

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Ownership of Amounts Withdrawn from Joint Account

February 2004

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **May 15, 2004.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends that the California Multiple-Party Accounts Law be revised to make clear that ownership of funds withdrawn from a joint account is based on the proportionate contributions of the parties to the account. This would reverse the rule of *Lee v. Yang*, 111 Cal. App. 4th 481, 3 Cal. Rptr. 3d 819 (2003), holding that a party who withdraws funds from a joint account owns the funds regardless of their source. The Commission further recommends clarification of the existing rule that withdrawal of sums on deposit in a joint account severs the right of survivorship in the amounts withdrawn to the extent of the ownership interest of the withdrawing party. The proposed revisions would not affect the law relating to spousal rights in a joint account, which are governed by a separate provision.

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

OWNERSHIP OF AMOUNTS WITHDRAWN FROM JOINT ACCOUNT

1 The California Multiple-Party Accounts Law¹ was enacted on recommendation
2 of the Law Revision Commission.² The law governs rights and duties of parties to
3 a multiple party account and of the financial institution that holds the account.

4 Probate Code Section 5301(a) states:

5 An account belongs, during the lifetime of all parties, to the parties in
6 proportion to the net contributions by each to the sums on deposit, unless there is
7 clear and convincing evidence of a different intent.

8 This section does not apply to an account between married persons, which is
9 governed by a separate provision.³

10 A recent appellate decision, *Lee v. Yang*,⁴ interprets Probate Code Section
11 5301(a) to confer ownership of funds withdrawn from a joint account on the
12 withdrawing party, regardless of the source of the funds. The Law Revision
13 Commission recommends that the statute be revised to make clear that ownership
14 of funds withdrawn from a joint account is determined by the net contributions of
15 the parties to the account, thereby reversing the rule of *Lee v. Yang*.⁵ The
16 Commission further recommends clarification of the existing rule that withdrawal
17 of sums on deposit in a joint account severs the right of survivorship in the
18 amounts withdrawn to the extent of the ownership interest of the withdrawing
19 party.⁶

CALIFORNIA MULTIPLE-PARTY ACCOUNTS LAW

20
21 The purpose of the Multiple-Party Accounts Law is to provide rules governing
22 the ownership of a multiple party account in a bank or other financial institution,
23 to clarify rights of creditors of the parties, and to simplify the procedure for
24 transfer of funds by the bank or other financial institution following the death of
25 the depositor. The law enacts the substance of Part VI of the Uniform Probate
26 Code.

27 The law distinguishes a joint account, which is payable on request of any party,
28 from a pay on death account or a trust account, to which a beneficiary has
29 restricted access. Under the law, the parties to a joint account have unrestricted

1. The law is located at Probate Code Sections 5100-5407.

2. See *Recommendation Relating to Nonprobate Transfers*, 16 Cal. L. Revision Comm'n Reports 129 (1982); see also *Recommendation Relating to Multiple-Party Accounts in Financial Institutions*, 20 Cal. L. Revision Comm'n Reports 95 (1990).

3. See Prob. Code § 5305.

4. 111 Cal. App. 4th 481, 3 Cal. Rptr. 3d 819 (2003).

5. See proposed amendment to Probate Code Section 5301 *infra*.

6. See proposed amendment to Probate Code Section 5303 *infra*.

1 withdrawal rights, regardless of ownership interests, and a financial institution
2 may pay out to a withdrawing party without fear of liability that the withdrawing
3 party may be taking out a greater share than that party's actual ownership interest
4 in the account. A joint account belongs, during the lifetime of all the parties, to the
5 parties in proportion to the net contribution by each to the sums on deposit, unless
6 there is clear and convincing evidence of a different intent.⁷

7 The general principle of ownership based on net contributions changed the rule
8 under former law. Until enactment of the Multiple-Party Accounts Law, each party
9 to a joint account was presumed to have an equal interest in the account.⁸ The
10 change was intended to capture the normal expectations of a depositor — a person
11 who deposits funds in a joint account normally does not intend to make an
12 irrevocable present gift of the funds deposited, and many people believe that
13 depositing funds in a joint account in a bank or savings and loan association has no
14 effect on ownership of the funds until their death.⁹

15 *LEE V. YANG*

16 In *Lee v. Yang*, the parties had commingled their funds in several joint accounts
17 in contemplation of marriage. When their marriage plans foundered, one party
18 withdrew from the accounts an amount in excess of that party's net contributions
19 to the sums on deposit. The other party sued to recover the excess withdrawal.

