

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

Ownership of Amounts Withdrawn  
from Joint Account

June 2004

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

#### NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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June 10, 2004

To: The Honorable Arnold Schwarzenegger  
*Governor of California*, and  
The Legislature of California

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Commission recommends that the California Multiple-Party Accounts Law be revised to make clear that ownership of funds withdrawn from a joint account is based on the proportionate contributions of the parties to the account.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the existing rule that withdrawal of sums on deposit in a joint account severs the right of survivorship in the amounts withdrawn to the extent of the ownership interest of the withdrawing party.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.

Respectfully submitted,

Frank Kaplan  
*Chairperson*



## OWNERSHIP OF AMOUNTS WITHDRAWN FROM JOINT ACCOUNT

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

Probate Code Section 5301(a) states:

An 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.

This section does not apply to an account between married persons, which is governed by a separate provision.<sup>3</sup>

A recent appellate decision, *Lee v. Yang*,<sup>4</sup> interprets Probate Code Section 5301(a) to confer ownership of funds withdrawn from a joint account on the withdrawing party, regardless of the source of the funds. The Law Revision Commission recommends that the statute be revised to make clear that ownership of funds withdrawn from a joint account is determined by the net contributions of the parties to the account, thereby reversing the rule of *Lee v. Yang*.<sup>5</sup> The Commission further recommends clarification of the existing rule that withdrawal of sums on deposit in a joint account

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1. Prob. Code §§ 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 (community property presumption).

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

5. See proposed amendment to Prob. Code § 5301 *infra*.

severs the right of survivorship in the amounts withdrawn to the extent of the ownership interest of the withdrawing party.<sup>6</sup>

### CALIFORNIA MULTIPLE-PARTY ACCOUNTS LAW

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

The law distinguishes a joint account, which is payable on request of any party, from a pay on death account or a trust account, to which a beneficiary has restricted access. Under the law, the parties to a joint account have unrestricted withdrawal rights, regardless of ownership interests, and a financial institution may pay out to a withdrawing party without fear of liability that the withdrawing party may be taking out a greater share than that party's actual ownership interest in the account. A joint account belongs, during the lifetime of all the parties, to the parties in proportion to the net contribution by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.<sup>7</sup>

The general principle of ownership based on net contributions changed the rule under former law. Until enactment of the Multiple-Party Accounts Law, each party to a joint account was presumed to have an equal interest in the account.<sup>8</sup> The change was intended to capture the normal expectations of a depositor — a person who deposits funds in

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6. See proposed amendment to Prob. Code § 5303 *infra*.

7. Prob. Code § 5301.

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

a joint account normally does not intend to make an irrevocable present gift of the funds deposited, and many people believe that depositing funds in a joint account in a bank or savings and loan association has no effect on ownership of the funds until their death.<sup>9</sup>

### LEE V. YANG

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

#### Majority Opinion

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

The court concluded that the law is unclear as to ownership of funds that have been withdrawn and are therefore no longer on deposit. The court noted the federal gift tax rule that a gift of funds in a joint account is effective when funds are withdrawn rather than when they are deposited.<sup>11</sup> The court

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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. *Lee*, 111 Cal. App. 4th at 481, 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-

reasoned that withdrawal should be deemed a gift to the extent there is no independent legal obligation requiring the party to account for the proceeds. The court concluded that in this case there was substantial evidence that there was no agreement between the parties restricting the amount the parties could withdraw from the account. “The inescapable inference is that likewise there was no restriction on the use of the withdrawn funds and hence no legal obligation to account for or return them.”<sup>12</sup> By virtue of the withdrawing party’s unrestricted right to withdraw and apply funds to the party’s own benefit, ownership of the funds passed to the withdrawing party by way of gift.

### Dissent

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

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Party Accounts Law. *Multiple-Party Accounts in Financial Institutions*, *supra* note 2, at 108.

12. *Lee*, 111 Cal. App. 4th at 493, 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.” *Multiple-Party Accounts in Financial Institutions*, *supra* note 2, at 105 (citing Prob. Code § 5301(a)). 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.



