

PROPOSED REVISIONS TO ARTICLE 6—PROBATE CODE

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1. All South Carolina citizens have a right to determine who is to receive their cash funds.
2. All South Carolina citizens have a right to designate joint with right of survivorship accounts that pass outside of probate by contract.
3. All South Carolina citizens have a right to have their contracts enforced as written.

62-6-101: (1) should read, “‘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 **contracts.**”

(2) should read, “‘Agent’ means a person authorized to make account transactions for his **principal.**”

(3) should read, “‘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 trustee.”

62-6-105: should read, “By a writing signed by **any** party, the party may designate an agent on the account. 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 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, **except for those multiple party accounts with right of survivorship and a POD beneficiary. Only the joint account owner with right of survivorship and POD beneficiary may make changes to the multiple party accounts during the principal’s incapacity which includes closing the account and changing the POD beneficiary.** An agent serving under a durable power of attorney can change, modify, or revoke an agent designated on an account.”

62-6-205: should read, “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 **shall** 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 **pursuant to §62-3-804 and the personal representative must prepare an accounting stating that the estate is insolvent and the date on which the estate became insolvent.** 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 **placed on constructive notice that the funds should not be released because of any controversy regarding the funds.**"

62-6-301: should read, "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 **unless the bank is on constructive notice that the funds should not be released and there is a controversy regarding the funds.**"

62-6-306: should read, "(b) Protection under this section does not extend to payments made after a financial institution has received **constructive** 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, **or multiple account owners**, 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, **not to exceed 24 hours**, 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 or **placed on constructive notice that the funds should not be released and that there is a controversy regarding the funds**, 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 **constructive** 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."

62-6-307: should read, "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 **only after notice and hearing to all interested parties in the decedent's estate comporting with due process requirements**. 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."