

First Supplement to Memorandum 87-90

Subject: Study L-1060 - Multiple-Party Accounts (Comments of Reviewers)

Attached are six exhibits concerning the staff draft of a *Tentative Recommendation relating to Multiple-Party Accounts* attached to the basic memo (87-90):

Exhibit 1: Report of Study Team 2 of the Estate Planning, Trust and Probate Law Section of the State Bar.

Exhibit 2: Letter from Kenneth Petrulis for the Legislative Committee of the Beverly Hills Bar Association Probate Section.

Exhibit 3: Letter from Kenneth Klug to Ted Cranston concerning tenancy in common accounts.

Exhibit 4: Letter from Kenneth Klug to James Quillinan concerning the proposed renumbering of Section 5101.

Exhibit 5: Letter of March 17, 1983, from Charles Collier to the State Bar Legislative Representative in Sacramento advising that the Executive Committee "supports" the 1983 multiple-party accounts bill.

Exhibit 6: Sample credit union account card for joint accounts.
State Bar Support in 1983 and Earlier

The basic memo states that when the bill proposing the California Multiple-Party Accounts Law (AB 53) was introduced in 1983, it was supported by the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar. Team 2 takes issue with this statement. Exhibit 5 (Collier letter of 3/17/83) shows that the Executive Committee did support AB 53, so the statement in the basic memo is correct.

Moreover, in 1973 the State Bar published a report entitled "The Uniform Probate Code: Analysis and Critique" favoring enactment of the multiple-party account provisions of the Uniform Probate Code. Although the report was generally critical of the UPC, it singled out the multiple-party account provisions for favorable comment:

The provisions of Part 1 of Article VI clarifying the rights and obligations of the financial institution and depositors in multiple-party accounts have considerable merit, and their addition to California's present statutory scheme would be beneficial.

The State Bar report was written by a distinguished committee with the following members (affiliation as of 1973):

Brent Abel of McCutchen, Doyle, Brown & Enerson (chairperson)
Ronald Gother of Gibson, Dunn & Crutcher (vice chair)
Max Gutierrez of Brobeck, Phleger & Harrison
Louis Bernheim of Bernheim, Sugarman, Gilbert & Straughn
John Cohan of Irell & Manella
Edmond David of Overton, Lyman & Prince
Bruce Friedman of Zang, Friedman & Zamir
Hon. Gilbert Harelson, Judge of the Superior Court
Hon. Arthur K. Marshall, Judge of the Superior Court
William McClanahan of Wallenstein & Field
Jerome Peters of Peters, Fuller, Byrne & Rush
Matthew Rae of Darling, Hall, Rae & Gute
Edward Halbach, Dean, School of Law, University of California
William Johnstone of Hahn & Hahn
James Kelly of diLeonardo, Blake, Kelly, Aguilar & Leal
Bertrand Kragen, Esq.
Robert Mills of McCutchen, Doyle, Brown & Enerson
Francis Price of Price, Postel & Parma

What Do Depositors Intend?

Team 2 questions the assumption on which the proposal is based: that a person who deposits funds in a multiple-party account normally does not intend an irrevocable present gift to the other parties, and that many people believe that depositing funds in a joint account has no effect on ownership until death. However, this assumption is supported by the 1973 analysis and critique of the State Bar:

The P.O.D. accounts reflects the erroneous understanding of many lay persons of the effect that the creation of a joint tenancy account has no effect until death.

This assumption is also supported by other commentators. See, e.g., Griffith, *Community Property in Joint Tenancy Form*, 14 Stan L. Rev. 87 (1961); Uniform Probate Code § 6-103 comment.

Tracing

The California Multiple-Party Accounts Law provides that a joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. Prob. Code § 5301. Team 2 is concerned that this creates complex tracing problems, and that it may be impossible to determine who made a deposit or withdrawal.

The provision does require tracing, but there is a fall-back rule: If net contributions cannot be shown, the funds are divided equally among the parties. Uniform Probate Code § 6-103 comment.

Proceeds of Deposit Life Insurance

Subdivision (f) of Section 5101 (to be recodified in the draft as Section 5132) provides that, if proceeds of deposit life insurance are added to a joint account because of death of the party whose net contribution is in question, the insurance proceeds are part of that party's net contribution. Team 2 says that this needs clarification: The provision on life insurance "disregards ownership of the policy; credit seems to depend on the identity of the insured."

The question of whether the owner of the policy is the same person as the insured is irrelevant. The provision only applies when the insured has died and the proceeds have been added to the account. In that case, the proceeds are treated the same as other funds deposited by the decedent.

Excessive Withdrawals

Team 2 asks what happens if a party to a joint account withdraws funds in excess of his or her net contribution, and whether, after the death of that party, the surviving party has a cause of action against the decedent for the excess withdrawal. This is addressed in the comment to Uniform Probate Code Section 6-103: "Presumably, overwithdrawal leaves the party making the excessive withdrawal liable to the beneficial owner as a debtor or trustee."

