L-1060

jd759
01/11/89

First Supplement to Memorandum 89-4

Subject: Study 1060 - Multiple-Party Accounts in Financial Institutions

Attached is a letter from Valerie J. Merritt concerning the Tentative Recommendation Relating to Multiple-Party Accounts in Financial Institutions. The letter is written on behalf of the Executive Committee of the Estate Planning, Trust and Probate Law Section. The Executive Committee "believes that the Tentative Recommendation is much better than current law or the prior versions of the proposed legislation" but believes that "some aspects of the proposal will create significant problems . . ." The matters raised by the Executive Committee are discussed below. We plan to go through this Supplement at the meeting. To make this Supplement complete, we also repeat the recommendations made in Memorandum 89-4. Memorandum 89-4 contains a discussion of those recommendations.

GENERAL APPROACH OF MULTIPLE-PARTY ACCOUNTS LAW

In reviewing the multiple-party accounts law, it is necessary to keep in mind that the scheme of this law is that the account agreement determines the terms of the account. Accounts are not designated as "joint tenancy" accounts, "tenancy in common" accounts, or "community property" accounts. Instead, a "joint account" has a right of survivorship unless there is clear and convincing evidence of a contrary intent, such as an express statement in the account agreement that there is no right of survivorship. The parties who open an account are asked to designate whether or not they want a right of survivorship. They are not asked whether they want a "joint tenancy account" or a "tenancy in common account." Where there is no right of survivorship, the parties may indicate the proportional share each owns of the account, and the account agreement may provide that absent such

an indication each party owns an equal proportionate share. Also, where there is no right of survivorship, each party has an opportunity to designate one or more P.O.D. beneficiaries for his or her interest in the account. Where there is a right of survivorship, the parties may designate one or more P.O.D beneficiaries to take when the last of the parties to the account dies. Also, whether or not the joint account is a survivorship account, the parties may designate an "agent" to make account transactions. The agent has no ownership interest in the account and must apply the moneys withdrawn from the account for the benefit of the party owning the beneficial interest in the account. A deposit of community property in a joint account does not change the nature of the property from community property to separate property.

The forms developed by the Credit Unions for use under the existing statute do not use rely on labels for accounts; they permit the parties to the account to indicate specifically the matters described above, primarily by checking boxes.

The problem in implementing this scheme is that existing accounts use a variety of names, such as "joint tenancy account," "tenancy in common account" (believed to be very rare), "community property account," "power of attorney" or "designation of agent," "trust account" (used by some forms now used to describe what lawyers call a "Totten trust account") and "trust account" (a different form used for a trust established by an instrument outside the deposit agreement).

We want the Multiple-Party Accounts Law to apply to these existing accounts and to new accounts that are opened up after the new statute become operative but use the same old names for the accounts. Accordingly, we need to draft the statute so that it will cover the existing account designations and not make any drastic changes in the consequences of the account. We do, however, want to make two significant changes. First, we want to make the rule that the ownership of an account during lifetime is determined by the net contribution of each party (presumed by the statute to be equal). Second, we want to make clear that the right of survivorship can be terminated by changing the terms of the account or withdrawing the funds from the account, thereby changing what appears to be the rule

under existing law. We want to apply these changes to existing accounts as well as new accounts. We need to effectuate these changes whether or not the financial institutions adopt new forms to use under the new statute or continue to use their existing forms. In addition, we want to make clear that community property funds remain community property when the funds are deposited in a joint account.

At the same time, we want to preserve the scheme of the existing California Multiple-Party Account Law which is the same as the Uniform Act and the laws enacted in most other states. This will permit the credit unions to continue to use the new forms they have developed that permit the parties to indicate whether or not they want survivorship, the proportionate ownership of the account if there is no survivorship, P.O.D beneficiaries, and the like. This scheme also will permit other financial institutions to adopt similar forms. But, nevertheless, we must provide for the consequences of labeling an account as a ""tenancy in common account" or as a "community property account." This is essential because we have those accounts now and financial institutions may continue to offer them after the new law becomes operative.