20 **Majority Opinion**

21 The court of appeal in *Lee v. Yang* noted enactment of the rule that an account
22 belongs to the parties in proportion to the net contribution by each to the sums on
23 deposit, unless there is clear and convincing evidence of a different intent. The
24 court distinguished sums remaining on deposit from sums withdrawn. "This
25 proportionate ownership rule, however, does not articulate a rule of ownership as
26 to funds withdrawn by a party, irrespective of that party's net contribution."¹⁰

27 The court concluded that the law is unclear as to ownership of funds that have
28 been withdrawn and are therefore no longer on deposit. The court noted the federal
29 gift tax rule that a gift of funds in a joint account is effective when funds are
30 withdrawn rather than when they are deposited.¹¹ The court reasoned that
31 withdrawal should be deemed a gift to the extent there is no independent legal
32 obligation requiring the party to account for the proceeds. The court concluded

7. Prob. Code § 5301.

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

9. *Multiple-Party Accounts in Financial Institutions*, *supra* note 2, at 108. This explanation parallels the Commission's earlier explanation in *Nonprobate Transfers*, *supra* note 2, at 138.

10. 3 Cal. Rptr. 3d at 826.

11. Treas. Reg. § 25.2511-1 (1958). This rule is cited in the Law Revision Commission recommendation as consistent with the rule under the Multiple-Party Accounts Law. *Multiple-Party Accounts in Financial Institutions*, *supra* note 2, at 108.

1 that in this case there was substantial evidence that there was no agreement
2 between the parties restricting the amount the parties could withdraw from the
3 account. “The inescapable inference is that likewise there was no restriction on the
4 use of the withdrawn funds and hence no legal obligation to account for or return
5 them.”¹² By virtue of the withdrawing party’s unrestricted right to withdraw and
6 apply funds to the party’s own benefit, ownership of the funds passed to the
7 withdrawing party by way of gift.

8 **Dissent**

9 The dissent in *Lee v. Yang* noted that the core distinction between ownership of
10 the funds and the power of withdrawal is clearly articulated in the law and in the
11 legislative background of the law.¹³ The dissent pointed out that a rule allowing a
12 party to an account to withdraw and keep 100% of the funds is contrary to the
13 purpose of the Multiple-Party Accounts Law, which was adopted to avoid the
14 imputation of a gift of sums deposited into a joint tenancy account.

15 The dissent also noted the Uniform Probate Code’s commentary to UPC § 6-
16 103, which is the source of, and identical to, the California statute:

17 Th[is] section does not undertake to describe the situation between parties if one
18 withdraws more than he is then entitled to as against the other party. [Other
19 sections] protect a financial institution in such circumstances without reference to
20 whether a withdrawing party may be entitled to less than he withdraws as against
21 another party. Presumably, overwithdrawal leaves the party making the excessive
22 withdrawal liable to the beneficial owner as a debtor or trustee. Of course,
23 evidence of intention by one to make a gift to the other of any sums withdrawn by
24 the other in excess of his ownership should be effective.

25 Finally, the dissent argued that the majority’s reliance on the federal gift tax rule
26 is misplaced. That rule only determines the timing of a transfer of ownership for
27 taxation purposes, not whether a transfer of ownership has occurred at all. Whether
28 there is a transfer of ownership is determined by state property law, not federal gift
29 tax law.

30 The dissent concluded:¹⁴

31 In the majority’s view, a joint tenancy account holder with an urgent need for
32 cash, or merely harboring a vengeful motive, can wipe out an entire account with

12. 3 Cal. Rptr. 3d at 828.

13. The Law Revision Commission’s recommendation states that the net contribution rule applies to amounts withdrawn as well as to amounts on deposit. The recommendation notes that “the source of the funds deposited is taken into account in determining the interests in funds deposited in or withdrawn from a joint account”, citing to Probate Code Section 5301(a). *Multiple-Party Accounts in Financial Institutions*, *supra* note 2, at 105. The Commission’s letter of transmittal of the recommendation to the Governor and Legislature addresses this point in further detail: “The multiple-party accounts law ... permits a person having the present right of withdrawal to sever the joint tenancy by withdrawing the funds from the account. Withdrawal of the funds does not, however, affect the ownership rights of the parties to the funds withdrawn.” *Id.* at 97-98.