Transmutation of Separate Property to Community

Probate Code Section 5305 provides that if parties to an account are married to each other, their deposits are presumed to be community property. Team 2 is concerned that a married person might deposit separate property to the account and have it thereby transmuted to community property, contrary to his or her intent. However, as Team 2's report notes, Section 5305 provides that the community property presumption may be rebutted by tracing the deposit to separate property.

Section 5305(b)(1) provides that separate property deposited becomes community if the spouses made an agreement to that effect. Team 2 asks how this provision fits with Civil Code Section 5110.730 which requires transmutation agreements to be in writing. The Civil Code section

appears to prevail because it was added in 1984, a year later than the Probate Code section. We should make this clear by revising Probate Code Section 5305(b)(1) to require the agreement to be in writing.

Community Property During Lifetime, Survivorship at Death

The inter vivos community property presumption and the provision for survivorship which cannot be changed by will (Section 5305) are based on the assumption that married persons want both the benefits of community property during their lifetimes and automatic survivorship at death. Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87, 90, 95, 106-09 (1961). Team 2 questions this assumption.

According to Team 2, automatic survivorship of community property is undesirable for two reasons: (1) By overriding the decedent's will, it defeats the decedent's carefully drafted estate plan; (2) it is not needed to avoid delay and expense, because the surviving spouse may collect the funds (subject to possible disposition of half by the decedent's will) by using either the affidavit procedure (Prob. Code §§ 13100-13115) or the community property set-aside (Prob. Code §§ 13650-13660).

The first argument ignores the fact that the parties may negate survivorship in a multiple-party account by appropriate language. See Prob. Code § 5302. To negate survivorship, the parties may, for example, establish a "JOINT ACCOUNT -- NO SURVIVORSHIP." Comment to Prob. Code § 5302. A carefully drafted estate plan should take this possibility into account.

Automatic survivorship better avoids delay and expense than the community property set-aside because the latter requires petition and hearing (Prob. Code §§ 13650, 13656), and better avoids delay and expense than the affidavit procedure because the latter may only be used where the gross value of the decedent's real and personal property in California does not exceed \$60,000 -- probably a small minority of estates of married persons.

Creation of Tenancy by the Entirety?

Team 2 is concerned that the staff proposal will create a kind of property not previously recognized in California: tenancy by the entirety. Tenancy by the entirety is essentially a joint tenancy, but it may only be held by married persons, and it differs from joint tenancy in

that neither spouse can convey his or her interest to affect the right of survivorship of the other spouse.

The proposal merely provides that funds of married persons in an account to which they are both parties are presumed to be their community property during their lifetimes, but that when one dies, a right of survivorship arising from the express terms of the account or under the statute cannot be changed by will. If funds are withdrawn during the lifetimes of the married couple, the funds are ordinary community property. Unlike a tenancy by the entirety, either party can dispose of half of the withdrawn funds by will.

Survivorship in Tenancy in Common Accounts

Under the California Multiple-Party Accounts Law, a joint account includes survivorship unless there is "clear and convincing evidence of a different intention." Prob. Code § 5302. There is a question whether an account designated "tenancy in common," which did not have survivorship at common law, is clear and convincing evidence of an intent not to have survivorship. The California Multiple-Party Accounts Law addresses this question only obliquely in a transitional provision: Under Section 5306, a tenancy in common account established before the operative date does not include survivorship.

Kenneth Klug finds an Alice in Wonderland quality to imposing survivorship on tenancy in common accounts, if that is the effect of Section 5302. He says:

For years, the public has been opening tenancy in common accounts intending exactly what the law provided; legal advisors have been advising people concerning ownership of tenancy in common accounts. It would be a disservice to the public to enact legislation which would abolish this useful type of account or which would change terminology so that tenancy in common no longer means tenancy in common. To require that clear and convincing evidence be submitted to establish tenancy in common is a step backwards.

Exhibit 6 is a sample account card developed by the California Credit Union League for use by credit unions. In the sample account card, the depositor does not choose the type of account by its common law label (e.g., joint tenancy or tenancy in common). Rather the depositor chooses based on the particular features desired: (1) "jointly and equally with right of survivorship" or (2) with respective

percentage ownership indicated and either with survivorship at death or with payment to a designated beneficiary (no survivorship). If all credit unions and industrial loan companies are using this account card or something similar, it may be that there are no tenancy in common accounts being established under the new law. Or, if tenancy in common accounts are being established, the depositor must expressly indicate whether there is survivorship. If the depositor must choose survivorship or no survivorship, whether the account is labelled "tenancy in common" seems inconsequential.

When the Multiple-Party Accounts Law was enacted, the Commission thought that tenancy in common accounts would no longer be used after the operative date, because new accounts would presumably conform to the new law. However, the staff draft may encourage the use of tenancy in common accounts by banks and savings and loan associations after the operative date of the draft (July 1, 1989): A transitional provision on page 39 of the draft permits financial institutions to continue to use old forms after the operative date. This creates a possibility that, after the operative date, banks and savings and loan associations will continue to use old account forms, with tenancy in common as a possible choice.

It is likely that many depositors who open a tenancy in common account do so without legal advice and without understanding the common law meaning of the term. Depositors may choose a tenancy in common account after talking to a non-lawyer employee of the financial institution with a hazy understanding of the law.

