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An Analysis of New York's Proposed Multiple-Party Bank Account Law

INTRODUCTION

DURING the past twelve years, ten proposals for change in the New York banking law governing ownership in joint bank accounts have been presented to the New York legislature.¹ The latest proposal,² Senate Bill No. 4893A and Assembly Bill No. 6547A, was introduced to the 1984 legislature and has not been reported out of the banking committee.³ The primary objective of these proposals has been to remove the joint tenancy provision of section 675 of the banking law,⁴ thereby eliminating the depositor's creation of a "present gift of one-half" of the funds in the account to his or her co-depositor.⁵ The proposals have also at-

1. *Recommendations of the Law Revision Commission to the Legislature*, 1983 N.Y. LAWS 2228; 1982 N.Y. LAWS 2324; 1979 N.Y. LAWS 1469; 1978 N.Y. LAWS 1659; 1977 N.Y. LAWS 2236; 1976 N.Y. LAWS 2239; 1975 N.Y. LAWS 1547; 1974 N.Y. LAWS 1901; 1973 N.Y. LAWS 2111. These proposals were to amend section 675 of the current law. N.Y. BANKING LAW § 675 (McKinney 1979). See also *infra* note 2 and accompanying text.

2. See *Recommendation of the Law Revision Commission to the 1983 Legislature*, 1984 MCKINNEY'S SESSION L. NEWS, A-426 [hereinafter cited as *Commission Report*].

3. The 1984 proposal amends § 675 and adds Article XIII-F, which contains §§ 680-685.

4. The current joint tenancy provision reads as follows:

When a deposit of cash, securities, or other property has been made or shall hereafter be made in or with any banking organization or foreign banking corporation transacting business in this state . . . in the name of such depositor or shareholder and another person and in form to be paid or delivered to either, or the survivor of them, such deposit or shares . . . shall become the property of such persons as joint tenants . . .

N.Y. BANKING LAW § 675(a) (McKinney 1979).

5. The "present gift of one-half" concept originally arose with the enactment of legislation in 1907 whereby the property held by depositors in a joint account was owned by them as joint tenants. See 1907 N.Y. LAWS 456. Prior to this, there existed at common law a presumption that joint accounts were opened for convenience and no present gift of the funds was intended. See, e.g., *Beaver v. Beaver*, 117 N.Y. 421, 22 N.E. 940, 6 N.Y.S. 556 (1889). This presumption survives today in the area of joint safe deposit boxes. In a 1982 matrimonial case, the Second Department held that funds placed in a joint safe deposit box did not create a right to half the money in the box (as would have been the case if the funds were in a joint bank account). The court ruled that "[t]he common law rules of joint tenancy apply to a joint safe deposit box." *Troiano v. Troiano*, 87 A.D.2d 588, 447 N.Y.S.2d 753 (2d Dep't 1982).

tempted to clarify joint depositors' rights regarding survivorship. At present, section 675(a) provides that a deposit of cash, securities, or other property in a bank account in the name of a depositor and another person creates a right of survivorship. The current proposal of the Law Revision Commission (the Commission) differs from earlier bills in that it provides for a right of election regarding the survivorship provision.⁶

On September 28, 1983, the New York legislature added section 675(c) to the banking law. The new subsection directs the state banking board to promulgate rules requiring joint tenants of bank accounts to "be informed of the terms and conditions of the account including the relationship and consequences *between the parties in the account* and the responsibilities of the institution with which the account is established."⁷ This measure is stopgap, however, and full compliance will require additional amendments to banking legislation to clarify the law.

Courts have traditionally experienced difficulty when trying

6. Thus, a depositor would be given the opportunity to direct the disposition of the funds in a joint account in accordance with his or her individual preference. Under existing law, however, the opening of a joint account in statutory form is prima facie evidence of intent to create a survivorship account. N.Y. BANKING LAW § 675(b) (McKinney 1979). One way in which a person contesting the survivor's title to the account may rebut the presumption of survivorship is to establish that the account was created only for convenience. See, e.g., *In re Estate of Coddington*, 56 A.D.2d 697, 391 N.Y.S.2d 710 (3d Dep't 1977). In *Coddington*, the decedent's wife attempted to rebut the presumption of survivorship regarding a joint bank account opened in the name of decedent and his mother. The court held that even though decedent had at one time withdrawn most of the funds in the account, the evidence was insufficient to overcome the prima facie presumption that a joint testamentary disposition had been created. Establishing that an account was opened for convenience can prove difficult due to the evidentiary restrictions imposed by New York's "Dead Man's Statute." N.Y. CIV. PRAC. LAW § 4519 (McKinney 1963 & Supp. 1984). This law prohibits an interested witness from testifying as to a conversation had with the decedent concerning a particular matter unless the testimony of the deceased can be introduced into evidence (e.g., the deceased's prior deposition is available). Normally, such testimony is unavailable.

