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ARTICLE 6.

NONPROBATE TRANSFERS

PART 1.

MULTIPLE‑PARTY ACCOUNTS

**SECTION 62‑6‑101.** Definitions.

In this part [Sections 62‑6‑101 et seq.], unless the context otherwise requires:

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

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

(4) "Joint account" means an account payable on request to one or more of two or more parties (whether "and", "or", "and/or", or any other designation), whether or not mention is made of any right of survivorship.

(5) A "Multiple‑Party account" is any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a prorata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple‑party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set‑off, or 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 62‑1‑107.

(10) "P.O.D. account" means an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums On Deposit" means the balance payable on a multiple‑party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relationship such as attorney‑client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑6‑102.** Ownership as between parties and others; protection of financial institutions.

The provisions of Sections 62‑6‑103 to 62‑6‑105 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple‑party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of Sections 62‑6‑108 to 62‑6‑113 govern the liability of financial institutions who make payments pursuant thereto and their set‑off rights.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑6‑103.** Ownership during lifetime.

(a) 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.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 69.

**SECTION 62‑6‑104.** Right of survivorship.

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is a writing filed with the financial institution at the time the account is created (or subsequently as provided under Section 62‑6‑105) which indicates a different intention. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 62‑6‑103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account:

(1) on death of one of two or more original payees the rights to any sums remaining on deposit are governed by subsection (a);

(2) on death of the sole original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account:

(1) on death of one of two or more trustees, the right to any sums remaining on deposit are governed by subsection (a);

(2) on death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account on deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple party account has no effect on beneficial ownership on the account other than to transfer the rights of the decedent as part of his estate.

(e) A right to survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will; however, a party who owns a joint account under the provisions of Section 62‑6‑103(a) may effect such change by will to the extent of his ownership if the will contains clear and convincing evidence of his intent to do so.

(f) The provisions of Section 62‑6‑104(a), (b), and (c) are applicable to all multiple‑party accounts created subsequent to the effective date of this section, and unless there is clear and convincing evidence of a different intention at the time the account was created, to all multiple‑party accounts created prior to the effective date of this section.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 70; 1990 Act No. 521, Section 88.

**SECTION 62‑6‑105.** Effect of written notice to financial institution.

The provisions of Section 62‑6‑104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑6‑106.** Accounts and transfers nontestamentary.

Any transfers resulting from the application of Section 62‑6‑104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles 1 through 4 [Sections 62‑1‑101 thru 62‑4‑101 et seq.] except as a consequence of, and to the extent directed by, Section 62‑6‑107.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑6‑107.** 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, P.O.D. payee, 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 two years 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 thereof 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.

**SECTION 62‑6‑108.** Financial institution protection; payment on signature of one party.

Financial institutions may enter into multiple‑party accounts to the same extent that they may enter into single‑party accounts. Any multiple‑party account may be paid, on request, to any one or more of the parties, unless a contrary intent is manifested by the terms of the account or the deposit agreement. A financial institution may not be required to inquire as to the source of funds received for deposit to a multiple‑party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 72.

**SECTION 62‑6‑109.** Financial institution protection; payment after death or disability; joint account.

Unless a contrary intent is manifested by the terms of the account or the deposit agreement, any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 62‑6‑104.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 73.

**SECTION 62‑6‑110.** Financial institution protection; payment of P.O.D. account.

Unless a contrary intent is manifested by the terms of the account or the deposit agreement, any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 74.

**SECTION 62‑6‑111.** Financial institution protection; payment of trust account.

Unless a contrary intent is manifested by the terms of the account or the deposit agreement, any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary or to the personal representative or heirs of a deceased beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 75.

**SECTION 62‑6‑112.** Financial institution protection; discharge.

Payment made pursuant to Section 62‑6‑108, 62‑6‑109, 62‑6‑110, or 62‑6‑111 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, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple‑party accounts.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑6‑113.** Financial institution protection; 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.

PART 2.

PROVISIONS RELATING TO EFFECT OF DEATH

**SECTION 62‑6‑201.** Provisions for payment or transfer at death.

(a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, or other security interest, promissory note, deposit agreement, pension plan, trust agreement, conveyance, or any other written instrument otherwise effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this Code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promissor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this State.

HISTORY: 1986 Act No. 539, Section 1.