However, if Mr. Klug's assumption is correct that many depositors know the law or rely on legal advice before choosing a tenancy in common account, then he has a point. If so, perhaps tenancy in common accounts opened after the operative date of the draft should have the same effect they have under existing law applicable to banks and savings and loan associations -- no survivorship.

Reporting of Interest on Joint Accounts

Team 2 asks how financial institutions report interest earned on joint accounts, since ownership may be unequal. Financial institutions need only report total interest earned. There is no requirement that financial institutions segregate interest according to ownership.

Clearly, that would be impossible for the financial institution to do. It is up to depositors to segregate interest and report appropriately to the Internal Revenue Service.

Liability of Account Funds for Debts of Deceased Party

The proposal would add a new provision to California law that multiple-party account funds are liable for debts of a deceased party if the estate is insufficient. This is consistent with Section 6-107 of the Uniform Probate Code. It would change the much-criticized rule that a surviving joint tenant takes the property free of claims of the deceased joint tenant's creditors. The criticism is that the surviving joint tenant gets a windfall, and the deceased joint tenant's creditors are unfairly prejudiced. The Beverly Hills Bar Association supports the proposal, but State Bar Team 2 does not.

According to Team 2, the proposal takes away a benefit from poor decedents. But the existing rule benefits the decedent's surviving joint tenant more than it benefits the decedent. The staff thinks this is an insufficient reason to keep the existing rule.

Team 2 objects to piecemeal treatment of this issue, noting that the State Bar is working on a procedure for creditors' claims against revocable trusts. However, if it is desirable to permit decedent's creditors to reach joint account funds, it seems better to enact such a rule now, even though it does not deal with the question comprehensively for all nonprobate assets.

The proposal contains a two-year statute of limitations: The personal representative must commence a proceeding to recover the funds not more than two years after decedent's death. Team 2 thinks two years is too long. However, two years is the period provided under Uniform Probate Code Section 6-107, enacted in 18 states.

The Beverly Hills Bar points out that the proposal only applies where there is a probate. If there is no probate, the existing rule is preserved that decedent's creditors may not reach joint account funds. The Beverly Hills Bar thinks perhaps creditors should be allowed to reach account funds directly if there is no probate. This suggestion would go well beyond UPC Section 6-107 and the law in the 18 states that have enacted it. It would be much more burdensome for surviving parties to deal with claims of all decedent's creditors than to deal

with one claim by the personal representative.

The Beverly Hills Bar cites the revocable trust provision (Prob. Code § 18201) as permitting the settlor's creditors to reach trust funds directly. However, it is not clear that the trust provision permits this: It refers to claims of creditors of the settlor's estate, so it seems to require trust funds to be pursued by the deceased settlor's personal representative rather than by creditors directly.

We need a general procedure for the personal representative to reach nonprobate assets that can be brought into an insolvent probate estate. See note on page 24 of the draft recommendation attached to the basic memo (87-90). The New York Law Revision Commission is studying whether creditors should be able to reach nonprobate assets (revocable trusts and multiple-party accounts) where the estate is insolvent.

The Beverly Hills Bar is concerned that proposed Section 5307 may permit multiple-party account funds recovered by the estate to be paid to creditors who have not filed a timely claim in the estate proceeding. But subdivision (d) of proposed Section 5307 provides: "Amounts recovered by the personal representative under this section shall be administered as part of the decedent's estate." This seems to require recovered funds to be treated the same as in other estate proceedings, including the requirement that creditors file a timely claim.

The Beverly Hills Bar asks why demand by a creditor should be required as a precondition of the personal representative pursuing multiple-party account funds, particularly if the funds are needed to pay expenses of administration rather than debts. This requirement is taken from Uniform Probate Code Section 6-107, and is comparable to the application requirement for assets transferred by the decedent in fraud of creditors (existing Section 579, recodified as Section 9653 operative July 1, 1988):

9653. (a) On application of a creditor of the decedent or the estate, the personal representative shall commence and prosecute an action for the recovery of real or personal property of the decedent for the benefit of creditors if the personal representative has insufficient assets to pay creditors and the decedent during lifetime . . . [made a transfer in fraud of creditors].

The Beverly Hills Bar suggests a provision permitting the personal representative to notify the financial institution holding the multiple-party account that the estate claims the funds, and preventing withdrawal until the matter is settled. This is covered by Section 5405 in the California Multiple-Party Accounts Law, which requires a court order to freeze the account. The requirement of a court order is an important protection for the decedent's surviving spouse and immediate family who may need immediate access to the funds.

Subdivision (b) of proposed Section 5307 allows the personal representative to reach funds the decedent "owned beneficially" before death. The Beverly Hills Bar finds the "owned beneficially" language unclear and would substitute "net contribution," a defined term. However, "net contribution" means deposits plus a share of interest or dividends, and may not include funds that passed to the decedent from a predeceased codepositor. This appears to be the reason for the "owned beneficially" language used by the Uniform Probate Code. For this reason, the staff prefers the "owned beneficially" language.