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

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

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

The dissent concluded:<sup>14</sup>

In the majority's view, a joint tenancy account holder with an urgent need for cash, or merely harboring a vengeful motive, can wipe out an entire account with impunity unless the owner of the funds can prove that there had been a prior, enforceable agreement restricting the power of withdrawal or the use of the funds. This approach — requiring an owner of funds to prove he has *not* made a gift — is contrary to the presumption of ownership and burden of proof set forth in section 5301; is contrary to general notions of property law (see, e.g., *Blonde v. Estate of Jenkins* (1955) 131 Cal.App.2d 682, 686, 281 P.2d 14 [“[t]he donee has the burden to prove the gift”]); and is

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14. *Lee*, 111 Cal. App. 4th at 500-01, 3 Cal. Rptr. 3d at 834 (emphasis in original).

contrary to the Commission's comments that "[w]ithdrawal of . . . funds does not . . . affect the ownership rights of the parties to the funds withdrawn" and 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." (1990 Recommendation, *supra*, 20 Cal. Law Revision Com. Rep., at pp. 98, 105, italics added, fn. omitted.)

### Critique

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

The decision in the case appears to be based on a misconstruction of the federal gift tax rule. Under the federal rule, a gift occurs on withdrawal of funds from a joint account by the nondepositor *to the extent* the nondepositor has no obligation to account to the depositor for the proceeds.<sup>16</sup> Whether or not a nondepositor has an obligation to account is determined by state property law, not by the federal gift tax law. As the dissent in *Lee v. Yang* rightly points out, the court's reliance on federal estate tax law for its answer to the state property law issue begs the question.<sup>17</sup>

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15. See also Comment, 25 Est. Plan. & Cal. Prob. Rep. 60 (2003) ("The dissent appears to have the better reading skills."); Granberg, *What's Yours is Mine, in Joint Bank Accounts, 'Lee' Decides*, S.F. Daily Journal, May 14, 2004, at 5 ("dissent presented compelling arguments").

16. Treas. Reg. § 25.2511-1 (1958).

17. *Lee*, 111 Cal. App. 4th at 499-500, 3 Cal. Rptr. 3d at 833-34.

The California statute is drawn from the Uniform Probate Code provisions on multiple party accounts.<sup>18</sup> A majority of states have enacted the same statute. California law requires that a statute based on a uniform act must be uniformly construed.<sup>19</sup> When confronted with the issue of overwithdrawal by a party to a joint account, the courts of other states that have enacted the uniform act have invariably concluded that the withdrawing party's ownership right must be limited to the party's net contribution.<sup>20</sup>

### POLICY CONSIDERATIONS

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

#### **Intention of the Parties**

A depositor may add the name of another party to an account for a variety of reasons. The depositor may want to facilitate use of the funds for the mutual benefit of the parties. The depositor may want to enable the named party to engage in transactions on behalf of the depositor — in effect a power of attorney. Or a depositor may add another party's name to

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18. Unif. Prob. Code § 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 (§ 11(b)) and Uniform Nonprobate Transfers on Death Act (§ 211(b)).

19. Prob. Code § 2(b).

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

the account so that the property will pass to the joint owner free of probate, with no intention to make a lifetime gift.

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

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

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

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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.

23. *Lee*, 111 Cal. App. 4th at 501, 3 Cal. Rptr. 3d at 834.

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

### Tracing

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

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

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

In the case of an account between domestic partners, there may likewise be substantial commingling of funds. A clear set of rules governs ownership interests among registered domestic partners. Until January 1, 2005, a rule of proportionate ownership applies, absent a written agreement

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24. Prob. Code § 5134(b).

that specifies the rights of the parties.<sup>25</sup> After that date the ownership interests of the parties are governed by a community property regime.<sup>26</sup>

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

## RECOMMENDATION

### **Overwithdrawal**

The Multiple-Party Accounts Law does not directly answer the question of liability for overwithdrawal by a party. The commentary to the uniform act from which the California statute is drawn suggests that the law should impose liability for overwithdrawal.<sup>27</sup> Cases in other jurisdictions that have enacted the uniform act have consistently concluded that the net contribution rule applicable to determination of property interests in a joint account should also apply to amounts withdrawn from the account.

Determination of rights between parties to a joint account in the case of overwithdrawal is not a simple matter. Parties

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25. Fam. 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. Fam. Code § 297.5; see also Fam. Code § 299.3 (notice by Secretary of State).

27. Unif. Prob. Code § 6-103 cmt.

make deposits and withdrawals from an account; some of the withdrawals may be intended for common benefit, others may be intended for individual benefit. Where common benefit ends and individual benefit begins is not always clear. There may be unspoken agreements and understandings. The court in *Lee v. Yang* was appropriately concerned about the potential impact of a rule that requires tracing.