14. 3 Cal. Rptr. 3d at 834.

1 impunity unless the owner of the funds can prove that there had been a prior,
2 enforceable agreement restricting the power of withdrawal or the use of the funds.
3 This approach — requiring an owner of funds to prove he has not made a gift —
4 is contrary to the presumption of ownership and burden of proof set forth in
5 section 5301; is contrary to general notions of property law (see, e.g., *Blonde v.*
6 *Estate of Jenkins* (1955) 131 Cal.App.2d 682, 686, 281 P.2d 14 [“[t]he donee has
7 the burden to prove the gift”]); and is contrary to the Commission’s comments
8 that “[w]ithdrawal of ... funds does not ... affect the ownership rights of the parties
9 to the funds withdrawn” and that “the source of the funds deposited is taken into
10 account in determining the interests in funds deposited in or withdrawn from a
11 joint account.” (1990 Recommendation, *supra*, 20 Cal. Law Revision Com. Rep.,
12 at pp. 98, 105, italics added, fn. omitted.)

13 Critique

14 The Commission believes *Lee v. Yang* was incorrectly decided.¹⁵ The effect of
15 the decision is the opposite of that intended by the law. Under prior law the
16 depositor was presumed to own an equal share of funds withdrawn from a joint
17 account. The Multiple-Party Accounts Law presumes the depositor owns funds
18 withdrawn based on the depositor’s net contributions. *Lee v. Yang*, however,
19 presumes the depositor owns none of the funds withdrawn.

20 The decision in the case appears to be based on a misconstruction of the federal
21 gift tax rule. Under the federal rule, a gift occurs on withdrawal of funds from a
22 joint account by the nondepositor “to the extent” the nondepositor has no
23 obligation to account to the depositor for the proceeds.¹⁶ Whether a nondepositor
24 has an obligation to account is determined by state property law, not by the federal
25 gift tax law. As the dissent in *Lee v. Yang* rightly points out, the court’s reliance on
26 federal estate tax law for its answer to the state property law issue begs the
27 question.¹⁷

28 The California statute is drawn from the Uniform Probate Code provisions on
29 multiple party accounts.¹⁸ A majority of states have enacted the same statute.
30 California law requires that a statute based on a uniform act must be uniformly
31 construed.¹⁹ When confronted with the issue of overwithdrawal by a party to a
32 joint account, the courts of other states that have enacted the uniform act have

15. See also 25 *Estate Planning & California Probate Reporter* 60 (2003) (“The dissent appears to have the better reading skills.”).

16. Treas. Reg. § 25.2511-1 (1958).

17. 3 Cal. Rptr. 3d at 833-34.

18. UPC § 6-103. The multiple party account provisions were revised in 1989 and made part of a larger article in the Uniform Probate Code on nonprobate transfers; the relevant provision on ownership rights is now Section 6-211. The National Conference of Commissioners on Uniform State Laws has also promulgated the statute as a free standing act apart from the Uniform Probate Code. See Uniform Multiple Person Accounts Act (Section 11(b)) and Uniform Nonprobate Transfers on Death Act (Section 211(b)).

19. Prob. Code § 2(b).

1 invariably concluded that the withdrawing party's ownership right must be limited
2 to the party's net contribution.²⁰

3 POLICY CONSIDERATIONS

4 The Law Revision Commission recommends that the statute be revised to clearly
5 state what rule applies if a cotenant withdraws more than the cotenant's share of
6 funds from a joint account. Relevant policy considerations include the intention of
7 the parties and proof issues involved in tracing.

8 **Intention of the Parties**

9 A depositor may add the name of another party to an account for a variety of
10 reasons. The depositor may want to facilitate use of the funds for the mutual
11 benefit of the parties. The depositor may want to enable the named party to engage
12 in transactions on behalf of the depositor — in effect a power of attorney. Or a
13 depositor may add another party's name to the account so that the property will
14 pass to the joint owner free of probate, with no intention to make a lifetime gift.