Repeal, Reenactment, and Renumbering of Section 5101

Section 5101 contains 16 defined terms needed for the California Multiple-Party Accounts Law. The staff proposal would break up the section into 17 shorter sections by making its introductory clause and each of its 16 subdivisions a separately numbered section. Kenneth Klug objects to this. He renews his objection to the staff's "endless tinkering" with the code where no substantive change is intended.

Substantively, all that must be done to Section 5101 is to broaden the definition of "financial institution" to include banks and savings and loan associations. Why then should the section be repealed, reenacted, and renumbered?

The problem with Section 5101 is its length, covering nearly two pages in the Compact Edition of West's Probate Code. It is easier to find a definition in a separate section with its own heading. Annotations for the particular definition are easier to find if they are collected under a short section having only one definition.

When a section is amended, the bill must set out the amended section in full. A long section adds to printing costs, and exposes to scrutiny and controversy parts of the section not being amended. A

bill may be delayed or defeated for reasons having nothing to do with the amendment proposed by the bill.

Legislative Counsel's Drafting Manual recommends short code sections so "future amendments may be made without the necessity of setting forth and repeating sections of unnecessary length." This principle was endorsed by the California Code Commission in its 1949 report:

In our codes, we endeavor to break up the law into comparatively short sections. The primary purpose of this is to facilitate subsequent amendment and to reduce the length of amendatory bills

This is why staff proposes to repeal, reenact, and renumber Section 5101 in 17 short sections.

If this goal is laudable, it may be asked why it was not done in 1983 when the Multiple-Party Accounts Law was enacted. The answer is that in 1983 the staff was adhering to the Uniform Probate Code perhaps too slavishly. Probate Code Section 5101 is drawn from Uniform Probate Code Section 6-101, itself a lengthy section.

The staff brought Mr. Klug's objection to the attention of the Commission at the September meeting. The Commission is sensitive to the difficulty practitioners have in trying to trace the law when sections are renumbered and moved to other parts of the code, particularly when substantive provisions are split up and scattered among many new sections. However, at the September meeting, it seemed to be the consensus that repeal, reenactment, and renumbering of Section 5101 did not create these problems because the provisions were not being moved to other parts of the code, but were being kept in the same place, merely giving a separate section number to each subdivision of Section 5101. Practitioners should have no difficulty finding the renumbered definitions, particularly with the help of the Comments and the cross-reference tables usually supplied by law publishers.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
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November 30, 1987

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Re: LRC Memo 87-90 (Multiple Party Accounts)

Dear Jim:

Team 2 has reviewed the above LRC Memo. The team is of the opinion that the recommendations should be disapproved.

To clarify the record, when this bill was introduced in 1983 we agreed not to oppose it as part of a compromise with respect to all legislation proposed that year. We opposed this specific provision and still do, contrary to the implication of Memorandum 87-90.

The proposal would result in a substantial and unnecessary change in California law by establishing for banks and savings and loans a form of co-tenancy not presently recognized in California: tenancy by the entirety. The team also questions the assumption upon which the recommendation is based, namely that the proposal conforms more closely to what depositors generally intend during life and upon death. While we have indicated areas which raise concern, we do not feel this recommendation should be approved with amendments.

While the recommendation does not address the issue, there is a need for greater clarity in establishing bank accounts. All too frequently, a joint tenancy account is inadvertently created when a party desired either a community

property account or an account in tenancy in common. This proposal would only increase the problem.

It is particularly distressing that the transition provisions appear designed to "buy" the support of banks and savings and loans at the expense of the consumer. The institutions are not required to inform the depositor, but the new provisions will apply to multi-party accounts established prior to its effective date. One would hope that if this proposal is pursued, there will be some protection for the depositor, the party most in need of help under the proposed rules.

We have the following specific comments:

1. The staff recommendation comments that the proposal will bring uniformity to the law and avoid two separate bodies of law governing the rights between parties to multiple-party accounts (one applicable to accounts held by banks and savings and loans, and the other applicable to credit unions and industrial loan companies). This argument begs the question. Existing multiple-party account legislation has limited application since it only applies to credit unions and industrial loan companies. The legislation has been in place since the beginning of 1984, but it is difficult to know whether it has worked or will work any better than the law in place with respect to banks and savings and loan associations. It would be preferable to revise this law into conformity with the law presently applicable to banks and savings and loans rather than expand its application.

2. Under existing California law, a joint tenancy account belongs equally to the co-depositors. This proposal would adopt the gift tax rule based on the Uniform Probate Code which provides that a joint account belongs to the parties during their lifetimes in proportion to their net contributions unless there is clear and convincing evidence of a contrary intent. Section 5132 identifies and attempts to define "net contribution." This section would appear to raise some fairly complex tracing problems. For example, how would one determine the sum of all deposits made by or for one party at any particular time? Perhaps one could identify deposits made by a particular individual, but how would it be determined for whose credit they were in fact made? Similarly, how can one determine if a withdrawal is made "for" a party? What rule

should apply with respect to overdrafts? It is entirely possible that the tracing requirement would have to be made some years after these transactions occur. As a practical matter, it may be impossible to determine who made any deposit or withdrawal. There will also be circumstances when it is not at all clear whose funds were applied to a particular disbursement.

