150 continues subdivision (o) of former Section 5101 without change and is the same in substance as subdivision (14) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Account § 5122
Beneficiary § 5124
Financial institution § 5126
Party § 5134
Payment § 5136
Sums on deposit § 5148

§ 5152. Withdrawal

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

Comment. Section 5152 continues subdivision (p) of former Section 5101 without change and is the same in substance as subdivision (15) of Uniform Probate Code Section 6-101.

CROSS-REFERENCES

Definitions

Party § 5134
Payment § 5136

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.

CROSS-REFERENCES

Definitions

Account § 5122
Multiple-party account § 5130
Net contribution § 5132
Party § 5134
P.O.D. payee § 5140
Trust account § 5250

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.

CROSS-REFERENCES

Definitions

Account § 5122

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

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

5406. The provisions of this chapter that apply to the payment of a trust account apply to an account in the name of one or more parties as trustee for one or more other persons if the financial institution has no other or further notice that the account is not a trust account as defined in Section ~~5101~~ 5150.

Comment. Section 5406 is amended to substitute a reference to Section 5150 in place of the former reference to Section 5101. The definition of "trust account" is now found in Section 5150.

CROSS-REFERENCES

Definitions

Account 5122

Financial institution § 5126

Party § 5134

Trust account § 5150

Probate Code § 5407 (amended). Payment to minor

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

5407. If a financial institution is required or permitted to make payment pursuant to this chapter to a person who is a minor:

(a) If the minor is a party to a multiple-party account, payment may be made to the minor or to the minor's order, and payment so made is a valid release and discharge of the financial institution, but this subdivision does not apply if the account is to be paid to the minor because the minor was designated as a P.O.D. payee or as a beneficiary of a trust account.

(b) In cases where subdivision (a) does not apply, payment shall be made pursuant to the California Uniform Transfers to Minors Act.

Part 9 (commencing with Section 3900) of Division 4, or as provided in Chapter 2 (commencing with Section 3400) of Part 8 of Division 4.

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

CROSS-REFERENCES

Definitions

Beneficiary § 5124
Financial institution § 5126
Multiple-party account § 5130
Party § 5134
P.O.D. payee § 5140
Trust account § 5150

Conforming Revisions

Civil Code § 683 (amended). Joint tenancy

SEC. _____. Section 683 of the Civil Code is amended to read:

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

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

~~(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 § 5126 ("financial institution" defined). Banks are now be governed by subdivision (b).

Financial Code § 852 (repealed). Joint bank accounts

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

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

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

Comment. The first sentence of former Section 852 is superseded by Probate Code Sections 5128 ("joint account" defined), 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 5144 ("receives" defined) and 5405(a) and (c) (payment as discharge). These provisions protect the bank from liability whether

or not payment is consistent with the beneficial ownership of the account, unless the bank has been served with a court order restraining payment or has received written notice from a party that withdrawals should not be permitted. The new provisions give the bank at least as much protection as it had under former law.

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

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

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

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

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

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

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

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

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

~~(b) Any transfer of property to the designated payee or payees pursuant to the terms of a pay on death provision shall be given effect under the terms of the bank account agreement and shall not be deemed to be a testamentary disposition of property. The right of the designated payee or payees to receive such property shall not be denied, abridged, or affected on the grounds that the right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.~~

~~(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 5138 ("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 5126 ("financial institution" defined).

Financial Code § 853 (repealed). Trust accounts

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

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

Comment. Former Section 853 is superseded by Sections 5404, 5406, and 5407 of the Probate Code. 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 5130 of the Probate Code is governed by Part 1 (commencing with Section 5100) of Division 5 of the Probate Code.

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

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

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

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

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

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

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

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

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

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

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

~~6803. (a) By written instructions given to the association or~~

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

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

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

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

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

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

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

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

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

6804. ~~Except as provided under Section 14347 of the Revenue and Taxation Code, no~~ No association or federal association paying any survivor in accordance with the provisions of ~~this article~~ Part 1

(commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.

Comment. Section 6804 is amended to reflect the repeal of Section 14347 of the Revenue and Taxation Code (see 1982 Cal. Stat. ch. 1535, § 14), and the replacement 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 5148 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 5150 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 5148, 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.~~

~~(e) 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 5138 ("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 5126 ("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 5138 ("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 5124 of the Probate Code.

(2) "Trust account" has the meaning given that term in Section 5150 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 5138 ("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 5130 of the Probate Code is governed by Part 1 (commencing with Section 5100) of Division 5 of the Probate Code.

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

Probate Code § 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 5138.

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 5138.

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 5130, 5134, 5140, and 5124, 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 5130, 5134, 5140, and 5124, 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 Provisions 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 5126 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.

(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 100 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.

Section ____ . Uncodified Transitional Provision - No duty to reprint forms

SEC. _____. (a) Notwithstanding the enactment of this act, a financial institution may continue to use forms printed before July 1, 1989, but the California Multiple-Party Accounts Law, Part 1 (commencing with Section 5100) of Division 5 of the Probate Code, governs multiple-party accounts established by a financial institution before or after July 1, 1989.

(b) No liability shall be imposed on a financial institution for continuing to use forms printed before July 1, 1989, after the enactment of this act.

Comment. Section 101 is a new provision that avoids the need for banks and savings and loan associations to print new forms when the expansion of the California Multiple-Party Accounts Law becomes operative on July 1, 1989. However, even though an "old" form is used to establish the account, a multiple-party account established in a bank or savings and loan association on or after July 1, 1989, is governed by the California Multiple-Party Accounts Law. See Prob. Code §§ 5100-5407. See also Prob. Code § 5306 (effect of designating an account as a "tenancy in common" account).

Operative Date

SEC. 102. This act shall become operative on July 1, 1989, 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, 1989, 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, 1989) will have time to make any changes in the deposit agreement that they believe are desirable in view of the enactment of this act. As to the application of this act to accounts established before July 1, 1989, see Sections ____ and ____ (uncodified transitional provisions) of this Act.