The Tentative Recommendation already deals with the consequences of labeling an account as a "tenancy in common" account. But the Executive Committee of the State Bar Section points out that the Tentative Recommendation does not deal specifically with an account designated as a "community property account," and the Executive Committee is concerned that prior estate planning will be defeated by this failure. The staff proposes to add a section to the statute to state that an account designated in the deposit agreement as a "community property account" is governed by the rules applicable to community property generally.

This scheme should be kept in mind as we examine the various matters raised in connection with the tentative recommendation.

SPECIFIC MATTERS IN CONNECTION WITH STATUTE SECTIONS

Probate Code § 5130. Definition of "joint account" (page 19 of Tentative Recommendation)

Section 5130 of the Tentative Recommendation continues the definition of existing California law and of the comparable provisions of the Uniform Probate Code and the laws of all or substantially all of the other states that have enacted provisions based on the Uniform Code. The section provides:

> "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.

The State Bar Section states concerning this definition:

> We've previously pointed out the problems of the use of the term "joint account" and the ambiguities inherent in it, and repeat the same ideas here. The term is sometimes used to refer to a joint account with an automatic survivorship feature and sometimes used to refer to any account held by two or more persons. This causes confusion, which needs to be dealt with. Using the term "joint tenancy account" when referring to such an account with a survivorship feature would go a long way toward removing the ambiguities,

As the preliminary discussion in this supplement indicates, the scheme of the existing California statute, the Uniform Act, and the comparable statutes of other states is that the account agreement states the terms of the account (specifically whether or not there is a survivorship right) rather than to rely on a label given the account. Under this scheme, the term "joint account" covers more than a joint tenancy account. Both community property accounts and tenancy in common accounts are within the definition of a joint account.

The reason why it is important to include tenancy in common accounts within the definition of joint accounts is that this is necessary in order to apply to tenancy in common accounts the rule of subdivision (a) of Section 5301 ("A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent."). As far as the right of survivorship is concerned with respect to tenancy in common accounts, this is covered by Section 5306 (amended on page 31 of Tentative Recommendation) which makes clear there is no right of survivorship. Accordingly, there is no reason to revise the statute in so far as tenancy in common accounts.

Likewise, there is no reason to exclude an account established by married persons using community property funds. The statute will include any special rules needed to cover an account designated in the account agreement as a "community property account." For accounts of married persons not so designated, the statute and account agreement will specify the rights during lifetime and upon the death of one of the spouses.

STAFF RECOMMENDATION: To eliminate any confusion, the staff recommends that the following be added to the Comment to Section 5130:

> The definition of "joint account" embraces all of the following:
>
> (1) Joint account with right of survivorship. See Sections 5301(a) and 5302(a).
>
> (2) Joint account without right of survivorship. This is a special type of joint account where there is clear and convincing evidence of an intent not to have survivorship. The terms of the account may include an express statement making clear that there is no survivorship right (see subdivision (a) of Section 5302) or the account may be designated as a "tenancy in common" account (see Section 5306).
>
> (3) Joint account held by a husband and wife with right of survivorship that can not be changed by will. This is a joint account held by a husband and wife that is not specifically designated in the account agreement as a "community property" account. The statute creates a presumption that if the 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. See Section 5305. The rules stated in Section 5301(a) and 5302(a) apply to this type of joint account, including a rule that the right of survivorship of the surviving spouse cannot be changed by will.
>
> (4) Joint account held by husband and wife that is specifically designated as a "community property" account. This is a joint account held by a husband and wife that is specifically designated in the account agreement as a "community property" account. Section 5307 provides that this type of account is governed by the rules that apply to community property generally. Accordingly, unless the parties have agreed otherwise, the right of survivorship of the surviving spouse can be changed by will (deceased spouse by will devises her or her share of the account to a person other than the surviving spouse).