7. N.Y. BANKING LAW § 675(c) (McKinney Supp. 1983). In response to the legislative mandate of § 675(c), the Banking Board adopted a new General Regulation part 15 on June 28, 1984, to clarify the rights of joint depositors. N.Y. ADMIN. CODE tit. 3, § 153 (1984). As of October 1, 1984, banks are required to explain in greater detail the legal implications of joint tenancy; however, the disclosure requirements of part 15.3 of the new regulation fail to address the differences between a convenience account and a true joint account, and also do not inform the depositor that by opening a true joint account, he is presumed to have intended a gift of half the funds in the account to the co-depositor. Therefore, the regulation is not amenable to solving the problems which have plagued surrogates for decades.

to conform section 675 to the intentions of many persons utilizing joint bank accounts.⁸ The recent passage of section 675(c) may be viewed as an attempt on the part of the legislature to solve some of the problems inherent in the law of joint accounts. This Comment illustrates, however, that more extensive corrective measures are needed and that serious consideration should be given to the recommendations embodied in Senate Bill 4893A and Assembly Bill 6547A. Toward this end, certain provisions of the Commission's proposed bill are analyzed, especially those relating to spousal accounts, recordkeeping, and creditors' rights.⁹ This Comment also compares the current proposal to the laws in other jurisdictions and to the provisions of the Uniform Probate Code (UPC) dealing with multiple-party accounts.¹⁰ This examination should reveal that the current proposal will more adequately achieve the objective of complying with the depositor's intentions

8. See, e.g., *Marrow v. Moskowitz*, 255 N.Y. 219, 174 N.E. 460 (1931). In *Marrow*, the depositor opened a joint savings account with her granddaughter, to be "payable to either or the survivor." The depositor later revoked the "privilege" granted her granddaughter by withdrawing the funds, and then re-deposited the funds in the same type of joint account with the granddaughter. Soon after, the depositor died. The executor of her estate tried to recover funds paid by the bank to the granddaughter on the theory that survivorship was not intended, but the Court of Appeals held for the granddaughter. Also illustrative is *Matter of Lang*, 76 Misc. 2d 263, 351 N.Y.S.2d 884 (Sur. Ct.), *rev'd sub. nom.* *Kleinberg v. Heller*, 45 A.D.2d 514, 360 N.Y.S.2d 422 (1st Dep't 1984), *rev'd*, 38 N.Y.2d 836, 345 N.E.2d 592, 382 N.Y.S.2d 49 (1976). In that case, an account was established in the names of an elderly woman and her niece. The niece withdrew more than her moiety and was ordered by the Surrogate to turn over excess funds. The Appellate Division held that she did not have to turn over the excess, but the Court of Appeals reversed.

The Executive Committee of the Surrogates' Association of New York expressed its opinion on this issue in December 1982 when it adopted a resolution advocating the creation of an entirely new section of the banking law covering joint convenience accounts. Under the proposal, the person named on the account for the convenience of the depositor would bear the burden of proving that any withdrawals he or she made were for the benefit of the depositor. See Letter of Louis D. Laurino, Chairman of the Exec. Comm. of Surrogates' Ass'n of New York, to Ms. Carolyn Gentile, Chairwoman of the Law Revision Comm'n (Dec. 13, 1982).

9. For an extensive discussion of other related areas such as the tax consequences of joint bank accounts, wrongful withdrawals, and the "present gift of one-half" rationale, see Note, *Modifying the Joint Tenancy Strictures of Joint Bank Accounts in New York*, 45 ALB. L. REV. 206 (1980).

10. UNIF. PROBATE CODE §§ 6-101 to 6-113, 8 U.L.A. 519-33 (1982). The Uniform Probate Code (UPC) was promulgated by the House of Delegates of the American Bar Association on August 13, 1969, as an effort to modernize and unify American probate laws. It represents the culmination of thirty years of effort to reform the probate laws, which had been the subject of much public criticism. See generally Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453 (1970).

than does existing law. The adoption of certain provisions of the proposed bill is recommended, and suggestions are made regarding other aspects of the bill in terms of administration and practicability.

