

UNIFORM MULTIPLE-PERSON ACCOUNTS ACT (1989/1998)

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UNIFORM MULTIPLE-PERSON ACCOUNTS ACT (1989/1998)

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UNIFORM MULTIPLE-PERSON ACCOUNTS ACT (1989/1998)

PREFATORY NOTE

This Act is a free-standing version of Part 2 (formerly Part 1) of Article VI of the Uniform Probate Code, as revised in 1989. The Act comprehensively covers the problems of financial institution accounts in which one or more persons have an interest.

The Act addresses the variety of state statutes that protect financial institutions in their dealings with joint and survivorship accounts, and resolves the doctrinal confusion in judicial decisions that uphold so-called Totten Trust accounts (which provide probate avoiding death benefits), yet invalidate functionally indistinguishable POD (payable on death) accounts. The Act speaks separately to (i) ownership of accounts as between multiple owners, and the existence, validity, and revocability of survivors' benefits; and (ii) financial institution protection.

The Act recognizes that a depositor may add another person to an account for various reasons. The depositor may intend to reflect lifetime ownership of the account by more than one person, or to pass sums on deposit at death to another person, or simply to enable account transactions by a third person as a convenience without creating any ownership or survivorship rights in the third person. The traditional "joint account" does not adequately allow the depositor to distinguish among the different functions of the multiple-person account, and the depositor's use of a joint account for one purpose may yield unwanted consequences for other purposes.

The Act clarifies the relationships among the various persons involved with an account. The account may be owned by a single party or by multiple parties. Either a single-party account or a multiple-party account may include a POD beneficiary designation or an agency (power of attorney) designation or both. The Act includes sample statutory forms that provide clear and simple instructions to both the financial institution and depositor in setting up multiple-person accounts.

Under the Act, an account is owned by the parties during their lifetimes in accordance with each party's net contribution to the account. One party owns all if that party is the sole contributor to the account. Evidence of intention by a party to make a gift to another party might change the result, but no intention to make a present gift is imputed from opening an account in two names or from making an additional deposit to an account.

Rights at death, on the other hand, are governed by the principle that a depositor intends account balances to pass at death to the account survivors. The Act establishes a preference for survivorship between the parties whether or not specified in the account contract. But if the account contract expressly negates survivorship rights or if the account is designated as a tenancy in common, the surviving parties to the account do not take by right of survivorship.

The Act treats accounts in Totten Trust form as POD accounts. Survivorship benefits under multiple-party or POD accounts arise at death, and benefits are conferred by force of

contract law and the statute. Survivorship rights cannot be changed except by notice to the financial institution or a change in account form. Survivorship benefits, though revocable and effective on death for practical purposes, cannot be changed by will.

The Act also protects creditors of deceased parties. Under the Act a creditor may, through the personal representative of the depositor's estate, claim account balances needed to pay a debt or family allowance. The claim procedure may be initiated only on demand of the creditor and is subject to a relatively short limitation period.

The Act establishes that financial institutions may pay out on multiple-person accounts and be protected if the payment is made in accordance with contract terms. The Act covers banks, savings and loan associations, and credit unions; this feature is designed to correct existing state laws that provide variant account incidents and protections for the three types of financial institutions.

Financial institution protection is provided even though the person receiving a payment in accordance with the account contract is not the owner of the amounts received as against another party to the account or as against the estate of a deceased depositor. Ownership as between parties to accounts and financial institution protection are treated as separable and different matters.

The drafting committee believes that the Act is a substantial improvement of an already successful law. This part of the Uniform Probate Code is one of the most broadly accepted, having been adopted either as part of the code or independently by over half the states. The Act draws on improvements made by various states that have enacted the statute. Improvements over the previous version of the statute include provision for an agency designation, optional statutory account forms, treatment of community property and other types of marital property, payments to minors under the Uniform Transfers to Minors Act (1983/1986), and extensive terminological and drafting simplifications and standardizations. For additional detail, see the Prefatory Note to Article VI of the Uniform Probate Code, as revised in 1989.

UNIFORM MULTIPLE-PERSON ACCOUNTS ACT (1989/1998)

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

SECTION 1. DEFINITIONS. In this [Act]:

(1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Devisee" means any person designated in a will to receive a testamentary disposition of real or personal property.