Probate Code § 5136. Definition of "party" (page 20 of Tentative Recommendation)

The State Bar Executive Committee states:

> We have problems with the definition of "party" in Section 5136(a). We can think of no reason to exclude an agent if one includes a guardian or conservator. Like a guardian or conservator, an agent can withdraw all funds from the account and otherwise deal with it. Like a guardian or conservator, the death of the agent should not be a death of a "party" for purposes of triggering the survivorship provisions or payable on death provisions. This section should be altered.

This makes a good point. The staff believes that the statute should not seek to deal with accounts held by a guardian, conservator or personal representative. Section 5122(b)(3) already excludes from the coverage of the statute a "regular fiduciary or trust account where the relationship is established other than by deposit agreement."

STAFF RECOMMENDATION: The staff recommends that the second sentence of subdivision (a) of Section 5136 ("unless the context otherwise requires, 'party' includes a guardian, conservator, personal representative, or assignee, including a levying creditor, of a party") be deleted, and that Section 5122 be revised to add the following new paragraph (4) to subdivision (b):

> (b) "Account" does not include:
>
> * * *
>
> (4) An account established for the deposit of funds of the estate of a guardianship, conservatorship, or decedent.

Probate Code § 5152. Definition of "trust account" (pages 22-23 of Tentative Recommendation

The State Bar Section states:

> There are ambiguities throughout the Tentative Recommendation because it uses the term "trust account" for a Totten trust account," and then uses the same term to denote an account held by the trustee of an express formal trust. For example, Section 5122(b)(3) uses "trust account" to refer to a formal trust situation, but § 5126 uses the same term to refer to a Totten trust account. The term "Totten trust account" is a term of art that is widely understood. It is easily and clearly differentiated from accounts held by trustees of formal trusts. Why not use the existing term of art in the statute and avoid the ambiguities the use of "trust account" creates?

We could use the term "Totten trust account" in the statute. In fact, Section 80 of the Probate Code now defines "Totten trust account" and we can make the general definitions, including Section 80, applicable to the Multiple-Party Accounts Law. However, because "Totten trust account" is not generally used in the Financial Code provisions, the deposit agreement forms now generally use the term "trust account" to describe a Totten trust account, and the staff doubts that the average consumer has any idea of what a Totten trust account is.

STAFF RECOMMENDATION: The staff recommends that we make the general definitions to the Probate Code, including the definition in Section 80 of a "Totten trust account," applicable to the Multiple-Party Accounts Law. We would also substitute "Totten trust account" for "trust account" in the statute where we are referring to a Totten trust account.

The staff also recommends that a Totten trust be treated the same as a P.O.D. beneficiary designation. The statute should be revised to provide that a Totten trust beneficiary designation is a P.O.D. designation and that the provision applicable to a P.O.D. designation apply. This will simplify the statute and reduce its length, because it avoids the need to include separate, duplicative provisions stating the rights during lifetime and upon death of the party for a Totten trust account. The drafting committee revising the Uniform Act has determined to do the same thing.

Probate Code § 5203 (added). Creation of multiple-party relationships (pages 23-24 of Tentative Recommendation)

STAFF RECOMMENDATION: The staff recommends that subdivision (a) of Section 5203 be revised to substitute "payee(s)" for "beneficiary(ies)" in paragraph (3) and to add three additional paragraphs:

> (4) Joint account of husband and wife with right of survivorship: "This account/certificate is jointly owned by the named parties, who are husband and wife, and is presumed to be community property. On the death of either of them, ownership passes to the survivor."
>
> (5) Community property account of husband and wife: "This account/certificate of deposit is the community property of the named parties. The ownership during lifetime of both of the spouses and upon the death of one of the spouses is determined by the law applicable to community property generally."
>
> (6) Tenancy in common account: "This account/certificate of deposit is owned by the named parties as tenants in common. On the death of any party, the ownership that party in the account passes to the P.O.D. beneficiary(ies) of that party or, if none, to the estate of that party."