3. It should be noted that the term "joint account" is defined under Section 5128 to mean an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship. Section 5130 states that a multiple party account does not include an account established for the deposit of funds of a partnership, joint venture, or other association for business purposes. Thus, in any account where there are two signatories there would be a right of survivorship. If these parties were not married, it is highly questionable whether a right of survivorship is generally intended. The beneficiaries of the estate would then be required to establish what the intent of the original depositors was at the time the account was opened. In many instances it may not be clear whether the particular account was for business or personal use.

4. Section 5132 needs clarification. The provision concerning life insurance, for example, disregards ownership of the policy; credit seems to depend only on the identity of the insured.

5. The proposal does not seem to address the issue of what occurs if a depositor withdraws funds in excess of his or her "net contribution." This also raises the issue of the surviving joint tenant having a cause of action against the decedent for withdrawals exceeding the "net contribution" of the decedent.

6. While not directly addressed in the staff recommendation, Probate Code Section 5305 raises additional issues. This section generally provides that if the parties to an account are married to each other, the net contribution to the account is presumed to be and remains their community property. Thus, there would be an increasing likelihood that a spouse with substantial separate property could open a multiple-party account and thereby inadvertently convert separate to community property. The right of survivorship

would be established notwithstanding the fact that the account "does not mention any right of survivorship." See Section 5101(d). Section 5305(b)(1) indicates that the presumption established by 5305 can be rebutted by proof that the sums on deposit are claimed to be separate property and can be traced from separate property unless it is proved that the married persons made an agreement that expressed their clear intent that such sums be community property. How does this section fit with Civil Code Section 5110.730? Even if separate property ownership can be approved under current law, it would appear that the right of survivorship could not be defeated, even though the separate property ownership is established.

7. It is unclear how banks and savings and loans would report interest earned on these accounts given the requirement that a net contribution equals ownership. There is no suggestion as to how this problem has been handled by credit unions and industrial savings and loans.

8. The staff report states: "The rule of the California multiple-party accounts law conforms to the intent of married persons generally to retain the benefits of community property during their lifetimes and to pass the funds at death to the survivor with a minimum of delay and expense." We find this assumption to be inconsistent with the intentions of many married persons. First, in many instances, a joint tenancy account will defeat a property drafted estate plan. Many clients have elected to create a credit equivalent trust in order to shelter a portion of the estate from federal estate tax on the death of the surviving spouse. An automatic right of survivorship will defeat this plan and cause liquidity problems as well. Second, delay and expense can be avoided under existing law. If the parties wish, they have the joint tenancy option available at the present time. In addition, a surviving spouse can take advantage of the community property set aside provisions of the Probate Code. Accounts may also be collected by use of the expanded affidavit procedure.

9. We question the provisions of Section 5307, in light of current rules concerning creditors' rights to joint tenancy assets. The survivorship rules have traditionally provided an effective estate planning tool for the poor; this provision will limit its effectiveness. Will other probate procedures be added on as time progresses? The two year limit subsection (c) seems unduly long. A new statute has been

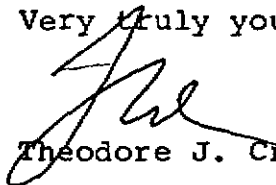
James V. Quillanan, Esq.
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proposed for revocable trusts; a copy was sent to the LRC on November 24, 1987. The creditors' claims rules for non-probate assets (other than trusts) should be the subject of a comprehensive study, not done piecemeal.

10. While the Director of Government Relations for the California Credit Union League may believe that credit unions are happier with their experience under the law as it has been in effect for nearly four years, that does not tell us much about the experience with the new law over that period of time. This section opposed the multiple-party accounts law at the time that it was proposed earlier, and obviously the banks and savings and loans opposed it at the time it was introduced into the legislature. To a certain extent, because the law has not been applicable to banks and savings and loans, the effect of the law has not been as widespread as it would be if banks and savings and loan associations were covered. Since most of the clients for whom sophisticated estate planning is done would be more likely to maintain accounts with banks or savings and loans, the full effect of the problems we see with the statute would only be felt if the law were extended to banks and savings and loans.

Many of the assumptions made in the staff report are merely that, assumptions, and they do not conform to the experience of those of us who have dealt with many individuals planning estates over the years. In conclusion, Team 2 is of the opinion that substantial additional analysis is needed prior to expanding this concept to banks and savings and loans.

Very truly yours,



Theodore J. Cranston

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December 9, 1987

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Re: Memorandum 87-90
Multiple Party Accounts

Commissioners:

The Legislative Committee of the Beverly Hills Bar Association Probate Section has reviewed the above memo and makes the following comments and recommendations, as drafted by David E. Lich of our Committee:

The theory of the proposed law regarding creditor's rights with respect to multiple-party accounts appears proper. Under the present law, the surviving account holders may receive a windfall, at the cost of the creditors of the decedent. However, there are some technical difficulties which must be addressed:

1) Proposed Section 5307(c) provides that the surviving party is liable to account to the personal representative of the deceased party's estate. There is no provision in the event that no probate is pending and there is no personal representative. What happens in the case of spousal set-asides, living trusts, and collection of small estates pursuant to Section 13100, et seq.? More importantly, what if all the decedent's funds were in joint accounts, and, by virtue thereof, there is no property whatsoever to be probated? In these events, it would appear to be necessary to establish a no-asset probate simply in order to have a personal representative assert the creditors' rights. Or, might it be better to allow the creditors in such a situation to pursue the surviving account holders directly? Compare, for example, Probate §18201 regarding creditors' rights against property in a living trust. There is no requirement that the assets be pursued by the personal representative; the property of the trust is "subject to the claims of creditors" to the extent the probate estate is insufficient.