I. THE 1984 LAW REVISION COMMISSION RECOMMENDATIONS

A. *Husband and Wife Joint Accounts*

Under existing section 675, joint accounts maintained by married persons are handled in the same manner as all other joint accounts. Courts have construed section 675 as creating equal interests in spousal co-depositors regardless of the source of the funds, absent clear evidence to the contrary.¹¹ In the Commission's bill, joint accounts in the names of husband and wife are accorded special treatment: withdrawals by either spouse are "presumed to be for the benefit of the depositor who contributed the funds to the account unless it is established by a preponderance of the evidence that this was not the case."¹²

Never before has the Commission proposed such a distinction. Its decision to do so now was founded on a desire to prevent inequities in marital situations which may arise when one spouse contributes most or all of the funds to an account while the other spouse makes the non-monetary contributions to the marriage.¹³ Of course, this presumption does not necessarily mean that the non-working spouse will receive more than half the funds in a joint account, but a court would be empowered to require this result if the circumstances so warrant.

A recent example of the problems which can develop under present law is *United States Trust Company v. McSweeney*,¹⁴ where the defendant wife was held liable to the plaintiff bank for over-

11. *Angelo v. Angelo*, 74 A.D.2d 327, 330, 428 N.Y.S.2d 14, 15 (2d Dep't 1980); *Glass v. Glass*, 35 Misc. 2d 665, 666, 231 N.Y.S.2d 327, 329, *aff'd*, 26 A.D.2d 772, 272 N.Y.S.2d 970 (1962); *McGuigan v. McGuigan*, 140 N.Y.S.2d 553, 555 (Sup. Ct. 1955).

12. *Commission Report*, *supra* note 2, at A-448. It should be noted that under New York's equitable distribution law, N.Y. DOM. REL. LAW § 236B (McKinney Supp. 1984), title is irrelevant. The presumption set up in the proposed bill may, however, affect the divorce court's decision as to what is "equitable."

13. *Commission Report*, *supra* note 2, at A-441.

14. 91 A.D.2d 7, 457 N.Y.S.2d 276 (1st Dep't 1982). *See supra* notes 59-60 and accompanying text.

drafts which resulted when the bank honored checks she wrote against a joint account in the name of her husband and herself. Liability was found even though she claimed that she acted at her husband's direction and that the checks did not benefit her. Furthermore, all deposits credited to the couple's account during the period in question were allocated entirely to the husband's overdrafts, and none to the wife's. The court ruled that the wife's claims did "nothing to change her status as a drawer, nor did they affect the liability to the bank that flows from that status."¹⁵

The court's reasoning in *McSweeney* is sound if it is analyzed in terms of a debtor/creditor relationship between any bank and its depositor. While it is not practical to suggest that the bank become concerned with the personal relationship between husband and wife depositors in a situation such as this, the question nevertheless arises as to whether this debtor/creditor principle should be similarly interpreted in cases involving spousal joint accounts, which include the vast majority of such accounts. Naturally, the presumption that withdrawals made are for the benefit of the contributing depositor would not affect the bank's overall rights as a creditor on the account. However, since a factual determination of the issues raised by the wife must be made by a jury, this presumption might lend weight to her argument that she should not be liable for the entire amount of the overdrafts since she acted at her husband's direction and for his benefit.

Section 682(d) of the proposed bill is specifically subordinated to the New York equitable distribution law.¹⁶ Thus, in divorce cases, the rights of the non-contributing spouse would be safeguarded to the fullest extent possible.¹⁷ Prior to the advent of the equitable distribution law, marital assets were divided according to title in the property.¹⁸ Under equitable distribution, title is no

15. *McSweeney*, 91 A.D.2d at 9, 457 N.Y.S.2d at 278. The couple's account was completely exhausted when the litigation commenced.

16. N.Y. DOM. REL. LAW § 236B (McKinney Supp. 1984).

17. If, as is suggested above, the husband contributed most of the funds to the account while the wife contributed her non-compensable time and services to the marriage, the "net contributions" theory of proposed section 682(b), *Commission Report, supra* note 2, at A-448, standing alone would result in disparate treatment for the wife. By including proposed sections 682(c) and (d), *id.*, the wife is provided an opportunity to receive an equitable portion of the funds.