15 In the case of a marital account, the parties may well intend to commingle their
16 funds, and to allow each to apply the funds to both their individual and common
17 benefit. The vast number of joint tenancy accounts are marital accounts. The
18 Multiple-Party Accounts Law deals with a marital account separately. Under
19 Probate Code Section 5305, the net contribution of married persons to a joint
20 account is presumed to be and remain their community property. The community
21 property laws impose fiduciary obligations on the spouses in the management and
22 control of the community property, and preserve equal ownership interests in the
23 property.

24 Before enactment of the Multiple-Party Accounts Law, nonmarital parties to a
25 joint account were also presumed to own the account in equal shares. This was the
26 law not only in California but also the prevailing view throughout the country.²¹
27 The purpose of the Multiple-Party Accounts Law was to change the presumption
28 from equal ownership between nonmarital parties to ownership based on net
29 contributions.²²

30 The presumption of ownership based on net contributions effectuates the policy
31 of recognizing the normal situation involved in establishing a nonmarital joint
32 account. The dissent in the *Lee v. Yang* articulates this policy:²³

20. See, e.g., *Erhardt v. Leonard*, 104 Idaho 197, 657 P.2d 494 (Idaho App. 1983); *Matter of Estate of Maxfield*, 856 P.2d 1056 (Utah 1993); *Vaughn v. Bernhardt*, 345 S.C. 196, 547 S.E.2d 869 (S. C. 2001).

21. Joint accounts were presumed to be vested in the parties as equal contributors and owners in the absence of evidence to the contrary; the presumption was rebuttable, the intention of the parties being the controlling factor. See 10 Am. Jur. 2d *Banks & Financial Institutions* § 671 (1997).

22. "The 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." *Multiple-Party Accounts In Financial Institutions*, *supra* note 2, at 97 (1990).

23. 3 Cal. Rptr. 3d at 834.

1 [I]f a cotenant removes more than his or her share of funds from a joint account,
2 the [Multiple-Party Accounts Law] properly places on that person the burden of
3 proving, by clear and convincing evidence, ownership rights in those funds by gift
4 or otherwise. This burden of proof comports with the ethical principle that those
5 who are added as cosignatories on a joint account — invariably persons in close,
6 trusting personal relationships — will respect the other party’s ownership of
7 deposited funds.

8 **Tracing**

9 A problem with basing ownership on net contributions is the difficulty of proof
10 — the painstaking tracing and accounting of funds that is required. The court in
11 *Lee v. Yang* articulates this policy consideration in support of its conclusion that
12 the withdrawing party should be presumed to own the funds withdrawn.

13 The Multiple-Party Accounts Law recognizes potential tracing problems, and
14 deals with them directly. In the absence of proof otherwise, the net contribution of
15 each of the parties is deemed to be an equal amount.²⁴

16 This rule does not apply in the case of a marital account. That is where most
17 commingling of funds occurs. The spousal equal ownership presumption of
18 Probate Code Section 5305 avoids the problems inherent in attempting to
19 disentangle the interests of the marital partners who may have commingled their
20 funds over an extended period. A spouse may rebut the presumption by tracing to
21 separate property deposits or by proving a contrary written agreement.

22 In the case of an account between domestic partners, there may likewise be
23 substantial commingling of funds. A clear set of rules governs ownership interests
24 among registered domestic partners. Until January 1, 2005, a rule of proportionate
25 ownership applies, absent a written agreement that specifies the rights of the
26 parties.²⁵ After that date the ownership interests of the parties are governed by a
27 community property regime.²⁶

28 Probate Code Section 5301 will ordinarily come into play only in the case of an
29 account to which one depositor adds the name of another for the purpose of caring
30 for the depositor in old age or for the purpose of transferring the funds at the death
31 of the depositor. Commingling of funds is relatively rare in those circumstances,
32 and tracing is not ordinarily a problem. Where tracing is not possible, the
33 Multiple-Party Accounts Law provides a rough measure of justice through its
34 presumption of equal ownership.

24. Prob. Code § 5314(b).

25. Civ. Code § 299.5(e) (“Any property or interest acquired by the partners during the domestic partnership where title is shared shall be held by the partners in proportion of interest assigned to each partner at the time the property or interest was acquired unless otherwise expressly agreed in writing by both parties.”).

26. Civ. Code § 297.5, as enacted by 2003 Cal. Stats. ch. 421, § 4; see also Civ. Code § 299.3 (notice by Secretary of State).

