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or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;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other statute before the effective date of the act, that statute continues to apply to the right even if it has been repealed or superseded.”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.

REPORTER’S COMMENT

This and the sections that follow are designed to reduce certain questions concerning many forms of multiple‑person accounts. A “payable on death” designation and an “agency” designation are also authorized for both single‑party and multiple‑party accounts. An agent (paragraph (2)) may not be a party. The agency designation must be signed by all parties, and the agent is the agent of all parties. See Section 62‑6‑105 (designation of agent).

A “beneficiary” of a party (paragraph (3)) may be a POD beneficiary. See paragraph (10) (“POD designation” defined). The definition of “beneficiary” refers to a “person,” who may be an individual, corporation, organization, or other legal entity Thus, a church, trust company, family corporation, or other entity, as well as any individual, may be designated as a beneficiary.

The term “multiple‑party account” (paragraph 5) is used in this part in a broad sense to include any account having more than one owner with a present interest in the account. Thus, an account may be a “multiple‑party account” within the meaning of this part regardless of whether the terms of the account refer to it as “joint tenancy” or as “tenancy in common,” regardless of whether the parties named are coupled by “or” or “and,” and regardless of whether any reference is made to survivorship rights, whether expressly or by abbreviation such as JTWROS or JT TEN. Survivorship rights in a multiple‑party account are determined by the terms of the account, by statute and by the intent of the party, and survivorship is not a necessary incident of a multiple‑party account. See Section 62‑6‑202 (rights at death).

“Net contribution” as defined in paragraph (6) has no application to the financial institution‑depositor relationship. Rather, it is relevant only to controversies that may arise between parties to a multiple‑party account. See Section 62‑6‑201 (ownership during lifetime).

Under paragraph (7), a “party” is a person with a present right to payment from an account. Therefore, present owners of a multiple‑party account are parties, as is the present owner of an account with a POD designation. The beneficiary of an account with a POD designation is not a party, but is entitled to payment only on the death of all parties. An agent with the right of withdrawal on behalf of a party is not itself a party. A person claiming on behalf of a party such as a guardian or conservator, or claiming the interest of a party such as a creditor, is not itself a party, and the right of such a person to payment is governed by general law other than this part.

Various signature requirements may be involved in order to meet the payment requirements of the account. A “request” (paragraph (12)) involves compliance with these requirements. A party is one to whom an account is presently payable without regard to whose signature may be required for a “request.”

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”.

CROSS REFERENCES

Definitions of terms for purposes of the South Carolina Probate Code, generally, see Section 62‑1‑201.

Provisions governing bank deposits, generally, see Sections 34‑11‑10 et seq.

Reduction in the amount of the conservator’s bond equal to the value of the assets of the estate deposited with a domestic financial institution as defined in this section, see Section 62‑5‑411.

Reduction of personal representative’s bond where assets of estate are deposited with domestic financial institution in a manner which prevents unauthorized disposition, see Section 62‑3‑604.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 18, Requirements.

S.C. Jur. Gifts Section 7, Intent.

S.C. Jur. Gifts Section 24, Pay on Death Accounts.

S.C. Jur. Guardian and Conservator Section 23, Valuation.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 47, Creation of a Trust of a Savings Account‑Joint Accounts.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, probate law. 42 S.C. L. Rev. 205 (Autumn 1990).

Selected Substantive Provisions of the South Carolina Probate Code: A Comparison with Previous South Carolina Law. 38 S.C. L. Rev. 611.

**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.

REPORTER’S COMMENT

The reference to a fiduciary or trust account in item (iii) includes a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, and a fiduciary account arising from a fiduciary relation such as attorney‑client.

Editor’s Note

Prior Laws: Former Section 62‑6‑102 was titled Ownership as between parties and others; protection of financial institutions, and had the following history: 1986 Act No. 539, Section 1.