On the other hand, the Multiple-Party Accounts Law takes into account the complexities involved in properly accounting for deposits and expenditures. The law provides that in determining the net contribution of the parties, the net contribution is presumed to be an equal amount in the absence of proof otherwise.<sup>28</sup> Moreover, the law provides special rules for handling ownership rights in a marital or domestic partnership account, where the commingling issue is most likely to arise.

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

### **Severance of Joint Tenancy**

Ownership of funds in a joint account during the lifetime of the parties is based on net contributions of the parties. But at death of a party, the funds in the account pass by right of survivorship to the surviving parties, regardless of net

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28. Prob. Code § 5134.

contributions.<sup>29</sup> It is a common practice for a depositor to name a party to a joint account with the intention to pass that property outside of probate on the depositor's death.

Several cases have arisen in other jurisdictions where the survivor has withdrawn funds from the joint account before the depositor's death. On the depositor's death, the depositor's estate has recaptured the funds because they were withdrawn during the lifetime of the parties, when ownership was based on net contributions. Moreover, the funds withdrawn do not pass to the survivor on the depositor's death because only "sums on deposit" at the time of death pass by survivorship, and withdrawn funds are no longer on deposit.<sup>30</sup>

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

California case law is clear that a party to a joint account may sever survivorship rights in that party's own property by withdrawal of funds from the account.<sup>31</sup> The statutory embodiment of this principle is not so clear, however:<sup>32</sup>

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29. Prob. Code § 5302.

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

31. *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 contrary agreement, a joint tenant of personal property may unilaterally sever his or her



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

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

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

### **Protection of Financial Institution**

The Multiple-Party Accounts Law is designed to facilitate transactions in a multiple party account. To this end, a financial institution may honor a withdrawal by an authorized person without inquiry as to the source of the funds withdrawn or their proposed application; nor is the financial institution obligated to determine the withdrawing party's net contribution or to prevent an overwithdrawal.<sup>33</sup> Payment by the financial institution to a party having a withdrawal right discharges the financial institution from claims for the funds

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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.").

32. Prob. Code § 5303(c).

33. Prob. Code § 5401(c).

withdrawn, whether or not payment is consistent with beneficial ownership of the funds; the payment has no bearing on the rights of parties among themselves.<sup>34</sup>

In conjunction with clarification of the rule that ownership of amounts withdrawn is based on net contributions, the law should make clear that no new accounting or monitoring obligation is imposed on a financial institution. The financial institution should not be required to make inquiry concerning the source or use of funds withdrawn or be obligated to trace net contributions of the parties.<sup>35</sup>

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34. Prob. Code § 5405.

35. See proposed revision to Prob. Code § 5401(c).

## PROPOSED LEGISLATION

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

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

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

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

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

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

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

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

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

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

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

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

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

**Comment.** Section 5303 is amended to make clear that, although a party may sever the right of survivorship in a joint account by withdrawal of funds, the severance is limited in the case of an overwithdrawal. A party's ownership interest in an account, and the concomitant power to terminate a right of survivorship by withdrawing funds from the account, is determined by the party's net contribution to the account. See Section 5301 (ownership during lifetime). This codifies the rule in *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.").

**Prob. Code § 5401 (amended). Rights of financial institution**

5401. (a) Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be

paid, on request and according to its terms, to any one or more of the parties or agents.

(b) The terms of the account or deposit agreement may require the signatures of more than one of the parties to a multiple-party account during their lifetimes or of more than one of the survivors after the death of any one of them on any check, check endorsement, receipt, notice of withdrawal, request for withdrawal, or withdrawal order. In such case, the financial institution shall pay the sums on deposit only in accordance with such terms, but those terms do not limit the right of the sole survivor or of all of the survivors to receive the sums on deposit.

(c) A financial institution is not required to do any of the following *pursuant to Section 5301, 5303, or any other provision of this part*:

(1) Inquire as to the source of funds received for deposit to a multiple-party account, or inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

(2) Determine any party's net contribution.

(3) Limit withdrawals or any other use of an account based on the net contribution of any party, whether or not the financial institution has actual knowledge of each party's contribution.

(d) All funds in an account, unless otherwise agreed in writing by the financial institution and the parties to the account, remain subject to liens, security interests, rights of setoff, and charges, notwithstanding the determination or allocation of net contributions with respect to the parties.

**Comment.** Subdivision (c) of Section 5401 is amended to state expressly that a financial institution has no duty with respect to tracing net contributions of a party under either Section 5301 (ownership during lifetime) or 5303 (right of survivorship and terms of account). This is not a change in, but is declarative of, existing law.

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