18. When New York enacted its equitable distribution law in 1980, it became one of the last states to adopt such a system. As of 1980, forty states, including the District of Columbia, had adopted an equitable distribution law, eight states were community prop-

longer the controlling factor,¹⁹ and thus presumptions about title created by the law of joint tenancy have no impact. Instead, "property accumulated during the marriage should be distributed in a manner which reflects the individual needs and circumstances of the parties."²⁰

There appears to be no doubt among New York courts that funds held in joint bank accounts are subject to equitable distribution. In *Jolis v. Jolis*,²¹ the first case to be decided in New York County under the equitable distribution law, the money deposited in the couple's joint savings account was considered marital property and conceded to be subject to the new statute.²² Similarly, in *Jacoby v. Jacoby*,²³ a case arising in Queens County Supreme Court, a divorcing couple's joint savings accounts represented their primary source of assets and each spouse scrambled to transfer funds from the accounts in anticipation of marital dissolution. The matrimonial action was instituted on January 19, 1981; during the week prior to the action, a total of \$116,770 was maneuvered among nine accounts held in four separate banks in an effort to avoid the legal effects of equitable distribution.²⁴ Plaintiff wife withdrew approximately \$20,000, while defendant husband withdrew \$96,000, using part of the funds to open new accounts in his name in trust for two of their children. The court, relying on case law and a noted authority on the subject of equitable distribution law,²⁵ found that the transfers constituted fraudulent conveyances by each spouse and decided to "disregard the title and transfer of the marital assets between January 13, 1981 and January 19, 1981 . . . and for the purposes of equitable distribution . . . treat all such transfers as part and parcel of the marital estate."²⁶ When making the designation as to how the couple's marital property was to be distributed, the court considered the fact that, although

erty states, and three remained title states. Freed & Foster, *Divorce in the United States: An Overview* 14 FAM. L.Q. 229, 249-50 (1981).

19. *Leibowits v. Leibowits*, 93 A.D.2d 535, 540, 462 N.Y.S.2d 469, 472 (2d Dep't 1983).

20. *Memorandum of Approval of Governor Hugh Carey*, 1980 N.Y. LAWS 1863.

21. 111 Misc. 2d 965, 446 N.Y.S.2d 138 (1981).

22. *Id.* at 971, 446 N.Y.S.2d at 142.

23. 187 N.Y.L.J. 18 (N.Y. Sup. Ct. 1982).

24. *Id.* at 18.

25. *Id.* The Court relied on Foster, *Commentary on Equitable Distribution*, 26 N.Y.L. SCH. L. REV. 1 (1981).

26. *Jacoby v. Jacoby*, 187 N.Y.L.J. 18, 18 (N.Y. Sup. Ct. 1982).

the husband was the sole "breadwinner," the wife had contributed to the marriage. The court also heard the testimony of an economics expert as to the value of the household services rendered by her. This factor, in addition to others required for consideration by statute,²⁷ resulted in the court's awarding forty percent of the marital property (consisting principally of the liquid assets in the joint savings accounts) to the wife and sixty percent to the husband. Thus, the application of the equitable distribution law produced a substantial sum for the wife even though she did not contribute the actual funds to any of the various joint accounts.

Clearly, the equitable distribution law is fulfilling the role it was designed to play regarding the distribution of marital property, including assets in joint bank accounts, and it is essential that the provision whereby the equitable distribution law takes precedent be retained in any proposed bill for the modification of section 675.

B. *Recordkeeping*

Another aspect of the proposed bill which must be considered is the effect its passage would have upon the recordkeeping duties of the parties. As noted above, the proposed legislation eliminates the joint tenancy provision from the law governing joint bank accounts, replacing it with a presumption that each depositor owns his or her net contributions unless it can be successfully established that this was not the intent of the co-depositors. This language paraphrases that of UPC section 6-103a;²⁸ the comment to that section indicates that the amounts on deposit are to be attributed so as to reflect individual, beneficial ownership of funds during the lifetimes of the parties. Under the proposed legislation, net contributions would be calculated by adding the total of all deposits of one depositor, less all withdrawals by the same depositor, plus a pro rata share of interest amounts to which that depositor is entitled.²⁹

27. The equitable distribution law lists ten factors which courts are to consider when making distributive awards. N.Y. DOM. REL. LAW § 236B(5)(d) (McKinney Supp. 1984).