Section 5203(b). Effect of new statute on existing accounts (page 24 of Tentative Recommendation)

The statute is drafted on the assumption that it can be applied to existing accounts and that it is not essential that existing account

forms be changed because of the enactment of the statute. The statute will apply to existing accounts and new accounts opened after the statute becomes operative.

The statute has two significant effects. First, the ownership during lifetime of funds on deposit in an account is based on the net contribution of the party to the account. This is what the parties would expect the rule to be. Second, the right of survivorship in a joint account can be terminated during lifetime by any party having a right of present withdrawal from the account but cannot be terminated by will. This gives effect to the expectation of the parties that the survivor will get the funds on deposit and changes the rule that the right of survivorship continues to exist notwithstanding that the funds are withdrawn from the account and deposited in a new account without a survivorship right or invested in other property. In addition, the statute creates a presumption that funds in a joint account held by married persons are community property. This is consistent with the normal expectation of married persons that depositing the funds in an account does not change the community property nature of the funds.

There is no need to prescribe the precise language required to be used in the various types of accounts. Existing account forms can continue to be used and these provisions will apply to them. The rules outlined above merely reflect what the parties would believe the rules to be on these matters. This is not to say that it would be undesirable to provide account forms tailored to the new law.

The Executive Committee proposes to add a provision that contains the following:

> A contract of deposit should substantially comply with the meaning and intent of the form language and inform the parties establishing the account of any survivorship features of the form of account chosen. If the form of language chosen substantially complies, the provisions of this part govern the type of account and the rights of the parties thereunder.

The staff has two problems with this suggestion. First, it would appear to require financial institutions to go to the expense of preparing new account forms. There is no necessity for this. It would be an expensive and burdensome requirement that would kill the proposal. Moreover, it would be difficult to draft a statement of the

effect of a "community property account." Second, what if the language does not "substantially comply" with the form language? Adopting the requirement suggested would create uncertainty as to when the new law applies -- it would apply only where "the form of language chosen substantially complies" with the statutory form language set out in the statute. If a dispute arises where an existing account form was used in the past or is used in the future, the parties will then argue that the net contribution rule does not apply, that the survivorship right does not exist, or that the account is true joint tenancy rather than an account that consists of community property funds, because the account form language does not "substantially comply" with the form language in the statute. A better solution would be to work with the bankers to develop appropriate forms, recognizing that the forms developed may be able to be used in most of the states that have adopted the substance of the Uniform Act. Accordingly, the **STAFF RECOMMENDS that subdivision (b) of Section 5203 be retained without change.**

Section 5204. "Agency" account (pages 24-26 of Tentative Recommendation)

Section 5204 establishes a statutory agency account. The section indicates the language that creates such an account and protects the financial institution that relies on the statutory form account. The purpose of the section is to encourage the use of an agency account, rather than a joint account, where an agency account is the type of account needed to accomplish the purpose of a convenience account. Other states have revised the Uniform Act to provide for such an account. To encourage the use of such accounts, the drafting committee of the National Conference of Uniform Law Commissioners is drafting such a provision for inclusion in the Uniform Act.

The State Bar Executive Committee states:

> We are very concerned about proposed §5204. We believe that this section does not add much to the law of agency and significantly detracts from the smooth implementation of agency relationships. Subparagraphs (g) and (h) are inherently contradictory. Subparagraph (g) should be deleted entirely. It gives a financial institution the power to reject any power of attorney not signed at the financial

> institution. There is no requirement of good faith or reason to question the validity of the document. If this provision stays in, virtually every general power of attorney will be useless in dealing with financial institutions. This is directly contrary to the intent of the law with regard to durable powers of attorney generally, and bad public policy. Practitioners have enough problems now with getting financial institutions to honor powers of attorney; there is no reason to add to those problems.