(5) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(6) "Heirs" means those persons, including surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(7) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(8) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(9) "Payment" of sums on deposit includes withdrawal, payment to a party or

third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a set-off, reduction, or other disposition of all or part of an account pursuant to a pledge.

(10) "Person" means an individual, a corporation, an organization, or other legal entity.

(11) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(12) "POD designation" means the designation of (i) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(13) "Receive," as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(14) "Request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of this [Act], if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(15) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(16) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will or otherwise.

(17) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(18) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

Comment

This and the sections that follow are designed to reduce certain questions concerning many forms of multiple-person accounts (including the so-called Totten trust account). A "payable on death" designation and an "agency" designation are also authorized for both single-party and multiple-party accounts. The POD designation is a more direct means of achieving the same purpose as a Totten trust account; this Act therefore discourages creation of a Totten trust account and treats existing Totten trust accounts as POD designations.

An agent (paragraph (2)) may not be a party. The agency designation must be signed by all parties, and the agent is the agent of all parties. See Section 5 (designation of agent).

A "beneficiary" of a party (paragraph (3)) may be either a POD beneficiary or the beneficiary of a Totten trust; the two types of designations in an account serve the same function and are treated the same under this Act. See paragraph (12) ("POD designation" defined). The definition of "beneficiary" refers to a "person," who may be an individual, corporation, organization, or other legal entity. Paragraph (10). Thus a church, trust company, family corporation, or other entity, as well as any individual, may be designated as a beneficiary.

The term "multiple-party account" (paragraph (7)) is used in this Act in a broad sense to include any account having more than one owner with a present interest in the account. Thus an account may be a "multiple-party account" within the meaning of this Act regardless of whether the terms of the account refer to it as "joint tenancy" or as "tenancy in common," regardless of whether the parties named are coupled by "or" or "and," and regardless of whether any reference

is made to survivorship rights, whether expressly or by abbreviation such as JTWROS or JT TEN. Survivorship rights in a multiple-party account are determined by the terms of the account and by statute, and survivorship is not a necessary incident of a multiple-party account. See Section 12 (rights at death).

Under paragraph (8), a "party" is a person with a present right to payment from an account. Therefore, present owners of a multiple-party account are parties, as is the present owner of an account with a POD designation. The beneficiary of an account with a POD designation is not a party, but is entitled to payment only on the death of all parties. The trustee of a Totten trust is a party but the beneficiary is not. An agent with the right of withdrawal on behalf of a party is not itself a party. A person claiming on behalf of a party such as a guardian or conservator, or claiming the interest of a party such as a creditor, is not itself a party, and the right of such a person to payment is governed by general law other than this Act.

Various signature requirements may be involved in order to meet the payment requirements of the account. A "request" (paragraph (14)) involves compliance with these requirements. A party is one to whom an account is presently payable without regard to whose signature may be required for a "request."

SECTION 2. SCOPE OF ACT.

(a) This [Act] applies to accounts in this state.

(b) This [Act] does not apply to

(1) an account established for a partnership, joint venture, or other organization for a business purpose,

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

Comment

Subsection (a) is drawn from Uniform Probate Code Section 1-301(4).

The reference to a fiduciary or trust account in subsection (b)(3) includes a regular trust account under a testamentary trust or a trust agreement that has significance apart from the

account, and a fiduciary account arising from a fiduciary relation such as attorney-client.

SECTION 3. TYPES OF ACCOUNT; EXISTING ACCOUNTS.

(a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to Section 12(c), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established before, on, or after the effective date of this [Act], whether in the form prescribed in Section 4 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of this [Act], and is governed by this [Act].

Comment

In the case of an account established before (or after) the effective date of this Act that is not in substantially the form provided in Section 4, the account is governed by the provisions of this Act applicable to the type of account that most nearly conforms to the depositor's intent. See Section 4 (forms).

Thus, a tenancy in common account established before or after the effective date of this Act would be classified as a "multiple-party account" for purposes of this Act. See Section 1(5) ("multiple-party account" defined). On death of a party there would not be a right of survivorship since the tenancy in common title would be treated as a multiple-party account without right of survivorship. See Section 12(c). It should be noted that a POD designation may not be made in a multiple-party account without right of survivorship. See Sections 1(8) ("POD designation" defined), 4 (forms), and 12 (rights at death).