28. UNIF. PROBATE CODE § 6-103(a), 8 U.L.A. 523 (1982).

29. See *Commission Report, supra* note 2, at A-449 (proposed section 684(a)). See also UNIF. PROBATE CODE § 6-101(6), 8 U.L.A. 520 (1982). These withdrawals would be presumed to be for the benefit of the spouse who contributed the funds in a spousal joint

Accurate recordkeeping becomes particularly important under the proposed legislation because there would no longer be a statutory presumption that each co-depositor is entitled to a moiety.³⁰ The Commission considered this, but it concluded that the task of keeping records would not be more burdensome than it had been in the past because passbook entries would continue to be the accepted means of tracking the disposition of funds in a joint account.³¹ The potential for problems in the area of recordkeeping also was discussed in a report prepared by the Banking Law Committee of the Banking, Corporation and Business Law Section of the New York Bar Association, and that committee predicted difficulties in tracing transactions and determining the ownership of funds in joint accounts, especially in light of the expanded use of electronic banking.³² In response, the Commission correctly pointed out that the identity of the withdrawer of funds is concealed today in all joint accounts, electronic or not.³³ The Commission stressed that "[t]here can be no guarantees that claimants will be able to *prove* their allegations that co-depositors withdrew more than their moieties under existing law, or that

account under proposed section 682(c). The following hypothetical illustrates the operation of proposed section 682(c): A couple's joint account has a balance of \$750, \$500 derived from *H*'s income and \$250 from *W*'s. *W* withdraws \$250 from the account by writing a check to make a payment on an automobile registered in *H*'s name. To determine whether the \$250 withdrawal is to be attributed entirely to the \$500 of *H*, or proportionately to *H*'s and *W*'s amounts of deposit, it is first necessary to characterize the automobile. If it is the family car, it is considered a family asset regardless of title, and *W* cannot rebut the presumption that payment was partly for her benefit. Thus, the \$250 withdrawal would be allocated two-thirds to the \$500 of *H* on deposit, and one-third to the \$250 of *W*. If, on the other hand, the vehicle in question were a special antique automobile owned by *H* rather than a family asset, *W* might successfully rebut the section 682 presumption, and the entire \$250 would be applied to reduce the \$500 *H* has on deposit, as the payment did not benefit *W*. It should be emphasized that such tracing of net contributions is used only when creditors are attempting to reach the interests of the joint depositor; it would not affect divorce situations, where equitable distribution law is paramount.

30. A "moiety," in this context, is one-half the amount of property in an account governed by joint tenancy.

31. Since passbook or statement accounts do not indicate who actually makes the withdrawals or deposits, it is up to the individual depositor to keep records of his own transactions.

32. BANKING LAW COMMITTEE OF THE BANKING, CORPORATION, AND BUSINESS LAW SECTION, NEW YORK STATE BAR ASSOCIATION LEGISLATIVE REPORT NO. 49 (1982).

33. Memorandum from Joyce Pulliam, Associate Att'y of the N.Y. State Law Revision Comm'n, to Senator Rolison, Chairman, Senate Banking Comm. and Assemblyman Farrell, Chairman, Assembly Banking Comm. (May 5, 1983) (discussing objections to the Comm'n's proposed 1982 and 1983 bills regarding section 675 of the banking law).

non-contributing depositors wrongfully withdrew under our proposed statute. The burden is on the challenger to prove his or her allegations."³⁴ Thus, the Commission bill would not create any new difficulties in determining the ownership of funds in a joint account and would result in an equitable resolution of disputes as to wrongful withdrawals.

Proposed section 684 relieves banks of the burden of proof regarding the calculation of net contributions.³⁵ Under this provision, the bank is under no obligation to determine the source of the funds received for deposit or the use to which withdrawn funds are put; the burden of proof lies with the depositors.³⁶ This policy represents a natural extension of the language in present section 675(a), under which a bank's obligation to pay is released upon delivery of the funds on account to either co-depositor in the absence of written notice to the contrary.³⁷ The drafters of this legislation implicitly recognized the inherent administrative difficulties in requiring that financial institutions keep records of the source of funds. At the same time, they probably were sensitive to the fact that any attempt to monitor the use to which withdrawn funds are put would not only be virtually impossible but also represent an invasion of privacy.

34. *Id.* at 3-4.

35. Proposed section 684(a) provides that a "financial institution owes no duty under this article to any depositor, or a successor in interest, to determine the source of funds received for deposit to a joint account, or to inquire as to the proposed application of any sum withdrawn from an account." *Commission Report, supra* note 2, at A-449.

36. According to John E. Nagurney, Associate Counsel for Operations of Marine Midland Bank, proposed section 684 "provides a fair amount of protection for financial institutions"; he believes this is especially important in light of the holding in *Brown v. Bowery Savings Bank*, 51 N.Y.2d 411, 415 N.E.2d 906, 434 N.Y.S.2d 916 (1980) (discussed *infra* note 37). Interview with John E. Nagurney, Associate Counsel-Operations, Marine Midland Bank, in Buffalo, N.Y. (Feb. 1, 1984).