Subdivision (g) is limited to a statutory agency account established pursuant to the section. It has no effect on a durable power of attorney governed by other statutory provisions. Subdivision (h) makes clear that these other powers of attorney are not affected by subdivision (g) or for that matter by any part of Section 5204. It may be that some provision should be included in the law to deal with the failure of financial institutions to recognize durable powers of attorney not executed on the financial institution's own form. Drafting such a provision is a separate matter, not affected by Section 5204 which is drawn from a provision that has worked well in Wisconsin. Perhaps the Commission would wish to propose that a financial institution that unreasonably refuses to honor a durable power of attorney is liable for the reasonable attorney fees of the attorney-in-fact in bringing an action to force the financial institution to honor the durable power of attorney. The Commission included a comparable provision in the affidavit procedure for small estates. See Section 13105(b)(last sentence) ("If an action is brought against the holder under this section, the court shall award attorneys' fees to the person or persons bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to them as required by subdivision (a).") Such a provision could be included, however, only if there was some assurance that the person presenting the durable power of attorney was in fact the attorney in fact and that the person giving the durable power of attorney had in fact signed the instrument while competent. How can there be such assurance to the bank? This issue may merit further study, but the enactment of a provision that will encourage financial institutions to provide "agency" account forms and to honor them for the ordinary customers of the financial

institution should not be delayed until the existing problem of financial institutions being reluctant to honor general durable powers of attorney is studied and dealt with.

Probate Code § 5303 (amended). Rights of survivorship determined by form of account at time of death; methods for change of terms of account (pages 28-29 of Tentative Recommendation)

STAFF RECOMMENDATION: To make clear that the financial institution is protected, the staff recommended in Memorandum 89-4 that the following be added to the Comment to Section 5303:

> Merely changing the terms of the account to eliminate survivorship rights does not affect the right of the financial institution to make payments in accordance with the terms of the account. See also Section 5405.

Probate Code § 5305 (amended). Presumption that sums on deposit are community property (pages 30-31 of Tentative Recommendation)

The Executive Committee is concerned that the Tentative Recommendation (as well as the existing statute) provides that an account held "formally and expressly as community property" will pass to the surviving spouse and is not subject to disposition by will of one of the spouses.

Under the existing statute and the Tentative Recommendation, a spouse who wishes to eliminate this survivorship right must (1) make a separate agreement with the other spouse that the share of the spouse in the account is subject to disposition by will, or (2) include in the original terms of the account that there is no right of survivorship or designate a P.O.D beneficiary for the spouse's share of the account, or (3) withdraw the funds from the account and open a new account that is not a survivorship account or (4) change the terms of the account to designate a P.O.D. beneficiary or to provide that the account is not a survivorship account.

The Executive Committee states:

> "We strongly support a provision similar to Section 5306 which would state clearly that an account in the name of husband and wife "as community property" is presumed not to have a survivorship feature.

STAFF RECOMMENDATION: To deal with the concern of the Executive Committee, the staff recommends that subdivision (c) of Section 5305 be revised to read as set out below and a new Section 5307 be added to the statute:

> (c) ~~Notwithstanding subdivision (a)~~ Except as provided in Section 5307, 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.

The new Section 5307 to be added to the statute would read:

> 5307. For the purposes of this chapter, except to the extent the terms of the account or deposit agreement expressly provide otherwise, if the parties to an account are married to each other and the account is expressly described in the account agreement as a "community property" account, the ownership of the account during lifetime and after the death of a spouse is governed by the law governing community property generally.

This revision of the statute will give the estate planning lawyer the flexibility needed in devising an appropriate estate plan. We have not attempted to deal in the section on "community property" accounts with the specific rights during lifetime and after death of a spouse. We believe it is better to rely on the general law relating to community property than it is to attempt to repeat that law in Section 5307.