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2) Proposed Section 5307(c) provides that no proceeding to assert liability against the surviving account holder shall be commenced unless (1) the personal representative has received a written demand by a creditor of the decedent; and (2) the proceeding is commenced by the personal representative not more than two (2) years after the decedent's death. First, there is no definition provided of "creditor". The definition of "creditor" should be limited to those who have filed timely claims in the decedent's estate. Under the generic definition of "creditor", such a timely claim would not be required. Compare, for example, Probate Code Section 13552 regarding the liability of the surviving spouse for the decedent's debts which section bars claims unless the creditor files a timely claim in the probate estate.

Second, this section would appear to prevent the personal representative from pursuing the surviving account holder unless such a demand was made by a creditor. Shouldn't the personal representative be empowered (and possibly required) to pursue the surviving account holder if there is reason to believe that the estate is insolvent? Moreover, the personal representative may wish to seek out the surviving account holder to pay taxes and expenses of administration. Under the proposal, it would appear that the personal representative is not empowered to begin such a proceeding, except upon the demand of a "creditor".

3) There is no provision made for the personal representative to notify the financial institution and put a "stop" on withdrawals by the surviving account holder. Supposedly, this could be handled under the provisions of a Prejudgment Writ of Attachment. It would be far more simple, however, to provide herein for the ability of the personal representative to simply notify the financial institution of the personal representative's claim, in order that the financial institution shall thereafter not disburse funds from the multiple-party account to the surviving account holder. This would avoid the necessity of the personal representative having to "chase" the surviving account holder.

4) There is no time limit on the written demand from the creditor. The only provision is that the proceeding must be commenced by the personal representative not more than two (2) years after the decedent's death. Looking at extremes, this would open the possibility for a demand by a creditor upon the personal representative on the last day, requiring that the personal representative commence an action against the surviving account holders on that very day. A written demand by the creditor should have to be served upon the personal representative not later than, say, twenty (20) months after the decedent's death, in order to allow the personal representative sufficient time to commence the action against the surviving account holders.

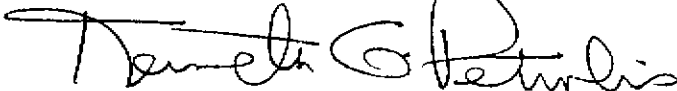
5) Proposed Section 5307(b) provides the surviving party is liable for amounts "the decedent owned beneficially" immediately before the decedent's death. It would be clearer to provide that the surviving party

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is liable to the extent of the decedent's "net contribution", since this term is defined in proposed Section 5132.

Yours very truly,

BEVERLY HILLS BAR ASSOCIATION
LEGISLATIVE COMMITTEE PROBATE SECTION



KENNETH G. PETRULIS

KGP/ar

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November 30, 1987

Mr. Theodore J. Cranston
Gray, Cary, Ames & Frye
1200 Prospect Street, Suite 575
La Jolla, California 92037

Re: LRC Memo 87-90, Multiple Party Accounts

Dear Ted:

I co-owned with a friend of mine a cabin at Bass Lake. Title stood in his name and his wife's name, as joint tenants, as to an undivided one-half interest; and in my name and my wife's name, as joint tenants, as to an undivided one-half interest. In order to provide for payment of taxes, insurance, utilities and other common costs of maintenance and upkeep, a bank account was opened in the names of the two wives. The husbands' names were not on the account. Either of the two wives could draw on the account. The account was held as tenants in common between the two wives. As would be expected, contribution to the account was equal. Under the proposal of Memo 87-90, the account would be a "joint account" with right of survivorship. Clearly, that is not what the parties intended.

As you know, it is quite common for siblings who co-own property to establish tenancy in common accounts for the purpose of managing co-owned, inherited property. Occasionally this may be formalized into a partnership account, but more often than not the account is merely held in the individual names, as tenants in common. Rental or other income from the co-owned property is typically deposited in the account, and expenses relating to the property are typically paid from the account. Anyone who would suggest that a right of survivorship is intended in those circumstances lacks practical experience in the real world.

Mr. Theodore J. Cranston
November 30, 1987
Page 2

For years, the public has been opening tenancy in common accounts intending exactly what the law provided; legal advisors have been advising people concerning the ownership of tenancy in common accounts. It would be a disservice to the public to enact legislation which would abolish this useful type of account or which would change terminology so that tenancy in common no longer means tenancy in common. To require that clear and convincing evidence be submitted to establish tenancy in common is a step backwards.