**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.

REPORTER’S COMMENT

In the case of an account established after the effective date of this part that is not in substantially the form provided in Section 62‑6‑104, the account is governed by the provisions of this part applicable to the type of account that most nearly conforms to the depositor’s intent. See Section 62‑6‑104 (forms).

Thus, a tenancy in common account established before or after the effective date of this part would be classified as a “multiple‑party account” for purposes of this part. See Section 62‑6‑101(5) (“multiple‑party account” defined). On death of a party there would not be a right of survivorship since the tenancy in common title would be treated as a multiple‑party account without right of survivorship. See Section 62‑6‑202(c). It should be noted that a POD designation may not be made in a multiple‑party account without right of survivorship. See Sections 62‑6‑101(10) (“POD designation” defined), 62‑6‑104 (forms), and 62‑6‑202 (rights at death).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 18, Requirements.

S.C. Jur. Gifts Section 7, Intent.

Treatises and Practice Aids

Restatement (2d) of Property, Don. Trans. Section 32.4, Document of Transfer as a Substitute for a Will.

Restatement (2d) of Property, Don. Trans. Section 34.1, Effect of Donative Transfer on Spouse of Donor.

**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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| --- | --- |
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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.

REPORTER’S COMMENT

This section provides short forms for single‑ and multiple‑party accounts which, if used, bring the accounts within the terms of this part. A financial institution that uses the statutory form language in its accounts is protected in acting in reliance on the form of the account. See also Section 62‑6‑306 (discharge).

The forms provided in this section enable a person establishing a multiple‑party account to state expressly in the account whether there are to be survivorship rights between the parties. The account forms permit greater flexibility than traditional account designations.

An account that is not substantially in the form provided in this section is nonetheless governed by this part. See Section 62‑6‑103 (types of account; existing accounts).

CROSS REFERENCES

Accounts, see Section 62‑6‑103.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 18, Requirements.

S.C. Jur. Gifts Section 7, Intent.

Treatises and Practice Aids

Restatement (2d) of Property, Don. Trans. Section 32.4, Document of Transfer as a Substitute for a Will.

Will Contests Section 10:2, Types of Multi‑Party Accounts.

Will Contests Section 10:18, Ownership of Bank Account Between Multi‑Party Account Customers‑Joint Accounts.

Will Contests Section 10:21, Ownership of Bank Account Between Multi‑Party Account Customers‑Pod Accounts.

**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.

REPORTER’S COMMENT

An agent has no beneficial interest in the account. See Section 62‑6‑201 (ownership during lifetime). The agency relationship is governed by the general law of agency of the state, except to the extent this part provides express rules, including the rule that the agency survives the disability or incapacity of a party.

A financial institution may make payments at the direction of an agent notwithstanding disability, incapacity, or death of the party, subject to receipt of a stop notice. Section 62‑6‑306 (discharge); see also Section 62‑6‑304 (payment to designated agent).

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

Editor’s Note

Prior Laws: Former Section 62‑6‑105 was titled Effect of written notice to financial institution, and had the following history: 1986 Act No. 539, Section 1.

**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.

Editor’s Note

Prior Laws: Former Section 62‑6‑106 was titled Accounts and transfers nontestamentary, and had the following history: 1986 Act No. 539, Section 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Descent and Distribution Section 3, Property Subject to Descent and Distribution.

S.C. Jur. Wills Section 119, Order Not Subject to Collateral Attack.

**SECTIONS 62‑6‑107 to 62‑6‑113.** Omitted by 2013 Act No. 100, Section 2, eff January 1, 2014.

Editor’s Note

Former Section 62‑6‑107 was titled Rights of creditors and was derived from 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 71.

See, now, Section 62‑6‑205.

Former Section 62‑6‑108 was titled Financial institution protection; payment on signature of one party and was derived from 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 72.

See, now, Section 62‑6‑301.

Former Section 62‑6‑109 was titled Financial institution protection; payment after death or disability; joint account and was derived from 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 73.