1

RECOMMENDATION

2 **Overwithdrawal**

3 The Multiple-Party Accounts Law does not directly answer the question of
4 liability for overwithdrawal by a party. The commentary to the uniform act from
5 which the California statute is drawn suggests that the law should impose liability
6 for overwithdrawal. Cases in other jurisdictions that have enacted the uniform act
7 have consistently concluded that the net contribution rule applicable to
8 determination of property interests in a joint account should also apply to amounts
9 withdrawn from the account.

10 Determination of rights between parties to a joint account in the case of
11 overwithdrawal is not a simple matter. Parties make deposits and withdrawals
12 from an account; some of the withdrawals may be intended to benefit the
13 community, others may be intended for individual benefit. Where community
14 benefit ends and individual benefit begins is not always clear. There may be
15 unspoken agreements and understandings. The court in *Lee v. Yang* was
16 appropriately concerned about the potential impact of a rule that requires tracing.

17 On the other hand, the Multiple-Party Accounts Law takes into account the
18 complexities involved in properly accounting for deposits and expenditures. The
19 law provides that in determining the net contribution of the parties, the net
20 contribution is presumed to be an equal amount in the absence of proof
21 otherwise.²⁷ Moreover, the law provides special rules for handling ownership
22 rights in a marital or domestic partnership account, where the commingling issue
23 is most likely to arise.

24 The Commission recommends that the law make explicit the presumption that
25 the withdrawing party owns the funds withdrawn only to the extent of the party's
26 net contribution. Overwithdrawal should not transfer ownership of the funds
27 absent a showing by clear and convincing evidence of the depositor's intent to
28 make a gift of them. Although that approach may require tracing, this should not
29 be a substantial problem because of the presumption of equal ownership in the
30 absence of proof otherwise and because of the relative rarity of cases where
31 tracing is a significant issue.

32 **Severance of Joint Tenancy**

33 Ownership of funds in a joint account during the lifetime of the parties is based
34 on net contributions of the parties. But at death of a party, the funds in the account
35 pass by right of survivorship to the surviving parties, regardless of net
36 contributions.²⁸ It is a common practice for a depositor to name a party to a joint

27. Prob. Code § 5134.

28. Prob. Code § 5302.

1 account with the intention to pass that property outside of probate on the
2 depositor's death.

3 Several cases have arisen in other jurisdictions where the survivor has
4 withdrawn funds from the joint account before the depositor's death. On the
5 depositor's death, the depositor's estate has recaptured the funds because they
6 were withdrawn during the lifetime of the parties, when ownership was based on
7 net contributions. Moreover, the funds withdrawn do not pass to the survivor on
8 the depositor's death because only "sums on deposit" at the time of death pass by
9 survivorship, and withdrawn funds are no longer on deposit.²⁹

10 While facially correct, the effect of these cases is to defeat the intention of a
11 depositor who creates a joint account for the express purpose of passing funds at
12 death to the other parties to the account. The joint account is ill-designed for that
13 purpose. A significant reason for enactment of the Multiple-Party Accounts Law
14 was to provide a vehicle to enable a person to pass funds in an account to a
15 beneficiary without conferring on the beneficiary a present withdrawal right. The
16 law authorizes a P.O.D. (pay on death) account in which the depositor names a
17 beneficiary to receive funds remaining in the account on the death of the depositor,
18 without creating any present rights in the beneficiary.

19 California case law is clear that a party to a joint account may sever survivorship
20 rights in that party's own property by withdrawal of funds from the account.³⁰ The
21 statutory embodiment of this principle is not so clear, however:³¹

22 Withdrawal of funds from the account by a party with a present right of
23 withdrawal during the lifetime of a party also eliminates rights of survivorship
24 upon the death of that party with respect to the funds withdrawn.

25 Broadly read, the provision is susceptible to the interpretation that a withdrawing
26 party may affect survivorship rights of others in the amounts withdrawn even
27 though the party has no ownership interest in the amounts withdrawn.

28 The Law Revision Commission recommends tightening the statute to more
29 clearly address the issue. A party's ability to terminate survivorship rights in funds
30 withdrawn from a joint account should be limited to the party's ownership interest
31 in the account; the withdrawing party should not be able to alter survivorship
32 rights in funds over which the party has withdrawal rights but no ownership
33 interest. The statute should be revised to state clearly that, "Withdrawal of funds
34 from the account by a party also eliminates rights of survivorship with respect to
35 the funds withdrawn to the extent of the party's net contribution to the account."