Under this section, a Totten trust account established before, on, or after the effective date of this Act is governed by the provisions of this Act applicable to an account with a POD designation. See Section 1(8) ("POD designation" defined) and the Comment to Section 1.

It should be noted that this section is subject to Section 35 (effective date and transitional provisions).

SECTION 4. FORMS.

(a) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this [Act] applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

OWNERSHIP [Select One And Initial]:

_____ **SINGLE-PARTY ACCOUNT**

_____ **MULTIPLE-PARTY ACCOUNT**

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One And Initial]:

_____ **SINGLE-PARTY ACCOUNT**

At death of party, ownership passes as part of party's estate.

_____ **SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH)
DESIGNATION**

[Name One Or More Beneficiaries]:

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

_____ **MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP**

At death of party, ownership passes to surviving parties.

_____ **MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
AND POD (PAY ON DEATH) DESIGNATION**

[Name One Or More Beneficiaries]:

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

_____ MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation To Account, Name One Or More Agents]:

[Select One And Initial]:

_____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

_____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) is governed by the provisions of this [Act] applicable to the type of account that most nearly conforms to the depositor's intent.

Comment

This section provides short forms for single- and multiple-party accounts which, if used, bring the accounts within the terms of this Act. A financial institution that uses the statutory form language in its accounts is protected in acting in reliance on the form of the account. See also Section 26 (discharge).

The forms provided in this section enable a person establishing a multiple-party account to state expressly in the account whether there are to be survivorship rights between the parties. The account forms permit greater flexibility than traditional account designations. It should be noted that no separate form is provided for a Totten trust account, since the POD designation serves the same function.

An account that is not substantially in the form provided in this section is nonetheless governed by this Act. See Section 3 (types of account; existing accounts).

SECTION 5. DESIGNATION OF AGENT.

(a) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(c) Death of the sole party or last surviving party terminates the authority of an agent.

Comment

An agent has no beneficial interest in the account. See Section 11 (ownership during lifetime). The agency relationship is governed by the general law of agency of the state, except to the extent this Act provides express rules, including the rule that the agency survives the disability or incapacity of a party.

A financial institution may make payments at the direction of an agent notwithstanding disability, incapacity, or death of the party, subject to receipt of a stop notice. Section 26 (discharge); see also Section 24 (payment to designated agent).

The rule of subsection (b) applies to agency designations on all types of accounts, including nonsurvivorship as well as survivorship forms of multiple-party accounts.

SECTION 6. APPLICABILITY OF ACT. The provisions of Article 2 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the right of those persons to payment as determined by the terms of the account. Article 3 governs the liability and set-off rights of financial institutions that make payments pursuant to it.

ARTICLE 2. OWNERSHIP AS BETWEEN PARTIES AND OTHERS

SECTION 11. OWNERSHIP DURING LIFETIME.

(a) In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(b) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(c) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.

Comment

This section reflects the assumption that a person who deposits funds in an account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, the person usually intends no present change of beneficial ownership. The section permits parties to accounts to be as definite, or as indefinite, as they wish in respect to the matter of how beneficial ownership should be apportioned between them.

The assumption that no present change of beneficial ownership is intended may be

disproved by showing that a gift was intended. For example, under subsection (c) it is presumed that the beneficiary of a POD designation has no present ownership interest during lifetime. However, it is possible that in the case of a POD designation in trust form an irrevocable gift was intended.

It is important to note that the section is limited to ownership of an account while parties are alive. Section 12 prescribes what happens to beneficial ownership on the death of a party.

The section does not undertake to describe the situation between parties if one party withdraws more than that party is then entitled to as against the other party. Sections 21 and 26 protect a financial institution in that circumstance without reference to whether a withdrawing party may be entitled to less than that party withdraws as against another party. Rights between parties in this situation are governed by general law other than this Act.

"Net contribution" as defined by subsection (a) has no application to the financial institution-depositor relationship. Rather, it is relevant only to controversies that may arise between parties to a multiple-party account.

The last sentence of subsection (b) provides a clear rule concerning the amount of "net contribution" in a case where the actual amount cannot be established as between spouses. This Act otherwise contains no provision dealing with a failure of proof. The omission is deliberate. The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals, and not equal and undivided ownership that would be an incident of joint tenancy.

