

RESOLUTION 06-06-2010

DIGEST

Probate: Multi-Party Accounts

Amends Probate Code sections 5301, 5303 and 5401 to clarify the amount a joint account holder in a multi-party account may withdraw from the account.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolution found.

Reasons:

This resolution amends Probate Code sections 5301, 5303 and 5401 to clarify the amount a joint account holder in a multi-party account may withdraw from the account. This resolution should be approved in principle because it would clarify current law, which has become muddled as a result of *Lee v. Yang* (2003) 111 Cal. App. 4th 481.

Probate Code section 5301(a) provides that an account belongs to “the parties in proportion to the net contributions by each...” However, the ruling in *Lee v. Yang (id.)* established the presumption that a joint account holder who is first to the bank and withdraws funds, can keep the withdrawn funds regardless of their contribution to the account. This is contrary to the legislative intent that established Probate Code section 5301. By way of example, a parent may add a child to their account as a convenience in anticipation of the parent’s incapacity or death, and not with the intent that the child be able to access and withdraw funds from the account for the child’s personal use until the parent’s actual incapacity or death. This resolution would reinstate the intent of the legislature and require that a joint account holder be limited to the withdrawal of funds from the account to the extent of that party’s net contribution so it would not be a race to the bank.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code Sections 5301, 5303, and 5401 to read as follows:

- 1 §5301
- 2 (a) An account belongs, during the lifetime of all parties, to the parties in
- 3 proportion to the net contributions by each ~~to the sums on deposit~~, unless there is clear
- 4 and convincing evidence of a different intent.
- 5 (b) In the case of a P.O.D. account, the P.O.D. payee has no rights to the sums on
- 6 deposit during the lifetime of any party, unless there is clear and convincing evidence of a
- 7 different intent.
- 8 (c) In the case of a Totten trust account, the beneficiary has no rights to the sums on
- 9 deposit during the lifetime of any party, unless there is clear and convincing evidence of a
- 10 different intent.

11 If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

12

13 §5303

14 (a) The provisions of Section 5302 as to rights of survivorship are determined by
15 the form of the account at the death of a party.

16 (b) Once established, the terms of a multiple-party account can be changed only by
17 any of the following methods:

18 (1) Closing the account and reopening it under different terms.

19 (2) Presenting to the financial institution a modification agreement that is signed by
20 all parties with a present right of withdrawal. If the financial institution has a form for this
21 purpose, it may require use of the form.

22 (3) If the provisions of the terms of the account or deposit agreement provide a
23 method of modification of the terms of the account, complying with those provisions.

24 (4) As provided in subdivision (c) of Section 5405.

25 (c) During the lifetime of a party, the terms of the account may be changed as
26 provided in subdivision (b) to eliminate or to add rights of survivorship. Withdrawal of
27 funds from the account by a party ~~with a present right of withdrawal during the lifetime of~~
28 ~~a party~~ also eliminates rights of survivorship ~~upon the death of that party~~ with respect to
29 the funds withdrawn to the extent of the party's net contribution to the account.

30

31 §5401

32 (a) Financial institutions may enter into multiple-party accounts to the same extent
33 that they may enter into single-party accounts. Any multiple-party account may be paid, on
34 request and according to its terms, to any one or more of the parties or agents.

35 (b) The terms of the account or deposit agreement may require the signatures of
36 more than one of the parties to a multiple-party account during their lifetimes or of more
37 than one of the survivors after the death of any one of them on any check, check
38 endorsement, receipt, notice of withdrawal, request for withdrawal, or withdrawal order. In
39 such case, the financial institution shall pay the sums on deposit only in accordance with
40 such terms, but those terms do not limit the right of the sole survivor or of all of the
41 survivors to receive the sums on deposit.

42 (c) A financial institution is not required to do any of the following pursuant to
43 Section 5301, 5303, or any other provision of this part:

44 (1) Inquire as to the source of funds received for deposit to a multiple-party
45 account, or inquire as to the proposed application of any sum withdrawn from an account,
46 for purposes of establishing net contributions.

47 (2) Determine any party's net contribution.

48 (3) Limit withdrawals or any other use of an account based on the net contribution
49 of any party, whether or not the financial institution has actual knowledge of each party's
50 contribution.

51 (d) All funds in an account, unless otherwise agreed in writing by the financial
52 institution and the parties to the account, remain subject to liens, security interests, rights
53 of setoff, and charges, notwithstanding the determination or allocation of net contributions
54 with respect to the parties.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

Existing Law: This proposal involves California's Multi-Party Account law, particularly affecting accounts commonly referred to as "joint tenancy" accounts. The names of the parties to these accounts are commonly listed on the account as "or" (e.g. "John Smith or Mary Smith").

The status of current law is muddled as a result of *Lee v. Yang* (2003) 111 Cal. App. 4th 481. The intent of the Legislature, as shown in the California Law Revision Commission commentaries, was that the contributors to multi-party accounts would own the money in the accounts to the extent of their contributions to the accounts. The one case interpreting these statutes, *Lee vs. Yang*, which held that the ownership while the money is in the account is as intended by the Legislature, but then held that, generally, the first account holder withdrawing the funds gets to keep them all, without regard to whether that person ever contributed anything to the account.

This Resolution: This resolution would reverse the holding in *Lee v. Yang*, reinstating the original intention that the funds are, generally, owned by the account holders according to their contributions, regardless of which account holder withdraws the funds.

The Problem: The decision in *Lee v. Yang* changed the law from a fair and orderly disposition to simply a race to the bank for many users of these accounts. *Lee v. Yang* created a presumption that whoever withdraws the money gets to keep it unless the account holder who contributed the funds can prove that there was an actual agreement to the contrary. Ordinary people have no way to know of the need for such an agreement.

Lee vs. Yang particularly places the elderly at risk, because elders commonly use these accounts to enable a relative (often one of the depositor's children) to assist with paying bills, or to avoid conservatorship or probate administration of their assets. When making these arrangements, the elderly generally do not expect or intend that they are making a present gift of those funds. We hope that family members will provide honest assistance to their elderly relatives, but the sad fact is that most elder abuse is done by family members trusted by the elderly. With the mental problems that are commonly associated with aging, when the elderly find their funds have been taken by the person they trusted, the elderly are at a particular disadvantage in trying to recover their misappropriated funds.

It is also inconsistent with common sense and fairness for unmarried couples using joint tenancy bank accounts to allow whoever decides to terminate the relationship to take and keep all of the couple's money.

The proposed legislation is needed to restore the fair and reasonable intention of the Legislature when the California Multi-Party Accounts Law was enacted, generally complying with the intent of the parties that their ownership is based on their contribution to the account and not whoever gets to the bank first.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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