The problem with the proposal made by Memo 87-90 is made even more acute by the transitional provisions Section 100 and Section 101. These sections provide that the financial institution may continue to use its outdated forms and has no liability for doing so. In other words, an outdated signature card can be presented to the depositors who are led to believe by the statements on the card that they are opening a tenancy in common or community property account, when in fact a "joint account" with right of survivorship is being opened. Black means white and white means black. I expect next to see the Cheshire cat in this Wonderland of Alice.

Very truly yours,



Kenneth M. Klug

cc: Team 2
James V. Quillinan

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**



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SAN FRANCISCO, CA 94102-4498
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November 30, 1987

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Mr. James V. Quillinan
Diemer, Schneider, Jeffers,
Luce & Quillinan
444 Castro Street, Suite 900
Mountain View, CA 94041

Re: LRC Memo 87-90, Multiple Party Accounts

Dear Jim:

You will recall that in my letter of September 11, 1987, I was critical of what I viewed as unending tinkering with the Probate Code. I complained, "Constantly drafting and redrafting statutes is a disservice to the public; change for the sake of change reduces the ability of the lawyers, the courts and others who must deal with the laws to assimilate all of the changes." I went on to commend the Commission for its work, but added that "It is time to stop fixing things that are already fixed."

In its staff draft of the Recommendation Relating to Rules of Procedure in Probate, the staff defended itself by stating that they do what they can to keep the renumbering of code sections down to a minimum. (Staff Note, Page 2.)

Although I disagree that the staff is doing everything it can do to maintain the integrity of the existing Probate Code and numbering system, it is not my purpose to engage in a debate with the staff. The purpose of this letter is to again bring to the attention of the Commissioners what I see as an unending problem that needs to be addressed directly by the Commission.

You will be receiving Team 2's report from Ted Cranston relating to LRC Memo 87-90. I will not discuss in this letter the substantive problems in the proposal which will be covered by that report. Instead, I want to focus on my earlier complaint and observe that the problem still

Mr. James V. Quillinan
November 30, 1987
Page 2

exists. The staff draft of Memo 87-90 is yet another example. That memo proposes to repeal Probate Code Section 5101 and re-enact it "without substantive change" in Sections 5120, 5122, 5124, 5128, 5130, 5132, 5134, 5136, 5138, 5140, 5142, 5144, 5146, 5148, 5150, and 5152.

The primary substantive change to Section 5101 is a redefinition of "financial institution" that could easily have been accomplished by amending subdivision 5101(c) as proposed in Section 5126. This approach would have resulted in 15 fewer sections for lawyers to learn.

Section 5101 was enacted in 1983 following recommendation of the Law Revision Commission. What possible public benefit is obtained by repealing, renumbering and redrafting that section as this staff draft proposes? As a lawyer, I am bothered by the unending tinkering that is still going on: more change for the sake of change. As a citizen and taxpayer of California I am appalled by the waste of public resources being expended to study, restudy, write and rewrite the statutes. I am appalled not only by the obvious waste of staff time and materials, but by the expenditure of the time of the Commissioners, of the legislature, and of the countless people who review and comment upon these proposals and who participate in the legislative process.

What is the cost to the people of the State of California to constantly rewrite statutes? Do the benefits come close to justifying the costs? Aren't there more important things to which we can devote our resources? Are the inmates running the asylum?

We have been complaining for years about needless change in the Probate Code. It is simply not possible for the volunteer attorneys of our Section to keep pace with the paid Law Revision Commission staff. I wish that I had the time to review and study each memorandum presented. Unfortunately, our studies must, of necessity, be selective. We could be more selective and provide better review and analysis if we were not deluged by proposals "without substantive change." Furthermore, the problem may well go beyond the Probate Code. From the tinkering we see with the Probate Code, is there any reason to believe that the staff will not continue tinkering with other statutes long after the Commission completes its work on the Probate Code?

I believe the time has come for the Commission to clearly and convincingly instruct the staff to limit its

Mr. James V. Quillinan
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proposals to substantive changes and technical conforming amendments required by the substantive changes. I believe the entire Probate Code project will be completed more efficiently and satisfactorily if the Commission would so instruct the staff.

Very truly yours,



Kenneth M. Klug

cc: All Executive Committee Members and Advisors

ESTATE PLANNING, TRUST AND PROBATE LAW SECTION OF THE STATE BAR OF CALIFORNIA



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March 17, 1983

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Peter Jensen
State Bar of California
1210 K Street
Sacramento, California

Dear Peter:

As you know, the Executive Committee of the Estate Fund and Trust and Probate Law Section has worked with the California Law Revision Commission on a number of bills which the Commission has introduced in the Legislature this year.

The Executive Committee of the Section supports the following Law Revision Commission bills:

- Assembly Bill 24 (missing persons);
Assembly Bill 28 (disclaimers);
Assembly Bill 29 (emancipated minors); and
Assembly Bill 53 (non-probate transfers).

The Executive Committee, however, may suggest some technical corrections on one or more of the bills from time to time.

