

SIDE-BY-SIDE

Article 6- Nonprobate Transfers- Parts 2 and 3

ARTICLE 6: EXISTING CODE LANGUAGE	Bill # S. 1243
Article 6.Part 2. Provisions Relating to Effect of Death	Article 6.Part 2. Ownership as Between Parties and Others
<p>SECTION 62-6-201. Provisions for payment or transfer at death.</p> <p>(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:</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>(b) Nothing in this section limits the rights of creditors under other laws of this State.</p>	<p>SECTION 62-6-201.</p> <p>(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:</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>(b) Nothing in this section limits the rights of creditors under other laws of this State.</p> <p><u>Part 2</u></p> <p><u>Ownership as Between Parties and Others</u></p> <p><u>Section 62-6-201. (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.</u></p> <p><u>(B) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.</u></p> <p><u>(C) An agent in an account with an agency designation has no beneficial right to sums on deposit.</u></p>

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<p>REPORTER’S COMMENTS</p> <p>Section 62-6-201(a) establishes the blanket rule that, so long as a form of ownership involves a written instrument and is otherwise supportable on one of the theories of contract, gift, conveyance, or trust, that form’s provisions for the transfer of assets to a survivor at the death of their owner is valid although the provision is not contained in a duly executed will.</p> <p>Section 62-6-201(b) will preserve to creditors of decedents all of the rights they otherwise may have to assert claims against such assets as pass by the right of survivorship recognized under Section 62-6-201(a).</p>	<p>REPORTER’S COMMENTS</p> <p>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.</p> <p>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.</p> <p><u>SECTION 62-6-202.</u></p> <p><u>(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.</u></p> <p><u>(b) In an account with a POD designation:</u></p> <p><u>(1) on death of one of two or more parties, the rights in sums on deposit are governed by subsection (a);</u></p>

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	<p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p>REPORTER'S COMMENTS</p> <p>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.</p> <p>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.</p> <p><u>SECTION 62-6-203.</u></p> <p><u>(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.</u></p> <p><u>(b) A right of survivorship arising from the express terms of the account under Section</u></p>

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	<p><u>62-6-202 may be altered by clear and convincing evidence, including but not limited to express provisions in a will.</u></p> <p><u>(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.</u></p> <p>REPORTER’S COMMENTS 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.</p> <p><u>SECTION 62-6-204.</u></p> <p><u>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.</u></p> <p>REPORTER’S COMMENTS 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.</p> <p><u>SECTION 62-6-205.</u></p> <p><u>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</u></p>

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	<p><u>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.</u></p> <p>REPORTER’S COMMENTS 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.</p>
Provisions from Article 6.Part 1 applicable to new Part 3.	Article 6.Part 3. <u>Protection of Financial Institutions</u>
<p>SECTION 62-6-108. Financial institution protection; payment on signature of one party.</p> <p>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.</p> <p>REPORTER’S COMMENTS Section 62-6-108 allows the financial institution to make payment, on request, to any one or more of the parties to any multiple-party account. See Section 62-6-101(7) for the definition of “party,” and see Sections 62-6-109, 62-6-110, and 62-6-111 for more specific provisions concerning the several commonly available versions of the multiple-party account. Under Section 62-6-108, the financial institution need not inquire of the source of funds deposited or of the application of funds withdrawn.</p>	<p><u>SECTION 62-6-301.</u></p> <p><u>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.</u></p> <p>REPORTER’S COMMENTS 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</p>

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SECTION 62-6-110. Financial institution protection; payment of P.O.D. account.	<p>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).</p> <p><u>SECTION 62-6-302.</u></p> <p><u>A financial institution, on request, may pay sums on deposit in a multiple-party account:</u></p> <p> <u>(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;</u></p> <p> <u>(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</u></p> <p> <u>(3) in accordance with a court order directing the payment of the sums on deposit.</u></p> <p>REPORTER’S COMMENTS</p> <p>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.</p> <p>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.</p> <p><u>SECTION 62-6-303.</u></p>

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<p>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.</p> <p>REPORTER’S COMMENTS</p> <p>Section 62-6-110 allows the financial institution to make payment of a “P.O.D. account,” on request, to any party, “original party,” thereby invoking the application of Section 62-6-109 to P.O.D. accounts to the extent that as between the several parties themselves such accounts may be described as “joint accounts.” See Section 62-6-103(a) and (b) and the comment to Section 62-6-109. However, the last sentence of Section 62-6-110 also concerns a matter which is part of the concern of Section 62-6-109, but goes further than does Section 62-6-109 to preclude the financial institution from making payment of a P.O.D. account to the representatives of a deceased party, unless it is shown that he was the survivor of both all the parties and also all the P.O.D. payees. That is consistent with the rights established under Section 62-6-104(b)(2). Section 62-6-110 allows the financial institution to make payment of a “P.O.D. account” to a P.O.D. payee, or his representative, only if it is shown that he was the survivor of all of the parties, “original payees.” That is consistent with the limitation of the rights of a P.O.D. payee to a right of survivorship, as under Sections 62-6-103(b) and 62-6-104(b)(2).</p>	<p><u>A financial institution, on request, may pay sums on deposit in an account with a POD designation:</u></p> <p class="list-item">(1) <u>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;</u></p> <p class="list-item">(2) <u>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;</u></p> <p class="list-item">(3) <u>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</u></p> <p class="list-item">(4) <u>in accordance with a court order directing the payment of the sums on deposit.</u></p> <p>REPORTER’S COMMENTS</p> <p>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.</p> <p>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.</p> <p><u>SECTION 62-6-304.</u></p> <p><u>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.</u></p> <p>REPORTER’S COMMENTS</p> <p>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</p>

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	<p>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.’</p> <p>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).</p> <p><u>SECTION 62-6-305.</u></p> <p><u>If a financial institution is required or permitted to make payment pursuant to this subpart 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.</u></p> <p>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.</p> <p><u>SECTION 62-6-306.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p>

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<p data-bbox="180 1015 921 1044">SECTION 62-6-113. Financial institution protection; set-off.</p> <p data-bbox="180 1079 1341 1315">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.</p> <p data-bbox="180 1351 1341 1416">REPORTER’S COMMENTS Section 62-6-113 allows the financial institution, as creditor of a party, to set off in its own favor</p>	<p data-bbox="1357 243 2507 406"><u>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.</u></p> <p data-bbox="1357 409 2507 506"><u>(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.</u></p> <p data-bbox="1357 509 2507 607"><u>(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.</u></p> <p data-bbox="1357 643 2507 945">REPORTER’S COMMENTS 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.</p> <p data-bbox="1357 1015 1612 1044"><u>SECTION 62-6-307.</u></p> <p data-bbox="1357 1079 2507 1315"><u>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.</u></p> <p data-bbox="1357 1351 2507 1416">REPORTER’S COMMENTS Section 62-6-307 is substantially similar to former S.C. Code §62-6-113. As with former</p>

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an amount from a multiple-party account to cover the indebtedness of that party, but that set-off is limited to affect the amount to which the party is, or was, beneficially entitled.	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.