Former Section 62‑6‑110 was titled Financial institution protection; payment of P.O.D. account and was derived from 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 74.

See, now, Section 62‑6‑303.

Former Section 62‑6‑111 was titled Financial institution protection; payment of trust account and was derived from 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 75.

Former Section 62‑6‑112 was titled Financial institution protection; discharge and was derived from 1986 Act No. 539, Section 1.

See, now, Section 62‑6‑306.

Former Section 62‑6‑113 was titled Financial institution protection; set‑off and was derived from 1986 Act No. 539, Section 1.

See, now, Section 62‑6‑307.

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.

REPORTER’S COMMENT

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

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

It is important to note that the section is limited to ownership of an account while parties are alive. Section 62‑6‑202 prescribes what happens to beneficial ownership on the death of a party.

The section does not undertake to describe the situation between parties if one party withdraws more than that party is then entitled to as against the other party. Sections 62‑6‑301 and 62‑6‑306 protect a financial institution in that circumstance without reference to whether a withdrawing party may be entitled to less than that party withdraws as against another party. Rights between parties in this situation are governed by general law other than this part.

The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals, and not equal and undivided ownership that would be an incident of joint tenancy.

Editor’s Note

Prior Laws: Former Section 62‑6‑201 was titled Provisions for payment or transfer at death, and had the following history: 1986 Act No. 539, Section 1.

Effect of Amendment

The 2013 amendment rewrote the section.

CROSS REFERENCES

Right of survivorship, see Section 62‑6‑202.

Library References

Banks and Banking 128, 151, 301(1).

Joint Tenancy 8.

Insurance 3463.

Labor and Employment 586.

Wills 86.

Westlaw Topic Nos. 52, 226.

Westlaw Topic Nos. 217, 231H, 409.

C.J.S. Banks and Banking Sections 266 to 270, 277 to 278, 280, 287 to 289, 327, 336, 608, 610 to 612.

C.J.S. Joint Tenancy Sections 15, 23 to 31.

C.J.S. Insurance Sections 393, 1415 to 1417.

C.J.S. Wills Sections 176 to 192, 796 to 797.

RESEARCH REFERENCES

Treatises and Practice Aids

Restatement (3d) Property (Wills & Don. Trans.) Section 7.1, Will Substitute‑Definition and Validity.

Restatement (3d) Property (Wills & Don. Trans.) Section 7.1 TD 3, Validity of Will Substitutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property: Joint Bank Accounts‑ Inter‑Vivos Ownership. 33 S.C. L. Rev. 125 (August 1981).

Selected Substantive Provisions of the South Carolina Probate Code: a Comparison with Previous South Carolina Law. 38 S.C. L. Rev. 611.

NOTES OF DECISIONS

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1. In general

Statute providing that any sums remaining on deposit in joint account at time of death of one of the parties to account belong to surviving party as against deceased party’s estate did not provide basis for testator’s widow to claim ownership of funds that widow withdrew from accounts prior to testator’s death; survivorship presumption applied only to sums in account at time of death, and widow had not contributed any money to joint accounts. Kemp v. Rawlings (S.C. 2004) 358 S.C. 28, 594 S.E.2d 845. Joint Tenancy 6

Joint survivorship accounts’ funds were property of estate of contributing account holder because non‑contributing account holder withdrew the funds and deposited them into a new account prior to contributing account holder’s death, such that non‑contributing holder lost his right to survivorship. Vaughn v. Bernhardt (S.C. 2001) 345 S.C. 196, 547 S.E.2d 869. Executors And Administrators 43; Joint Tenancy 6

Section 62‑6‑103, which provides that a joint bank account belongs, during the lifetime of all parties, to the parties in proportion to their net contributions to the account, did not preclude a bank from making payment from a joint account to satisfy a debt of one of the signatories, unconsented to by the other, even though the nonconsenting signatory had supplied the funds. Trotter v. First Federal Sav. and Loan Ass’n (S.C.App. 1989) 298 S.C. 85, 378 S.E.2d 267. Joint Tenancy 12