The draft language set out above recognizes that the Executive Committee is concerned only about accounts held "formally and expressly as community property." If the funds are held in an account described as a "joint account" rather than as a "community property" account, the general rule that applies to all joint accounts would apply -- the right of survivorship cannot be defeated by a will. In this situation at least, the financial institution would be assured that the terms of the account at the time of the death of a joint account holder would determine the person entitled to the funds in the account at that time.

Probate Code § 5306 (amended). Tenancy in common accounts (page 31 of Tentative Recommendation)

STAFF RECOMMENDATION: The staff recommended in Memorandum 89-4 that the wording suggested in a previous letter from Ms. Merritt be adopted so that Section 5306 will read:

5306. For the purposes of this chapter, if 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.

Section 5406. Payment of account held in trust form where financial institution has no notice that account is not a totten trust account (page 32 of Tentative Recommendation)

Section 5406 is intended to distinguish a Totten trust account from a true trust account. Unless the financial institution has notice that the account is a true trust account, the financial institution may treat the account as a Totten trust account.

Comparable provisions of the Financial Code require that the notice that the account is a true trust account be "in writing." See, e.g. Financial Code § 853 (pages 36-37 of Tentative Recommendation), 6853 (page 42 of Tentative Recommendation).

The Executive Committee agrees with the staff that the notice under Section 5406 that the trust is a true trust should be "in writing."

STAFF RECOMMENDATION: The staff recommends that Section 5406 be revised to read:

5406. The provisions of this chapter that apply to the payment of a Totten 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 in writing that the account is not a Totten trust account as defined in Section ~~5101~~ 80.

NEED TO INTRODUCE A SPOT BILL

The deadline for submission of bills to the office of the Legislative Counsel is February 3 and the deadline for introduction of bills is March 10. The staff suggests that we have introduced a spot bill that contains only the revisions of the definitions. At the February meeting, the staff will prepare a draft of the entire bill, and the bill we introduce can then be amended to add the remainder of the bill.

Respectfully submitted,

John H. DeMoully
Executive Secretary

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January 9, 1989

California Law Revision Commission
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Re: **MEMORANDUM 89-4 WITH COMMENTS ON THE TENTATIVE RECOMMENDATION RELATING TO MULTIPLE-PARTY ACCOUNTS IN FINANCIAL INSTITUTIONS**

Dear Commissioners:

I am writing this letter on behalf of the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California.

While the Executive Committee believes the Tentative Recommendation is much better than the current law or the prior versions of the proposed legislation, the Executive Committee continues to be concerned with issues raised in the memorandum of Valerie J. Merritt dated December 1, 1988, and other issues. We believe some aspects of the proposal will create significant problems, and we think it would be a mistake to enact those portions of the proposal when there is the opportunity to remedy the problems before this is submitted to the legislature.

While we are happy that the staff agrees with the need to specifically and clearly address the issue of accounts held as a tenancy in common, we are deeply concerned that the staff still does not recognize that the same issues apply to accounts held formally and expressly "as community property." They have made the peculiar proposal that such accounts be presumed to have a survivorship feature. Furthermore, since all accounts with a

survivorship feature pass without regard to the terms of the will, and since this legislation applies retroactively to existing accounts, all those accounts we advised our clients to convert from joint tenancy to community property so that they would be part of the overall estate plan would suddenly be converted back! We believe the staff does not understand the implications of such retroactive presumptions that change the law. Since community property carries with it the power of testamentary disposition, we believe it bad public policy (if not unconstitutional retroactive taking) to deprive a party of the power of disposition without notice in this manner. We strongly oppose the staff draft of a new subparagraph (4) to Section 5203 and new (3) to the Comments to Section 5130. We strongly support a provision similar to Section 5306 which would state clearly that an account in the name of husband and wife "as community property" is presumed not to have a survivorship feature.

