ARTICLE 6

Nonprobate Transfers

Editor's Note

2013 Act No. 100, Section 4, provides as follows:

"SECTION 4. (A) This act [amending Articles 1, 2, 3, 4, 6, and 7] takes effect on January 1, 2014.

"(B) Except as otherwise provided in this act, on the effective date of this act:

"(1) this act applies to any estates of decedents dying thereafter and to all trusts created before, on, or after its effective date;

"(2) the act applies to all judicial proceedings concerning estates of decedents and trusts commenced on or after its effective date;

"(3) this act applies to judicial proceedings concerning estates of decedents and trusts commenced before its effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

"(4) subject to item (5) and subsection (C) of this section, any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date of the act unless there is a clear indication of a contrary intent in the terms of the governing instrument; and

"(5) an act done and any right acquired or accrued before the effective date of the act is not affected by this act. Unless otherwise provided in this act, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust and a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death.

"(C) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the act, that statute continues to apply to the right even if it has been repealed or superseded."

Part 1

Definitions and General Provisions

**SECTION 62‑6‑101.** Definitions.

In this subpart:

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

(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 the death of all parties or for whom a party is named as the trustee.

(4) "Financial institution" means any 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.

(5) "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 including, but not limited to, joint accounts or POD accounts.

(6) "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.

(7) "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.

(8) "Payment" of sums on deposit includes withdrawal, payment to a party, or third person pursuant to a 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.

(9) "Proof of death" includes a death certificate or record or report which is prima facie proof of death under Section 62‑1‑507.

(10) "P.O.D. 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.

(11) "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.

(12) "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. However, for purposes of this subpart, 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.

(13) "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 the death of a party.

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment substantially rewrote the section, added subsection (2), definition of "Agent"; deleted former subsection (4), definition of "Joint account"; deleted former subsection (11), definition of "P.O.D. payee"; added new subsection (11), definition of "Receive"; deleted former subsection (14), definition of "Trust account"; deleted former subsection (15), definition of "Withdrawal"; and added new subsection (15), definition of "Terms of the account".

**SECTION 62‑6‑102.** Applicability of article.

This article does not apply to: (i) an account established for a partnership, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑103.** 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 62‑6‑202(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 after January 1, 2014, whether in the form prescribed in Section 62‑6‑104 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 subpart, and is governed by this article.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑104.** Short forms for single‑ and multiple‑party accounts.

(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 subpart applicable to an account of that type:

UNIFORM SINGLE‑OR MULTIPLE‑PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

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| --- | --- |
|  |  |
|  |  |
|  |  |

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]:

If Single‑Party Account is chosen above, choose one of following:

\_\_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]:

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

If Multiple‑Party Account is chosen above, choose one of following:

\_\_MULTIPLE‑PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties. The last surviving party owns the entire account. (Note: This can be overridden by clear and convincing evidence of a contrary intent.)

\_\_MULTIPLE‑PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One Or More Beneficiaries]:

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| --- | --- |
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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.

DESIGNATION OF AGENT FOR ACCOUNT [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]:

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| --- | --- |
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[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 article applicable to the type of account that most nearly conforms to the depositor's intent.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 70; 1990 Act No. 521, Section 88; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑105.** Designation of agent; authority of agent.

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. 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. Death of the sole party or last surviving party terminates the authority of an agent. The designated agent on an account is authorized to make all transactions on the account that the party can make, including, but not limited to, closing the account. An agent serving under a durable power of attorney can change, modify, or revoke an agent designated on an account.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑106.** Applicability of Part 2.

The provisions of Part 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. Part 3 governs the liability and set‑off rights of financial institutions that make payments pursuant to it.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

Part 2

Ownership as Between Parties and Others

**SECTION 62‑6‑201.** Ownership during lifetime.

(A) 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.

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

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

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 69; 1976 Code Section 62‑6‑103; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment rewrote the section.

**SECTION 62‑6‑202.** Right of survivorship.

(a) Except as otherwise provided in this subpart, 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 62‑6‑201 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 62‑6‑201 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 62‑6‑201, 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 62‑6‑201 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.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 70; 1990 Act No. 521, Section 88; 1976 Code Section 62‑6‑104; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment rewrote the section.

**SECTION 62‑6‑203.** Rights of parties and beneficiaries.

(a) Rights at death of a party under Section 62‑6‑202 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 under Section 62‑6‑202 may be altered by clear and convincing evidence, including but not limited to express provisions in a will.

(c) A multiple‑party account of husband and wife is presumed to be joint with right of survivorship unless clear and convincing evidence shows survivorship was not the intent of the party.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑204.** Transfers not testamentary.

A transfer resulting from the application of Section 62‑6‑202 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Articles 1 through 4 (estate administration) unless there is clear and convincing evidence that the deceased party did not intend for the account to be joint with right of survivorship.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑205.** Rights of creditors.

Subject to the provisions contained in Section 62‑3‑916, no multiple‑party account is effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, if other assets of the estate are insufficient. A surviving party or beneficiary who receives payment from a multiple‑party account after the death of a deceased party is liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability may be commenced unless the personal representative has received a written demand by a creditor of the decedent, and no proceeding may be commenced later than one year following the death of the decedent. Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the right of a financial institution to make payment on multiple‑party accounts according to the terms of the account or make it liable to the estate of a deceased party unless, before payment, the institution has been served with an order of the probate court.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 71; 1976 Code Section 62‑6‑107; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment rewrote this section.

Part 3

Protection of Financial Institutions

**SECTION 62‑6‑301.** Contract of deposit for a multiple‑party account.

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.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 72; 1976 Code Section 62‑6‑108; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑302.** Multiple‑party accounts may be paid on request to one or more parties.

A financial institution, on request, may pay sums on deposit in a multiple‑party account:

(1) to 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;

(2) to the personal representative 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 62‑6‑202; or

(3) in accordance with a court order directing the payment of the sums on deposit.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑303.** Payment of POD account.

A financial institution, on request, may pay sums on deposit in an account with a POD designation:

(1) to 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) to 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;

(3) to the personal representative 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; or

(4) in accordance with a court order directing the payment of the sums on deposit.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 74; 1976 Code Section 62‑6‑110; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑304.** Payment to 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.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑305.** Payment to minors.

If a financial institution is required or permitted to make payment pursuant to this part to a minor designated as a beneficiary, payment shall be made as ordered by the court or may be made in accordance with Section 62‑5‑103.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑6‑306.** Discharge.

(a) Payment made pursuant to this subpart 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 an agent under a durable power of attorney or a conservator for a party, or from the personal representative of a deceased party, or surviving spouse 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 or a court order 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.

HISTORY: 1986 Act No. 539, Section 1; 1976 Code Section 62‑6‑112; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment rewrote the section.

**SECTION 62‑6‑307.** Set‑off.

Without qualifying any other statutory right to set‑off or lien and subject to any contractual provision, if a party to a multiple‑party account is indebted to a financial institution, the financial institution has a right to set‑off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set‑off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

HISTORY: 1986 Act No. 539, Section 1; 1976 Code Section 62‑6‑113; 2013 Act No. 100, Section 2, eff January 1, 2014.