In a state that recognizes tenancy by the entireties for personal property, this section would not change the rule that parties who are married to each other own their combined net contributions to an account as tenants by the entireties. See Section 16 (community property and tenancy by the entireties).

SECTION 12. RIGHTS AT DEATH.

(a) Except as otherwise provided in this [Act], on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 11 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 11 belongs to the

surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under Section 11, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a).

(2) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under Section 11 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for

payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Comment

The effect of subsection (a) is to make an account payable to one or more of two or more parties a survivorship arrangement unless a nonsurvivorship arrangement is specified in the terms of the account. This rule applies to community property as well as other forms of marital property. See Section 16 (community property and tenancy by the entireties). The section also applies to various forms of multiple-party accounts that may be in use at the effective date of the legislation. See Sections 3 (type of account; existing accounts) and 4 (forms).

By technical amendment effective August 5, 1991, the word "[Act]" was substituted for "section" in the first sentence of subsection (a). The amendment clarified the original purpose of the drafters and Commissioners to permit a court to implement the intentions of parties to a joint account governed by Section 4(b) if it finds that the account was opened solely for the convenience of a party who supplied all funds reflected by the account and intended no present gift or death benefit for the other party. In short, the account characteristics described in this section must be determined by reference to the form of the account and the impact of Sections 3 and 4 on the admissibility of extrinsic evidence tending to confirm or contradict intention as signalled by the form.

Subsection (b) applies to both POD and Totten trust beneficiaries. See Section 1(8) ("POD designation" defined). It accepts the New York view that an account opened by "A" in A's name as "trustee for B" usually is intended by A to be an informal will of any balance remaining on deposit at A's death.

SECTION 13. ALTERATION OF RIGHTS.

(a) Rights at death of a party under Section 12 are determined by the terms of the account at the death of the party. A party may alter the terms of the account by a notice signed by the party and given to the financial institution to change the terms of the account or to stop or vary payment under the terms of the account. To be effective, the notice must be received by the financial institution during the party's lifetime.

(b) A right of survivorship arising from the express terms of the account, Section 12, or a POD designation, may not be altered by will.

Comment

Under this section, rights of parties and beneficiaries are determined by the type of account at the time of death. It is to be noted that only a “party” may give notice blocking the provisions of Section 12 (rights at death). “Party” is defined by Section 1(8). Thus if there is an account with a POD designation in the name of A and B with C as beneficiary, C cannot change the right of survivorship because C has no present right to payment and hence is not a party.

1995 Technical Amendment. By technical amendment in 1995, subsection (a) was amended to substitute “terms of the account” (as defined in Section 1(18)) for the language “type of account.” The purpose of this amendment is to reject any implication that to fall within this section an alteration of an account must affect the “type” of account, not merely its “terms.”

SECTION 14. ACCOUNTS AND TRANSFERS NONTESTAMENTARY. Except [as provided in the statutes governing augmented estates or] as a consequence of, and to the extent directed by, Section 15, a transfer resulting from the application of Section 12 is effective by reason of the terms of the account involved and this [Act] and is not testamentary or subject to estate administration.

Comment

The purpose of classifying the transactions contemplated by this Act as nontestamentary is to bolster the explicit statement that their validity as effective modes of transfers at death is not to be determined by the requirements for wills. The section is consistent with Article VI, Part 1, of the Uniform Probate Code (2010) (provisions relating to effect of death).

SECTION 15. RIGHTS OF CREDITORS AND OTHERS.

(a) For the purpose of this section, a nonprobate transfer occurs if the last domicile of a depositor whose interest is transferred under Section 12 was in this state.

(b) A transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against that estate and statutory allowances to the decedent’s spouse and children to the extent the estate is insufficient to satisfy those claims and

allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received by that transferee.

(c) Nonprobate transferees are liable for the insufficiency described in subsection

(b) in the following order of priority:

(1) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(2) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received;

(3) other nonprobate transferees, in proportion to the values received.

(d) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(e) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

(f) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the

expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(g) A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(h) Unless a written notice asserting that a decedent's estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, a trustee receiving a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

(i) In this section:

(1) "Child" includes any individual entitled to take as a child by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(2) "Claims," in respect to the estate of a decedent, includes liabilities of the decedent whether arising in contract, tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate.