We would like to point out that the wording of some of these provisions creates a "community property with right of survivorship" form of holding property in California. When this issue was previously squarely addressed by the Commission, the Commission voted to reject the concept as it had too many problems to it. The Commission was inclined to wait to see what problems would develop in Nevada, which had just adopted such a scheme. It is still too early to judge the consequences of the Nevada law, and California is too large and populous a state to embark on such an experimental concept without a great deal more study and time to watch the experience of our neighbor.

As we have indicated in the past, we have grave concerns about the language of §5203(b), which we believe shows no desire to inform or protect the consumer. It should be deleted entirely. The last sentence is particularly offensive, but each sentence has serious problems to it. The statute continues to explicitly excuse the requirement that the consumer be told of the survivorship feature of joint accounts. We strongly believe that substantial compliance with §5203(a) is the better standard. We still strongly believe the essence of Civil §683(a) should be continued in this section and that it should be deleted if it cannot be rewritten. While the staff has expressly rejected this idea, we still believe the language in Valerie Merritt's prior memorandum is better than their provisions. To repeat, the provision should read:

> " (b) Use of the form language provided in this section is not necessary to create an account that is governed by this part. A contract of deposit should substantially comply with the meaning and intent of the form language and inform the parties establishing the account of any survivorship features of the form of account chosen. If the

form of language chosen substantially complies, the provisions of this part govern the type of account and the rights of the parties thereunder."

We are very concerned with proposed §5204. We believe this section does not add much to the law of agency and significantly detracts from the smooth implementation of agency relationships. Subparagraphs (g) and (h) are inherently contradictory. Subparagraph (g) should be deleted entirely. It gives a financial institution the power to reject any power of attorney not signed at the financial institution. There is no requirement of good faith or reason to question the validity of the document. If this provision stays in, virtually every general durable power of attorney will be useless in dealing with financial institutions. This is directly contrary to the intent of the law with regard to durable powers of attorney generally, and bad public policy. Practitioners have enough problems now with getting financial institutions to honor powers of attorney; there is no reason to add to those problems.

There are ambiguities throughout the Tentative Recommendation because it uses the term "trust account" for a "Totten trust account," and then uses the same term to denote an account held by the trustee of an express formal trust. For example, Section 5122(b)(3) uses "trust account" to refer to a formal trust situation, but §5126 uses the same term to refer to a Totten trust account. The term "Totten trust account" is a term of art that is widely understood. It is easily and clearly differentiated from accounts held by trustees of formal trusts. Why not use the existing term of art in the statute and avoid the ambiguities the use of "trust account" creates?

We've previously pointed out the problems of the use of the term "joint account" and the ambiguities inherent in it, and repeat the same ideas here. The term is sometimes used to refer to a joint account with an automatic survivorship feature and sometimes used to refer to any account held by two or more persons. This causes confusion, which needs to be dealt with. Using the term "joint tenancy account" when referring to such an account with a survivorship feature would go a long way toward removing the ambiguities.

We have problems with the definition of "party" in §5136(a). We can think of no reason to exclude an agent if one includes a guardian or conservator. Like a guardian or conservator, an agent can withdraw all funds from the account and otherwise deal with it. Like a guardian or conservator, the death of the agent should not be a death of a "party" for purposes of triggering the survivorship provisions or payable on death provisions. This section should be altered.

In answer to the question found in the Note on page 37, we believe the provisions for written notice should be the same as the current provisions of the law with regard to notice to insurance companies of beneficiary designations, notice to pension plans, and similar situations. We believe consistency in the treatment of similar situations to be a desirable characteristic.

We strongly agree with the staff that it would be a public service for the California Bankers Association to develop uniform forms for deposit accounts, which would clearly set forth the survivorship aspects of each type and would offer the option of an agency relationship rather than a joint account to the unsophisticated depositor.

Very truly yours,

Valerie J. Merritt

VJM:plh

cc: Irving D. Goldring, Esq.
James V. Quillinan, Esq.
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