2. Testator’s intent

Will that bequeathed to testator’s wife joint bank account or joint saving account that testator and testator’s wife “have” entitled wife to funds in joint accounts that existed at testator’s death, not simply to funds in joint accounts that were in existence at time of execution of will; accounts from time of will’s execution were no longer in existence at time of testator’s death, testator was presumed to know that will speaks at death, and testator intended for his wife to be adequately provided for. Kemp v. Rawlings (S.C. 2004) 358 S.C. 28, 594 S.E.2d 845. Wills 481

Provision in testator’s will bequeathing to testator’s wife funds in joint accounts entitled wife to funds that wife withdrew from accounts prior to testator’s death; will was evidence of testator’s intent to give wife funds in joint accounts and for wife to receive those funds regardless of whether she withdrew them prior to testator’s death. Kemp v. Rawlings (S.C. 2004) 358 S.C. 28, 594 S.E.2d 845. Joint Tenancy 6

3. Change of right of survivorship

Right of survivorship of joint account may be changed by filing with financial institution a writing indicating different intended distribution of account proceeds, or by clear and convincing evidence of different intended distribution contained in will of owner of account to extent of his ownership. Estate of Chappell v. Gillespie (S.C.App. 1997) 327 S.C. 617, 491 S.E.2d 267.

4. Attorney’s fees

Following testator’s widow prevailing in action that was brought in probate court by testator’s children and that sought imposition of constructive trust on funds that widow withdrew from joint accounts prior to testator’s death, widow was not entitled to have her attorney fees paid out of testator’s estate; widow did not defend an action for recovery, preservation, protection, or increase of a common fund. Kemp v. Rawlings (S.C. 2004) 358 S.C. 28, 594 S.E.2d 845. Executors And Administrators 456(2)

**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.

REPORTER’S COMMENT

The effect of subsection (a) is to make an account payable to one or more of two or more parties a survivorship arrangement unless a nonsurvivorship arrangement is specified in the terms of the account.

The account characteristics described in this section must be determined by reference to the form of the account and the impact of Sections 62‑6‑103 and 62‑6‑104 on the admissibility of extrinsic evidence tending to confirm or contradict intention as signaled by the form.

Effect of Amendment

The 2013 amendment rewrote the section.

CROSS REFERENCES

Accounts, see Section 62‑6‑103.

Group life insurance policies, generally, see Sections 38‑65‑10 et seq.

Multiple party accounts may be paid on request to one or more parties, see Section 62‑6‑302.

Provisions of an accident and health insurance policy, see Sections 38‑71‑10 et seq.

Rights of parties and beneficiaries, see Section 6‑6‑203.

Transfers not testamentary, see Section 62‑6‑204.

Library References

Banks and Banking 128, 151, 301(5).

Joint Tenancy 6.

Westlaw Topic Nos. 52, 226.

C.J.S. Banks and Banking Sections 266 to 270, 277 to 278, 280, 287 to 289, 327, 336, 608, 610 to 612, 618.

C.J.S. Joint Tenancy Sections 2 to 4, 6, 9 to 17, 21 to 22.

LAW REVIEW AND JOURNAL COMMENTARIES

Selected Substantive Provisions of the South Carolina Probate Code: a Comparison with Previous South Carolina Law. 38 S.C. L. Rev. 611.

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1. In general

Regardless of when original account was first opened, joint account was “created,” for purposes of Probate Code section setting forth means by which right of survivorship of joint account may be changed, when testator added second party to account. Estate of Chappell v. Gillespie (S.C.App. 1997) 327 S.C. 617, 491 S.E.2d 267.