29. *Vaughn v. Bernhardt*, 345 S.C. 196, 547 S.E.2d 869 (S. C. 2001); *Shourek v. Stirling*, 621 N.E.2d 1107, 1110 (Ind. 1993).

30. *Estate of Propst*, 50 Cal. 3d 448, 461-62, 268 Cal. Rptr. 114, 788 P.2d 628 (1990) ("Accordingly, we hold that in the absence of prior agreement, a joint tenant of personal property may unilaterally sever his or her own interest from the joint tenancy and thereby nullify the right of survivorship, as to that interest, of the other joint tenant or tenants without their consent.").

31. Prob. Code § 5303(c).

PROPOSED LEGISLATION

1 **Prob. Code § 5301 (amended). Ownership during lifetime**

2 5301. (a) An account belongs, during the lifetime of all parties, to the parties in
3 proportion to the net contributions by each to ~~the sums on deposit~~, unless there is
4 clear and convincing evidence of a different intent.

5 (b) In the case of a P.O.D. account, the P.O.D. payee has no rights to the sums
6 on deposit during the lifetime of any party, unless there is clear and convincing
7 evidence of a different intent.

8 (c) In the case of a Totten trust account, the beneficiary has no rights to the sums
9 on deposit during the lifetime of any party, unless there is clear and convincing
10 evidence of a different intent. If there is an irrevocable trust, the account belongs
11 beneficially to the beneficiary.

12 **Comment.** Section 5301 is amended to avoid the implication that the net contribution rule is
13 used only to determine the ownership interests of the parties in sums remaining on deposit. See
14 Section 5150 (“sums on deposit” defined). The net contribution rule is used also to determine
15 whether a party has withdrawn from the account an amount in excess of the party’s ownership
16 interest. The amendment reverses the holding of *Lee v. Yang*, 111 Cal. App. 4th 481, 3 Cal. Rptr.
17 3d 819 (2003) (withdrawing party owns funds withdrawn from joint account regardless of source
18 of funds). In the absence of proof otherwise, the net contribution to an account of each of the
19 parties having a present right of withdrawal is deemed to be an equal amount. Section 5134 (“net
20 contribution” defined).

21 **Prob. Code § 5303 (amended). Right of survivorship and terms of account**

22 5303. (a) The provisions of Section 5302 as to rights of survivorship are
23 determined by the form of the account at the death of a party.

24 (b) Once established, the terms of a multiple-party account can be changed only
25 by any of the following methods:

26 (1) Closing the account and reopening it under different terms.

27 (2) Presenting to the financial institution a modification agreement that is signed
28 by all parties with a present right of withdrawal. If the financial institution has a
29 form for this purpose, it may require use of the form.

30 (3) If the provisions of the terms of the account or deposit agreement provide a
31 method of modification of the terms of the account, complying with those
32 provisions.

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

34 (c) During the lifetime of a party, the terms of the account may be changed as
35 provided in subdivision (b) to eliminate or to add rights of survivorship.
36 Withdrawal of funds from the account by a party ~~with a present right of~~
37 ~~withdrawal during the lifetime of a party~~ also eliminates rights of survivorship
38 ~~upon the death of that party~~ with respect to the funds withdrawn to the extent of
39 the party’s net contribution to the account.

1 **Comment.** Section 5303 is amended to make clear that, although a party may sever the right of
2 survivorship in a joint account by withdrawal of funds, the severance is limited in the case of an
3 overwithdrawal. A party’s ownership interest in an account, and the concomitant power to
4 terminate a right of survivorship by withdrawing funds from the account, is determined by the
5 party’s net contribution to the account. See Section 5301 (ownership during lifetime). This
6 codifies the rule in *Estate of Propst*, 50 Cal. 3d 448, 461-62, 268 Cal. Rptr. 114, 788 P.2d 628
7 (1990) (“Accordingly, we hold that in the absence of prior agreement, a joint tenant of personal
8 property may unilaterally sever his or her own interest from the joint tenancy and thereby nullify
9 the right of survivorship, as to that interest, of the other joint tenant or tenants without their
10 consent.”).