37. It should be noted that a bank can be held liable under section 675(a) to a joint tenant whose name has been removed from the joint account by the co-depositor without the consent of that joint tenant. In *Brown v. Bowery Savings Bank*, 51 N.Y.2d 411, 415 N.E.2d 906, 434 N.Y.S.2d 916 (1980) a joint tenant whose name had been removed from the joint bank account by her co-depositor without her consent sued the bank for paying the funds to the person whose name was substituted for hers on the account. The Court of Appeals held that the joint tenant whose name had been deleted was entitled to recover from the bank half the funds in the account at the time the substituted joint tenant withdrew the entire balance. *Id.* at 414, 415 N.E.2d at 907, 434 N.Y.S.2d at 917. The court reasoned that the act of deleting the joint tenant's name from the account destroyed the joint tenancy and created a half interest in the account for both parties. Therefore, the withdrawal by the substituted joint tenant constituted conversion of those funds. *Id.*

While the proposed statute would create paperwork for depositors in joint accounts, such burdens already are imposed in certain circumstances under the present tax laws.³⁸ Moreover, the problem of tracing the source of funds in a spousal account only arises when a creditor is seeking to reach the funds of one spouse; it does not occur in a divorce situation. The proposed bill would not impose a heavier recordkeeping burden than is presently required, since similar tracing procedures are used under present New York law to determine the extent of a spouse's interest in an account when it is challenged by a creditor.³⁹

C. Creditors

Bank customers are largely unfamiliar with the rights of creditors to reach funds deposited in joint accounts. Information provided by banks to customers interested in opening joint accounts usually fails to provide any indication as to when such accounts become subject to attachment by the creditor(s) of one depositor.⁴⁰ Perhaps this is understandable, as the law regarding the rights of creditors in this situation is not well defined. Two New York cases illustrate this problem.

In *Denton v. Grumbach*,⁴¹ the plaintiff-creditor claimed that \$19,000 had been appropriated from him fraudulently, and therefore he had an order of attachment levied on the funds held by defendants in a joint bank account. It was admitted in the course of litigation that the plaintiff's dispute lay with only one of the depositors of the joint account and that an order attaching, for example, funds the non-debtor depositor held in a separate account would have been invalid.⁴² The non-debtor depositor ar-

38. See, e.g., *Emmons v. Comm'r*, 20 T.C.M. (CCH) 1513, 1515 (1961) (two-fifths of the interest on a joint bank account taxable to taxpayer where she had originally deposited two-fifths of the funds in the account).

39. See *infra* note 47 and accompanying text. In addition, section 5-1.1(b)(3) of the Estates, Powers and Trusts Law places the burden of proof on the surviving spouse to determine the proportionate interest of the deceased spouse in a joint account maintained by the deceased spouse and a third party depositor, for purposes of establishing the amount to be included as a testamentary substitute subject to the surviving spouse's right of election. N.Y. EST. POWERS & TRUSTS LAW § 5-1.1 (McKinney 1981).

40. The disclosure statement of one New York bank (Anchor Savings Bank FSB) is over 1700 words long yet contains no reference to creditors' rights.

41. 2 A.D.2d 420, 157 N.Y.S.2d 91 (3d Dep't 1956).

42. *Id.* at 422, 157 N.Y.S.2d at 93. The joint account in question was apparently non-spousal.

gued that the attachment should be lifted to preserve her right of access to half the money in the account at any time.⁴³ Plaintiff contended that since the *debtor* depositor had a right of survivorship in this joint tenancy relationship, the attachment affected the entire account, not just the half presumably owned by the debtor depositor.⁴⁴ The court acknowledged that there is a rebuttable presumption that depositors are joint tenants, and that joint tenants are "seized . . . by the half and the whole."⁴⁵ However, since it was impossible to determine in this particular case what the proportionate interests of each party really were, the court refused to rely on the presumption that each defendant owned a moiety and ruled that attachment against the whole amount in the account was proper.⁴⁶ The court concluded that section 924 of the Civil Practice Act,⁴⁷ under which a release of the non-debtor

43. The non-debtor depositor's argument was based on the "present gift of one-half" idea as expressed in *Matter of Suter*, 258 N.Y. 104, 179 N.E. 310 (1932). *Suter*, in conjunction with a case decided one year earlier by the same court, *Marrow v. Moskowitz*, 255 N.Y. 219, 174 N.E. 460 (1931), created tremendous uncertainty in the case law governing situations where wrongful withdrawals occurred, necessitating a need to determine whether a gift of a moiety had been made by the contributing depositor to the co-depositor. In 1976, the Court of Appeals reaffirmed the "present gift of one-half" notion. *See Kleinberg v. Heller*, 38 N.Y.2d 836, 345 N.E.2d 592, 382 N.Y.S.2d 49 (1976) (respondent held obligated to return to the estate funds withdrawn in excess of her moiety).