Comment

Section 15 originally appeared as Uniform Probate Code (UPC) Section 6-107. Later in the 1989 revision, it became UPC Section 6-215 and Section 15 in this Act, a free-standing version of UPC Article VI, Part 2. The section was designed to extend UPC probate protections for exemption beneficiaries and unsecured creditors of decedents to values in multiple-name accounts in financial institutions passing outside probate at death. In 1998, NCCUSL revised UPC Article VI by adding a creditor and exemption protection section, 6-102, modeled after original Section 15. It applies to all revocable transactions serving to confer death benefits that by-pass probate. Concurrently, NCCUSL revised Section 15 of this Act to conform it to new UPC 6-102.

New Section 15 resembles the section it replaced in that it protects family exemption beneficiaries and creditors of decedents from loss via probate avoidance by multiple-name accounts in financial institutions. Also, it operates by placing a duty of contribution on recipients of bank account death benefits rather than by forcing the amounts transferred through a marshaling procedure. Other similarities are that a right to pursue a death beneficiary of a bank account for contribution to satisfaction of probate exemption and creditors' claims arises only if, and to the extent that, probate assets are insufficient for the purpose. And, as before, this right to contribution can be pursued only after written demand for the proceeding has been presented to the probate fiduciary by an exemption beneficiary or an unpaid creditor of the decedent.

Differing from the replaced section, the new text applies only to non-probate transferees of a decedent who was domiciled in this state at death. New also are provisions in subsection (c) establishing priorities among various non-probate transferees, the most important of which directs respect for a direction by the decedent regarding order of abatement among nonprobate transferees. Subsection (c) refers to nonprobate gifts at death accomplished by methods other than multiple-name reference accounts. This may appear to be extraneous to this Act which deals only with rights of contribution against death beneficiaries of accounts in financial institutions. However, since a multiple-person account may confer a death benefit on a trustee, the drafters decided that the subsection should parallel new UPC Section 6-102 on this point. If other legislation fails to confer rights against non-probate transferees other than those described in this Act, subsection (c) should be read to confer priority only as among death beneficiaries covered by this Act.

The following comments, derived in large part from the commentary to UPC Section 6-102, are also appropriate for this Act, even though this Act only covers death benefits via financial institution accounts.

1. The remedy described by this section is a duty on a non-probate transferee (defined in subsection (a) to refer only to a recipient of a death benefit from a depositor that is effective under Section 12 of this Act) to contribute as necessary to satisfy family exemptions and duly allowed creditors' claims remaining unpaid because of inadequate probate estate values. The maximum liability for a single non-probate transferee is the amount received. Unless other

priorities described in subsection (c) apply, two or more transferees are severally liable for proportions of the liability based on amounts received by each.

If there are no probate assets, or if no probate proceeding has been initiated, a creditor or other person seeking to use this section would need to secure appointment of a personal representative to invoke Code procedures for establishing a creditor's claim as "allowed." The use of regular probate proceedings as a prerequisite to gaining rights for creditors against nonprobate transferees has been a feature of this Act since 1989 and a feature of UPC Article VI since original promulgation in 1969. The arrangement works well in practice if procedures for opening estates, satisfying probate exemptions, and presenting claims, approximate UPC procedures.

2. A feature of Section 15 and UPC Section 6-102 that was clarified by 1991 technical amendment protects a survivor beneficiary of a joint account from liability to the probate estate of a deceased co-depositor for funds in the account owned by the survivor prior to the decedent's death. The revised section continues this protection by language in subsection (a) and Section 12 focusing the section on *transfers* at death of the interest in an account to which a decedent was beneficially entitled immediately before death. Section 11 and related sections of the Code make it clear that parties to a joint and survivor account separately own values in the account in proportion to net contributions. Hence, a surviving joint account depositor who contributed to the balance on deposit prior to the death of the other party without intending a gift to the other party is subject to the remedies described in this section only to the extent of new account values gained through survival of the decedent.

3. Trusts and non-trust recipients of account death benefits incur liability in the order described in subsection (c). Note that either a revocable or an irrevocable trust might be designated devisee of a pour-over provision that would make the trust the "principal non-probate instrument in the decedent's estate plan", and, so, liable under subsection (c)(2) ahead of other nonprobate transferees to the extent of values acquired as a multiple-name account death benefit. Note, too, that nothing would pass to the receptacle trust by the pour-over devise if all probate estate assets are used to discharge exemptions and claims. Still, the fact that the trust was designated to receive a pour-over devise signals that the trust probably includes the equivalent of a residuary clause measuring benefits by available assets and signaling probable intention of the settlor that residuary benefits should abate before other trust gifts if necessary because of settlor's debts.