2. Evidence of intent contrary to presumption

To leave money in a survivorship account to someone other than the joint owner, the Probate Code requires the party who contributes to the account to either (l) file a writing with the financial institution indicating a different intended distribution of the account proceeds, or (2) present clear and convincing evidence of a different intended distribution in her will. Abernathy v. Latham (S.C.App. 2001) 345 S.C. 106, 545 S.E.2d 848. Joint Tenancy 6

Personal representative of testator’s estate had right of survivorship in funds in certificates of deposit owned jointly by personal representative and testator, where there was no evidence showing contrary intention by testator at time certificates were set up. Abernathy v. Latham (S.C.App. 2001) 345 S.C. 106, 545 S.E.2d 848. Joint Tenancy 6

3. —— Provision in will

Residuary clause in testator’s will and extrinsic evidence of testator’s intent to divide her estate between personal representative and testator’s relatives did not overcome by clear and convincing evidence the presumption that personal representative had survivorship right to all funds in certificates of deposit held jointly by testator and personal representative. Abernathy v. Latham (S.C.App. 2001) 345 S.C. 106, 545 S.E.2d 848. Joint Tenancy 14

Provisions in a will constituted “clear and convincing” evidence of an intent by a party to a certificate of deposit joint account to change the right of survivorship in the account, where the will straightforwardly awarded 1⁄3 of the account funds to the surviving party to the account, and provided, through a residuary clause, that the remainder of all property should go to a third party. Matthews v. Nelson (S.C. 1991) 303 S.C. 489, 401 S.E.2d 669.

4. —— Writing filed with issuing institution

If a joint account was created before the enactment of the Probate Code, the surviving account holders are entitled to all remaining sums unless there is a writing filed with the financial institution or there is clear and convincing evidence of a different intention at the time the account was created. Abernathy v. Latham (S.C.App. 2001) 345 S.C. 106, 545 S.E.2d 848. Joint Tenancy 6; Joint Tenancy 14

Right of survivorship of joint account may be changed by filing with financial institution a writing indicating different intended distribution of account proceeds, or by clear and convincing evidence of different intended distribution contained in will of owner of account to extent of his ownership. Estate of Chappell v. Gillespie (S.C.App. 1997) 327 S.C. 617, 491 S.E.2d 267.

Proceeds from decedent’s joint accounts with her sister belonged to sister, and were not includable in decedent’s estate, for purposes of calculating surviving spouse’s elective share; accounts had been created before effective date of probate code, no writing had been filed with financial institution showing contrary intent, and no other evidence indicated that decedent and sister had contrary intent at time they created accounts. Smith v. McCall (S.C.App. 1996) 324 S.C. 356, 477 S.E.2d 475. Joint Tenancy 6; Wills 801(5.3)

A certificate of deposit issued in joint names belonged wholly to the surviving holder on the death of the other holder where it was issued to one “or” the other, it was designated a “Joint Account‑With Survivorship,” no writing was filed with the issuer indicating a contrary intention, and it was created after the effective date of Section 62‑6‑104, which requires a writing to indicate a different intention. Childs v. First Nat. Bank of Pickens County (S.C.App. 1991) 306 S.C. 20, 410 S.E.2d 17, certiorari denied.

5. —— Other evidence

Although residuary clause in will left 25% of any remaining assets to joint tenant in testator’s bank account and specific devises in will could not be funded without proceeds of bank account, this did not amount to clear and convincing evidence that testator intended to change joint tenant’s right of survivorship in account, especially since will did not specifically mention account or any other assets to be used in satisfying devises nor did it indicate that testator intended for joint tenant to receive only what was specifically mentioned in will. Estate of Chappell v. Gillespie (S.C.App. 1997) 327 S.C. 617, 491 S.E.2d 267.

Since witness’ testimony that they believed that testator would not have made specific devises in his will if he did not have assets to fund them was not evidence contained in will of account owner, it was insufficient to alter joint tenant’s right of survivorship in testator’s bank account. Estate of Chappell v. Gillespie (S.C.App. 1997) 327 S.C. 617, 491 S.E.2d 267.

