

(b) To sell, mortgage, or encumber any real estate or personal property except that he may pay for necessities as provided for in clause (a) above out of personalty.

The appointment of a conservator shall not deprive the conservatee of the right to vote or to marry if otherwise competent.

Any sale, transfer, or encumbrance of personal or real property by the conservatee contrary to this chapter or any order of the probate court, after appointment of a conservator, shall be invalid unless the same is subsequently affirmed by the court as being in the best interests of the conservatee.

Sec. 22. Minnesota Statutes 1971, Chapter 525, is amended by adding a section to read:

[525.614] TERMINOLOGY. Wherever in this chapter the term "guardian" is used, it shall include "conservator", and the term "ward" shall include "conservatee" unless another intention clearly appears from the context.

Approved May 23, 1973.

CHAPTER 619—H.F.No.1333

[Coded]

An act relating to the affairs of decedents; providing for the validity and effect of certain nontestamentary and testamentary transfers, contracts and deposits which relate to death and appear to have testamentary effect, and powers of attorney over accounts.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [528.01] **MULTI-PARTY ACCOUNTS ACT; CITATION.** This act may be cited as the Minnesota multi-party accounts act.

Sec. 2. [528.02] **DEFINITIONS.** Subdivision 1. As used in sections 1 to 16, the terms defined in this section have the meanings given them.

Subd. 2. "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account and other like arrangement.

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Subd. 3. "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

Subd. 4. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

Subd. 5. "Joint account" means an account so designated, and any account payable on request to one or more of two or more parties and to the survivor of them.

Subd. 6. A "multiple-party account" is any of the following types of account: (a) joint account, (b) a P.O.D. account, or (c) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a person, corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

Subd. 7. "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

Subd. 8. "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal.

Subd. 9. "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

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Subd. 10. "Proof of death" includes (a) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred which shall be prima facie proof of the fact, place, date and time of death and the identity of the decedent, (b) a certified or authenticated copy of any record or report of any governmental agency, domestic or foreign, that a person is dead which shall be prima facie evidence of the fact, place, date and time of death and the identity of the decedent.

Subd. 11. "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

Subd. 12. "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

Subd. 13. "Request" means a proper request for withdrawals, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

Subd. 14. "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends and, in addition, any deposit life insurance proceeds added to the account by reason of the death of a party.

Subd. 15. "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relationship such as attorney-client.

Subd. 16. "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

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Sec. 3. [528.03] OWNERSHIP AS BETWEEN PARTIES, AND OTHERS; PROTECTION OF FINANCIAL INSTITUTIONS. The provisions of sections 4 to 6 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 9 to 14 govern the liability of financial institutions who make payments pursuant thereto, and their set-off rights.

Sec. 4. [528.04] OWNERSHIP DURING LIFETIME. (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a *different intent*.

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

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

Sec. 5. [528.05] RIGHT OF SURVIVORSHIP. (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention, or there is a different disposition made by a valid will as herein provided, specifically referring to such account. *If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 4 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties. The interest so determined is also the interest disposable by will.*

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if

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

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

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

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, may be changed by specific reference by will, but the terms of such will shall not be binding upon any financial institution unless it has been given a notice in writing of a claim of a beneficiary thereunder, in which event the deposit shall remain undisbursed until an order has been made by the probate court adjudicating the decedent's interest disposable by will which is limited to decedent's contribution and increments thereto as stated above in clause (a).

Sec. 6. [528.06] **EFFECT OF A WRITTEN NOTICE TO FINANCIAL INSTITUTION.** The provisions of section 5 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

Sec. 7. [528.07] **ACCOUNTS AND TRANSFERS NONTES-
TAMENTARY.** Any transfers resulting from the application of section 5 are effective by reason of the account contracts involved and this statute, and are not to be considered as testamentary except as to the transfers expressly changed by will, as provided for by section 5, clause (e).

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Sec. 8. [528.08] RIGHTS OF CREDITORS. No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient, to the extent the deceased party is the source of the funds or beneficial owner. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claim and charges mentioned above remaining unpaid after the application of the decedent's estate. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor or one acting for a minor dependent child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution has been served with process in a proceeding by the personal representative.

Sec. 9. [528.09] FINANCIAL INSTITUTION PROTECTION; PAYMENT ON SIGNATURE OF ONE PARTY. Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall 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.