4. Subsection (d) recognizes that a number of separate instruments and transactions, executed at different times and with or without internal references linking them to other documents, may constitute the paperwork describing succession to a decedent's assets by probate and nonprobate methods. By authorizing control of abatement among gifts made by various transfers at death by the last executed instrument, the subsection permits a simple, last-minute override of earlier directions concerning a decedent's wishes regarding priorities among successors. Thus, a will or trust amendment can correct or avoid liquidity and abatement problems discovered prior to death. The expression "block buster will" was coined by estate

planners in the mid-70's to refer to proposed legislation enabling a later will to override death benefits by any nonprobate transfer device. This subsection meets some of the goals of advocates of this legislation.

5. Subsection (e) is based on the principle employed in the UPC's Augmented Estate Elective Share remedy (UPC Sections 2-201 through 2-214) in relation to nonprobate transfers made to persons in other states, possibly by transactions governed by laws of other states. The underlying principle is that the law of a decedent's last domicile should be controlling as to rules of public policy that override the decedent's power to devise a probate estate to anyone he or she chooses. The principle is implemented by subjecting donee recipients of a decedent's largesse to liability under the decedent's domiciliary law, with the belief that judgments recovered in that state following appropriate due process notice to defendants in other states will be accorded full faith and credit by courts in other states should interstate collection proceedings be necessary.

6. The first and third sentences of subsection (f) are identical to sentences in former Section 15. The second sentence is new. It reflects sensitivity for the dilemma confronting a probate fiduciary who, acting as required of a fiduciary, concludes that the costs and risks associated with a possible recovery from a nonprobate transferee outweigh the probable advantages to the estate and its claimants. A creditor whose claim has been allowed but remains unsatisfied and whose demand for a proceeding has been turned down by the estate fiduciary may proceed at personal risk in efforts to enforce the estate claim against the nonprobate beneficiary. This is so because the last two sentences of (f) shift the risk of unrecoverable costs from the decedent's estate to the claimant who undertakes collection efforts on behalf of the decedent's estate. Any recovery of costs should be used to reimburse the claimant who bore the risk of loss for the proceeding. A personal representative considering declination a demand for a proceeding should note that the "good faith" standard of this section must be determined in light of the representative's general responsibility as a fiduciary.

7. Subparagraph (g) meshes with time limits in UPC sections governing allowance and disallowance of claims. See UPC Sections 3-804 and 3-806.

8. Subsection (h) is designed to enable trustees handling nonprobate transfers to distribute trust assets in accordance with trust terms if no warning of probable estate insolvency has been received. Beneficiaries receiving distributions from a trustee take subject to personal liability in the amount and priority of the trustees based on the value distributed.

9. Subsection (i) copies subsection (e) of Section 15's original text as it includes UPC definitions of "child" and "claims" in this free-standing act.

SECTION 16. COMMUNITY PROPERTY AND TENANCY BY THE ENTIRETIES.

(a) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or Section 12 may not be altered by will.

(b) This [Act] does not affect the law governing tenancy by the entireties.

Comment

Section 16 does not affect or limit the right of the financial institution to make payments pursuant to Article 3 (protection of financial institutions) and the deposit agreement. See Section 6 (applicability of Act). For this reason, Section 16 does not affect the definiteness and certainty that the financial institution must have in order to be induced to make payments from the account and, at the same time, the section preserves the rights of the parties, creditors, and successors that arise out of the nature of the funds in the account -- community or separate, or tenancy by the entireties.

ARTICLE 3. PROTECTION OF FINANCIAL INSTITUTIONS

SECTION 21. AUTHORITY OF FINANCIAL INSTITUTION. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

Comment

The provisions of this article relate only to protection of a financial institution that makes payment as provided in the article. Nothing in this article affects the beneficial rights of persons to sums on deposit or paid out. Ownership as between parties, and others, is governed by Article 2. See Section 6 (applicability of Act).

SECTION 22. PAYMENT ON MULTIPLE-PARTY ACCOUNT. A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under Section 12.