6. Withdrawal prior to death

Statute providing that any sums remaining on deposit in joint account at time of death of one of the parties to account belong to surviving party as against deceased party’s estate did not provide basis for testator’s widow to claim ownership of funds that widow withdrew from accounts prior to testator’s death; survivorship presumption applied only to sums in account at time of death, and widow had not contributed any money to joint accounts. Kemp v. Rawlings (S.C. 2004) 358 S.C. 28, 594 S.E.2d 845. Joint Tenancy 6

Joint survivorship accounts’ funds were property of estate of contributing account holder because non‑contributing account holder withdrew the funds and deposited them into a new account prior to contributing account holder’s death, such that non‑contributing holder lost his right to survivorship. Vaughn v. Bernhardt (S.C. 2001) 345 S.C. 196, 547 S.E.2d 869. Executors And Administrators 43; Joint Tenancy 6

Non‑contributing party to joint survivorship accounts was not entitled to application of presumption that account funds were intended to be gift to him as surviving party, in action brought by representative of estate of sole‑contributor of funds to accounts to recover funds withdrawn by non‑contributing party, where non‑contributing party withdrew funds seven days prior to sole‑contributor’s death and no funds were on deposit at time of sole‑contributor’s death. Vaughn v. Bernhardt (S.C.App. 2000) 339 S.C. 125, 528 S.E.2d 82, rehearing denied, certiorari granted, affirmed 345 S.C. 196, 547 S.E.2d 869. Gifts 47(1)

Under the Probate Code, the presumption created in favor of the non‑contributing survivor to a joint account only applies to those funds remaining on deposit at the death of the contributor. Vaughn v. Bernhardt (S.C.App. 2000) 339 S.C. 125, 528 S.E.2d 82, rehearing denied, certiorari granted, affirmed 345 S.C. 196, 547 S.E.2d 869. Joint Tenancy 14

7. Under former Section 34‑11‑10

In determining whether a presumption that all funds from a joint bank account become payable to the survivor, under Section 34‑11‑10, has been rebutted, a court will analyze all relevant factors, including, but not limited to: whether the accounts were used solely for the depositor’s benefit; who made the deposits and withdrawals; whether the survivor of a joint account was meant to be favored by the deceased party; and whether a gift to the survivor would be destructive of the depositor’s general testamentary plan. Carolina Production Credit Ass’n v. Rogers (S.C. 1984) 282 S.C. 184, 318 S.E.2d 357. Joint Tenancy 6

A husband who had deposited money into an account jointly held by him and his wife was presumed to have made a gift to the wife only as to one‑half of the amount while both parties were alive. Clinkscales v. Clinkscales (S.C. 1980) 275 S.C. 308, 270 S.E.2d 715.

Although a presumption arises that funds in joint accounts established in conformity with statute are intended as a gift to be paid to the survivor as a gift to be paid to the survivor as owner, this presumption may be rebutted by evidence that negates the donative intention of the deceased. Johnson v. Herrin (S.C. 1978) 272 S.C. 224, 250 S.E.2d 334. Gifts 47(1)

This section [Code 1962 Section 8‑171] creates a presumption that the parties intended a joint‑survivor account to be paid to the survivor as owner; and that presumption will stand and entitles the survivor to full right of ownership unless rebutted by evidence to the satisfaction of the trier of the facts. Gilford v. South Carolina Nat. Bank (S.C. 1972) 257 S.C. 374, 186 S.E.2d 258.

There is a presumption that an account card signed by two persons creates the contractual relationship of a joint‑survivor account between these parties and the bank. Gilford v. South Carolina Nat. Bank (S.C. 1972) 257 S.C. 374, 186 S.E.2d 258.