Sec. 10. [528.10] FINANCIAL INSTITUTION PROTECTION; PAYMENT AFTER DEATH OR DISABILITY; JOINT ACCOUNT. Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 5, or unless a will provides other distribution; in which case the procedure set forth in section 5, clause (e), shall be followed.

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Sec. 11. [528.11] **FINANCIAL INSTITUTION PROTECTION; PAYMENT OF P.O.D. ACCOUNT.** 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, unless otherwise provided by will; in which case disbursement shall be made as provided in section 5(e).

Sec. 12. [528.12] **FINANCIAL INSTITUTION PROTECTION; PAYMENT OF TRUST ACCOUNT.** Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

Sec. 13. [528.13] **FINANCIAL INSTITUTION PROTECTION; DISCHARGE.** Payment made pursuant to sections 9, 10, 11, or 12 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries by will or otherwise, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

Sec. 14. [528.14] **FINANCIAL INSTITUTION PROTECTION; SET-OFF.** Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a

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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.

Sec. 15. [528.15] **PURPOSE; FORMS.** The declared purpose of sections 1 to 16 is to render certainty to the nature of accounts of deposit in relation to the rights of survivorship, and to distinguish accounts of survivorship from accounts established for the purpose of having an agent with power to draw on the account for the convenience of the owner with no survivorship rights in the agent. To further accomplish this purpose, the forms contained in this section are recommended for use to be kept on file in the depository financial institution. Deposits made using a form of account containing the following language signed by the depositor shall be conclusive evidence of the intent of decedent to establish a survivorship account in the absence of fraud or misrepresentation, subject, nevertheless, to other disposition made by will specifically referring to the account as otherwise provided in section 5, clause (e), the form to read as follows:

“The undersigned signators of this account hereby acknowledge that the depositor or depositors, both as to the original deposit and any subsequent deposits, intend that such funds as may constitute the account balance upon the death of any party to this account, shall be the property of the surviving party or parties who shall take as a surviving joint tenant.

If two or more persons shall be the survivors, their interests shall continue to be held as joint tenants with right of survivorship.

.....”

Where no rights of survivorship are intended and the account is one to be established for convenience only between a depositor and his agent, the following language is recommended for use, and when so used, any account deposited in the form shall be construed as a matter of law to be an account subject to a power of attorney with no survivorship rights, the form to read as follows:

“I (grantor of power), hereby constitute and appoint (grantee of power), as my attorney in fact, to deposit or withdraw funds held in (name of bank), in account #.....

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Dated:

Acknowledgment: In the presence of
 (an authorized person), (name of fi-
 nancial institution)."

The power so granted is subject to the provisions of section 16.

Sec. 16. [528.16] POWERS OF ATTORNEY WITH RESPECT TO ACCOUNTS AT FINANCIAL INSTITUTION. In addition to a power of attorney otherwise authorized by law, a separate power of attorney hereby is authorized with respect to accounts at any bank, savings bank, savings and loan association, or credit union, herein referred to as financial institution.

Accounts shall include checking, savings, certificates of deposit, savings certificates or any other depository relationship with a financial institution.

The separate power of attorney shall be in writing, subscribed and acknowledged and shall explicitly identify the attorney in fact, the financial institution, and the account or accounts to be subject to such power. No more than one attorney in fact may be appointed with respect to any account at any one time.

The power so granted shall endure as between the grantor and grantee of the power until the earlier to happen of the following: (a) revocation by the grantor of the power; (b) termination of the account; (c) death of the grantor of the power; (d) appointment of guardian of the estate of the grantor of the power.

Any financial institution may rely upon the validity of the power and shall be held harmless from doing so, until written notice is received by the financial institution as to any of the events of termination of the power.

The attorney in fact acting hereunder shall maintain such books or records as will permit an accounting of the acts of the attorney in fact, if an accounting is requested by a legal representative of the grantor of the power.

The attorney in fact shall be liable for any disbursement other than a disbursement to or for the benefit of the grantor of the power, unless the grantor shall have authorized a disbursement in writing.

Any power of attorney, not signed in the presence of an authorized person at the financial institution, may be rejected by the financial institution until the grantor of the power shall have satisfied the financial institution of the validity of the power.

Approved May 23, 1973.

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