44. *Denton*, 2 A.D.2d at 422, 157 N.Y.S.2d at 93.

45. *Id.* The phrase "seized . . . by the half and the whole" is based on the common law notion that each joint tenant owns an undivided whole interest in the property due to the right of survivorship, yet is entitled to half the property at any time prior to death of the other tenant. In the case of real property, both joint tenants must consent to convey the entire property to a third party; however, "one joint tenant can convert a joint tenancy into a tenancy in common unilaterally by conveying his interest to a third party," resulting in a severance of the joint tenancy. J. DUKEMINIER & J. KRIER, *PROPERTY* 487 (1981). Similarly, the New York Court of Appeals has held that the withdrawal of more than a moiety by a joint depositor destroys the joint tenancy relationship and attending right of survivorship as to those funds. *See Kleinberg v. Heller*, 38 N.Y.2d 836, 345 N.E.2d 592, 382 N.Y.S.2d 49 (1976).

46. *Denton*, 2 A.D.2d at 422, 157 N.Y.S.2d at 93. It is interesting to speculate as to how this court would have ruled if one depositor had withdrawn more than half the funds in the account prior to the suit and had then been sued by the true depositor for wrongful withdrawal. Under the "present gift of one-half" presumption, the true depositor would be able to recover only the excess over one-half of the funds in the account. *See Bricker v. Krimer*, 13 N.Y.2d 22, 27, 191 N.E.2d 795, 797, 241 N.Y.S.2d 413, 416 (1963).

47. N.Y. CIV. PRAC. ACT § 924 (McKinney 1962) (current version at N.Y. CIV. PRAC. LAW §§ 5239, 6221 (McKinney 1980)). Sections 5239 and 6221 deal with the procedure to determine adverse claims. Under these sections, a special proceeding may be commenced "against the judgment creditor or other person with whom a dispute exists to determine rights in the property or debt . . ." *Id.* (emphasis added) The sections go on to state that

depositor's interest in the account could be granted, offered the preferred remedy.

The *Denton* outcome is difficult to reconcile with that of *In re Granwell*,⁴⁸ a New York Court of Appeals decision involving complex estate litigation. There, the estate of the deceased, Granwell, was indebted to a son by a prior marriage by virtue of a separation agreement which the deceased had entered into with his first wife. Granwell had contracted to pay his son half the amount of any funds transferred during his lifetime if such transfers were made in the form of a gift or to an inter vivos trust and were not supported by full and adequate consideration.⁴⁹ At a later date, Granwell purchased mutual funds and deposited some of them into a joint account with his second wife; he did not pay his son an amount equal to half his moiety in the mutual funds and furthermore made no provision in his will for his son, leaving his entire estate to his second wife (the executrix).⁵⁰ The trial court ruled that the son was a creditor of the estate and that the transfer of the funds to the wife was a fraudulent conveyance because it had rendered the deceased's estate insolvent. The Appellate Division, First Department, modified the order and held that the second wife was not liable to the son for part of the mutual funds because Granwell had no intent to defraud.⁵¹ On appeal, the state's highest court agreed with the trial court that a fraudulent conveyance had occurred. The Court of Appeals noted that when a joint ac-

"[w]here there appear to be disputed questions of fact, the court shall order a separate trial, indicating the person who shall have possession of the property . . ." *Id.* Thus, the non-debtor depositor in *Denton* could now employ the procedural mechanisms of these sections as a means of introducing the evidence required to establish her claim to a portion of the funds on deposit, if such evidence was available.

In this respect, it appears the court's analysis of section 675 of the banking law is incongruous with the operation of sections 5239 and 6221 of the Civil Practice Law and Rules (CPLR). Under the banking law, there is a presumption that the non-debtor depositor is entitled to half the funds in the joint account, whereas there is no such presumption under the CPLR. Therefore, if the non-debtor depositor does not have adequate proof of ownership to satisfy the requirements of section 675, he or she will not have sufficient proof to obtain a release under the CPLR either. The court's "solution" may be of little value to the non-debtor depositor in such a situation.

48. 20 N.Y.2d 91, 228 N.E.2d 779, 281 N.Y.S.2d 783 (1967).

49. *Id.* at 93, 228 N.E.2d at 780, 281 N.Y.S.2d at 785. Granwell also agreed to leave his son the proceeds of his life insurance policies as well as half of his estate. *Id.* at 93-94, 228 N.E.2d at 780, 281 N.Y.S.2d at 785.