**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.

REPORTER’S COMMENT

Under this section, rights of parties and beneficiaries are determined by the type of account at the time of death. It is to be noted that only a “party” may give notice blocking the provisions of Section 62‑6‑202 (rights at death). “Party” is defined by Section 62‑6‑101(7). Thus, if there is an account with a POD designation in the name of A and B with C as beneficiary, C cannot change the right of survivorship because C has no present right to payment and hence is not a party.

**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.

REPORTER’S COMMENT

The purpose of classifying the transactions contemplated by this part as nontestamentary is to bolster the explicit statement that their validity as effective modes of transfers on death is not to be determined by the requirements for wills.

**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.

REPORTER’S COMMENT

Section 62‑6‑205, in derogation of the survivorship rights established in Sections 62‑6‑202 through 62‑6‑204, establishes in the estate of a deceased party a limited beneficial ownership of the funds on deposit in a multiple‑party account, limited, however, to the payment of debts, taxes, and the expenses of administration of the estate of the deceased party, and existing only if other assets of that estate are insufficient to that purpose, only up to the amount to which the deceased party was beneficially entitled prior to death, and only if a creditor’s claim proceeding is brought within one year of the deceased party’s death.

Effect of Amendment

The 2013 amendment rewrote this section.

Library References

Banks and Banking 128, 151, 301(5).

Westlaw Topic No. 52.

C.J.S. Banks and Banking Sections 266 to 270, 277 to 278, 280, 287 to 289, 327, 336, 608, 610 to 612, 618.

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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.

REPORTER’S COMMENT

Section 62‑6‑301 is substantially the same as prior law under former S.C. Code Section 62‑6‑108, with the additional reference to POD and agency designations. The provisions governing payment on request of one or more parties, previously covered in former S.C. Code Section 62‑6‑108, is now found in S.C. Code Section 62‑6‑302.

The provisions of this subpart relate only to protection of a financial institution that makes payment as provided in the subpart. Nothing in this subpart affects the beneficial rights of persons to sums on deposit or paid out. Ownership as between parties, and others, is governed by Subpart 2. See Section 62‑6‑106 (applicability of subpart).

CROSS REFERENCES

Payment of funds deposited in bank in the names of two or more persons, see Section 34‑11‑10.

Library References

Banks and Banking 128, 133, 151, 301(1).

Westlaw Topic No. 52.

C.J.S. Banks and Banking Sections 266 to 270, 277 to 278, 280, 287 to 289, 326 to 329, 331 to 342, 347 to 348, 399, 608, 610 to 612.

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NOTES OF DECISIONS

In general 1

Under former Section 34‑25‑80 2

1. In general

Section 62‑6‑103, which provides that a joint bank account belongs, during the lifetime of all parties, to the parties in proportion to their net contributions to the account, did not preclude a bank from making payment from a joint account to satisfy a debt of one of the signatories, unconsented to by the other, even though the nonconsenting signatory had supplied the funds. Trotter v. First Federal Sav. and Loan Ass’n (S.C.App. 1989) 298 S.C. 85, 378 S.E.2d 267. Joint Tenancy 12

2. Under former Section 34‑25‑80

This section [Code 1962 Section 8‑602] sanctions the withdrawal by one joint owner of the entire amount of a savings account in a savings and loan association without liability on the part of the savings and loan association to the other party, even though such withdrawal amounts to a conversion of the other party’s share. Austin v. Summers (S.C. 1961) 237 S.C. 613, 118 S.E.2d 684.

**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.

REPORTER’S COMMENT

Section 62‑6‑302 expands upon former 62‑6‑108 and recognizes multiple party accounts may be paid on request to one or more parties. Subsection (2) is a departure from prior law in that it does not contain the former provision providing for payment to heirs or devisees if there is no personal representative. Now, in such a circumstance, Subsection (3) allows for payment in accordance with a court order. Section 62‑6‑302 is consistent with the result of Trotter v. First Federal Sav. and Loan Ass’n, 298 S.C. 85, 378 S.E.2d 267 (Ct. App. 1989), which recognized that a bank was authorized to make a payment from a joint account to satisfy the debt of one of the signatories, even though the other (non‑consenting) signatory had contributed the funds to the account.