Sincerely,

Charles A. Collier, Jr.

cc: John DeMouilly
Harley Spitler
Mary Yen

Account Number _____ **(To be filled in by the treasurer)**

I hereby make application for membership in and agree to conform to the bylaws or any amendments thereof in the

CREDIT UNION

Social Sec. No. or Tax Ident. No.: _____
SIGN HERE
Do Not Print

Address: _____ Zip _____

Date of Birth: _____ Husband's and wife's mother's maiden names: _____

Employer: _____ Occupation: _____ Res. Phone: _____
 Bus. Phone: _____

This application approved by the: (check one)
 Board Executive Committee Membership Officer

Date: _____ Signed: _____
 (Person representing approver of application)

INDIVIDUAL AND JOINT ACCOUNT AGREEMENT

In this agreement, the word "parties" means each and all of those who sign (whether or not one or more persons).

The _____ Credit Union is authorized to recognize any of the signatures subscribed below in the payment of funds or the transaction of any business for this account. The parties to this account agree with each other and the credit union that all sums now paid in on shares or heretofore or hereafter paid in on shares by any or all of the parties shall be owned:

1. Jointly and equally with right of survivorship.
 OR
 2. As follows:

_____ shall own _____ %
 _____ shall own _____ %
 _____ shall own _____ %

(If percentages are not indicated, parties will own in proportion to net contributions: Total Deposits minus Total Withdrawals)

A. With right of survivorship (all shares shall pass to the surviving parties on the account).
 OR
 B. Upon the death of a party, that party's interest shall be paid to his/her designated beneficiary.

The parties agree to have the credit union report income earned on this account under the number recorded on the W-9.

Withdrawal of any or all shares by any of the parties or vested beneficiaries shall be valid and discharge the credit union from any liability for such payment. All parties further agree that any amounts added to this account by reason of any life insurance shall be paid as designated by the parties. In the event that no designation is made, the proceeds shall be paid equally to the surviving parties. Any or all of the parties may pledge all or any part of the shares in this account as collateral security to a loan or loans. The right of authority of the credit union under this agreement shall not be changed or terminated by the parties, except by written notice to the credit union duly signed by all parties, and shall not affect transactions theretofore made. Shares are not transferable except on the books of the credit union. The parties agree to keep the credit union informed of any changes in their addresses.

Member's Signature

Dated: _____, 19____

} Owner(s)

CONSENT OF SPOUSE

(To be completed by the spouse of any joint owner if said spouse is not included as a joint owner.) Approved and consented to:

Dated: _____, 19____
 Spouse of _____

Dated: _____, 19____
 Spouse of _____

CLSC CAT #533 8-84

Form W-9

PAYER'S REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

Name: _____

Address: _____

City, State and Zip Code: _____

List Account Numbers here: _____

Part I. Taxpayer Identification Number Enter your Taxpayer Identification Number in the box. NOTE: If the account is in more than one name, see Page 2 of W-9 instructions.

Social Security Number or Employer Identification Number: _____

Part II. Backup Withholding on Accounts Opened After December 31, 1983 Check this box if you are not subject to backup withholding. (See copy of IRS instructions for Form W-9 or IRS Code Section 3406 (f) (c).)

CERTIFICATION

Under penalties of perjury, I certify that the information provided on this form is true, correct, complete, and that if a Taxpayer Identification Number has not been provided in the space above, a Taxpayer Identification Number has not been issued to me and I have mailed or delivered an application to receive a Taxpayer Identification Number to the appropriate Internal Revenue Service Center or Social Security Administration Office (or I intend to mail or deliver an application in the near future). I understand that if I do not provide a Taxpayer Identification Number to you within sixty (60) days, you are required to withhold twenty percent (20%) of all reportable payments thereafter made to me until I provide a number.

Signed: _____ Dated: _____

DESIGNATION OF BENEFICIARIES (Not to be used if joint tenancy box is checked)

In the event of my death, I the undersigned member of _____ Credit Union hereby designate as my beneficiary to receive my proportionate share in Account

No. _____

Name: _____

Address: _____

Member's Signature

Date: _____

CONSENT OF SPOUSE (If beneficiary is other than spouse)

APPROVED AND CONSENTED: Date: _____

Signed: _____

Spouse of: _____

In the event of my death, I the undersigned member of _____ Credit Union hereby designate as my beneficiary to receive my proportionate share in Account

No. _____

Name: _____

Address: _____

Member's Signature

Date: _____

CONSENT OF SPOUSE (If beneficiary is other than spouse)

APPROVED AND CONSENTED: Date: _____

Signed: _____

Spouse of: _____

DESIGNATION OF BENEFICIARY (INSURANCE)

In the event of my death, I, the undersigned, a member of _____ Credit Union,

hereby designate _____ as my beneficiary to receive any and all amounts paid under the terms of any Group Life Insurance Agreement to said credit union.

Address of Beneficiary: _____

Residence _____ City and State _____ Zip Code _____

Account No.: _____

Dated: _____ Member's Signature

CONSENT OF SPOUSE (To be completed if Beneficiary is other than the spouse of member)

Approved and consented to this date: _____

Signed: _____ Spouse of: _____

NOTE: Terms and conditions of Life Savings Insurance subject to possible change or termination by credit union.