Comment

A financial institution that makes payment on proper request under this section is

protected unless the financial institution has received written notice not to. Section 26 (discharge). Paragraph (1) applies to both a multiple-party account with right of survivorship and a multiple-party account without right of survivorship (including an account in tenancy in common form). Paragraph (2) is limited to a multiple-party account with right of survivorship; payment to the personal representative or heirs or devisees of a deceased party to an account without right of survivorship is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

SECTION 23. PAYMENT ON POD DESIGNATION. A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

Comment

A financial institution that makes payment on proper request under this section is protected unless the financial institution has received written notice not to. Section 26 (discharge). Payment to the personal representative or heirs or devisees of a deceased beneficiary who would be entitled to payment under paragraph (2) is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

SECTION 24. PAYMENT TO DESIGNATED AGENT. A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on

deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

Comment

This section is intended to protect a financial institution that makes a payment pursuant to an account with an agency designation even though the agency may have terminated at the time of the payment due to disability, incapacity, or death of the principal. The protection does not apply if the financial institution has received notice under Section 26 not to make payment or that the agency has terminated. This section applies whether or not the agency survives the party's disability or incapacity under Section 5 (designation of agent).

SECTION 25. PAYMENT TO MINOR. If a financial institution is required or permitted to make payment pursuant to this [Act] to a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to Minors Act (1983/1986).

Comment

Section 25 is intended to avoid the need for a guardianship or other protective proceeding in situations where the Uniform Transfers to Minors Act (1983/1986) may be used.

SECTION 26. DISCHARGE.

(a) Payment made pursuant to this [Act] in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative,

surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

Comment

The provision of subsection (a) protecting a financial institution for payments made after the death, disability, or incapacity of a party is a specific elaboration of the general protective provisions of this section and is drawn from Uniform Commercial Code Section 4-405.

Knowledge of disability, incapacity, or death of a party does not affect payment on request of an agent, whether or not the agent's authority survives disability or incapacity. See Section 24 (payment to designated agent). But under subsection (b), the financial institution may not make payments on request of an agent after it has received written notice not to, whether because the agency has terminated or otherwise.

1995 Technical Amendment: By technical amendment in 1995, the defined expression "terms of the account" was substituted for "type of account" in the first sentence of subsection (a). This amendment, made in association with a similar technical amendment to Section 13, was not intended to change the meaning of this section. Rather, it was made to negate a possible

interpretation of the words “type of account” that is more restrictive than intended by the drafters.

SECTION 27. SET-OFF. Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to set-off against the account. The amount of the account subject to set-off is the proportion to which the party is, or immediately before death was, beneficially entitled under Section 11 or, in the absence of proof of that proportion, an equal share with all parties.

**ARTICLE 4. SHORT TITLE, CONSTRUCTION,
TRANSITIONAL PROVISIONS**

SECTION 31. SHORT TITLE. This [Act] may be cited as the Uniform Multiple-Person Accounts Act (1989/1998).

SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

Comment

This Act is a free-standing version of Part 2 of Article VI of the Uniform Probate Code as revised in 1989. To facilitate correlation with corresponding provisions of the Uniform Probate Code, the numbering of this Act follows that of the Uniform Probate Code.

SECTION 33. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW

APPLICABLE. Unless displaced by the particular provisions of this [Act], the principles of law and equity supplement its provisions.

SECTION 34. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 35. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

(a) This [Act] takes effect

(b) On the effective date of this [Act]:

(1) An act done before the effective date and any accrued right is not impaired by this [Act]. If a right is acquired, extinguished, or barred on the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right.

(2) Any rule of construction or presumption provided in this [Act] applies to accounts established before the effective date unless there is a clear indication of a contrary intent.

[(c) The rights of a party, beneficiary, or creditor in an account established before the effective date of this [Act] are governed by the law applicable before the effective date for a period of one year after the effective date and thereafter are governed by this [Act].]

Comment

Subsection (b) is drawn from Uniform Probate Code Section 8-101. Subsection (b) is an exception to the general rule stated in Section 3 (existing accounts). Depending on the extent to which this Act affects rights in multiple-person accounts, a state may wish to provide delayed application in the form offered in optional subsection (c), during which parties to the account may make any changes in the form of the account that appear appropriate.