A financial institution that makes payment on proper request under this section is protected unless the financial institution has received written notice not to. Section 62‑6‑306 (discharge). Paragraph (1) applies to both a multiple‑party account with right of survivorship and a multiple‑party account without right of survivorship (including an account in tenancy in common form). Paragraph (2) is limited to a multiple‑party account with right of survivorship; payment to the personal representative or heirs or devisees of a deceased party to an account without right of survivorship is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

**SECTION 62‑6‑303.** Payment of P.O.D. 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.

REPORTER’S COMMENT

Section 62‑6‑303 is substantially the same as prior 62‑6‑110, with the addition of Subsection (4) which allows payment in accordance with a court order.

A financial institution that makes payment on proper request under this section is protected unless the financial institution has received written notice not to. See Section 62‑6‑306 (discharge). Payment to the personal representative of a deceased beneficiary who would be entitled to payment under paragraph (2) is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

Library References

Banks and Banking 128, 133, 151, 301(5).

Westlaw Topic No. 52.

C.J.S. Banks and Banking Sections 266 to 270, 277 to 278, 280, 287 to 289, 326 to 329, 331 to 342, 347 to 348, 399, 608, 610 to 612, 618.

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**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.

REPORTER’S COMMENT

Section 62‑6‑304 is new and recognizes the ability to pay to an agent under an agency designation. Designation of an agent is governed by S.C. Code Section 62‑6‑105 and this section is in accordance with the concept of adding a non‑party agent to an account, as commonly provided in account agreements. Section 62‑6‑304 is consistent with former S.C. Code Section 62‑6‑111 governing payments of a trust account to a trustee, though this section is broader in that the definition of agent under S.C. Code Section 62‑2‑101(2) includes any “person authorized to make account transactions for a party.”

This section is intended to protect a financial institution that makes a payment pursuant to an account with an agency designation even though the agency may have terminated at the time of the payment due to disability, incapacity, or death of the principal. The protection does not apply if the financial institution has received notice under Section 62‑6‑306 not to make payment or notice that the agency has terminated. This section applies whether or not the agency survives the party’s disability or incapacity under Section 62‑6‑105 (designation of agent).

**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.

SOUTH CAROLINA COMMENTS

Section 62‑6‑305 is intended to avoid the need for a guardianship or other protective proceeding in situations where the Uniform Gifts to Minors Act may be used.

**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.

REPORTER’S COMMENT

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

Knowledge of disability, incapacity, or death of a party does not affect payment on request of an agent, whether or not the agent’s authority survives disability or incapacity. See Section 62‑6‑304 (payment to designated agent). But under subsection (b), the financial institution may not make payments on request of an agent after it has received written notice not to, whether because the agency has terminated or otherwise.

Effect of Amendment

The 2013 amendment rewrote the section.

Library References

Banks and Banking 128, 133, 151, 301(5).

Westlaw Topic No. 52.

C.J.S. Banks and Banking Sections 266 to 270, 277 to 278, 280, 287 to 289, 326 to 329, 331 to 342, 347 to 348, 399, 608, 610 to 612, 618.

**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.

REPORTER’S COMMENT

Section 62‑6‑307 is substantially similar to former S.C. Code Section 62‑6‑113. As with former Section 62‑6‑113, Section 62‑6‑307 allows the financial institution, as creditor of a party, to set off in its own favor an amount from a multiple party account to cover the indebtedness of that party. This Section is in addition to any other statutory, common law, or contractual remedies, liens or rights of set‑off.

Library References

Banks and Banking 134.

Westlaw Topic No. 52.

C.J.S. Banks and Banking Sections 301 to 314, 316.