50. *Id.* at 94, 228 N.E.2d at 780-81, 281 N.Y.S.2d at 785.

51. 25 A.D.2d 824, 270 N.Y.S.2d 372 (1966).

count is opened there is a presumption of joint tenancy, entitling each depositor to a moiety or half the amount on deposit.⁵² Relying on this presumption, the court found that Granwell's second wife was entitled to a gift of half the amount of the mutual funds while he was alive; the other half was Granwell's property during his lifetime and was subject to attachment by his creditors both during life and after death, even though Granwell's interest had at death passed to his second wife as survivor.⁵³

Although *Denton* has not been overruled, it is clearly at odds with the dominant view expressed in *Granwell* and the Commission's view of the current law.⁵⁴ The *Denton* decision stands for the proposition that if, for purposes of attachment by a creditor of one depositor, it cannot be determined what the proportionate interest of each depositor is, then that depositor can be presumed to own all the funds in the account and the other none. The rebuttable presumption introduced by legislation in 1909⁵⁵ and affirmed by case law⁵⁶ is effectively abolished. The court in *Denton* believed the non-debtor depositor had only an expectancy of receiving the entire amount in the account at the death of her co-depositor and that no transfer to her of a moiety interest occurred until he died. Therefore, all funds in the account were subject to attachment by a creditor of the debtor depositor. In contrast, the *Granwell* court indicated it would only allow creditors access to half the funds in a joint account during lifetime even if all the funds were deposited by the debtor.⁵⁷

The Commission's proposed legislation adopts the views of the *Denton* court, at least as to creditor's rights against a joint bank account. The bill provides that creditors may reach all of the funds in the account in the absence of proof of net contributions.⁵⁸ The Commission's adoption of the *Denton* viewpoint is consistent with its contention that the presumption of a present gift of a moiety results in confusion for the depositors and the courts and should be eliminated. It must be emphasized that the

52. 20 N.Y.2d at 95, 228 N.E.2d at 781, 281 N.Y.S.2d at 786.

53. *Id.* at 95-96, 228 N.E.2d at 781-82, 281 N.Y.S.2d at 786-87.

54. *Commission Report, supra* note 2, at A-443.

55. *See* 1909 N.Y. LAWS 13.

56. *Matter of Bricker v. Krimer*, 13 N.Y.2d 22, 27, 191 N.E.2d 795, 797, 241 N.Y.S.2d 413, 416 (1963).

57. *Granwell*, 20 N.Y.2d at 95-96, 228 N.E.2d at 781-82, 281 N.Y.S.2d at 786-87.

58. *See Commission Report, supra* note 2, at A-449 (proposed § 685).

bill would only allow a creditor access to the entire account as a last resort when the depositor's efforts to meet the burden of proof regarding net contributions have failed.

A somewhat different situation occurred in *McSweeney*,⁵⁹ in which the bank itself became the creditor of the defendants under the common law rule that "the payment of an overdraft constitutes a loan by the bank to the drawer of the overdraft, a loan for which the drawer is liable."⁶⁰ Defendant wife's overdrafts totaled \$16,811 and her husband's totalled \$82,252. During the period of time in question, \$23,000 was deposited into the account, reducing the cumulative overdraft. The wife argued that a proportionate share of the deposits should be used to reduce each of the overdraft amounts. The court held that the bank could allocate the entire amount of the deposit to reduce the husband's overdrafts and allocate none to the wife's because, unless there is specification of the debt to which payment applies, the creditor may allocate as it wishes.⁶¹ It seems likely that the defendants did not realize at the time the deposits were made that, as joint depositors, they were liable to each other for overdrafts and therefore should have specified the debts to which the funds were to be applied. The court pointed out that there was nothing on the joint signature card the depositors signed which mentioned the liability of one depositor for the co-depositor's overdrafts.⁶² Under the proposed bill, the withdrawals made (checks written) by the wife would be presumed to be for the husband's benefit if he contributed the funds initially, so that her share of the overdrafts should be correspondingly reduced.

59. 91 A.D.2d 7, 457 N.Y.S.2d 276 (1st Dep't 1982) (discussed *supra* notes 14-16 and accompanying text).

60. *McSweeney*, 91 A.D.2d at 9, 457 N.Y.S.2d at 278 (citing *Payne v. Freer*, 91 N.Y. 43 (1883)). This rule has been codified in subdivision (1) of section 4-401 of the Uniform Commercial Code. See U.C.C. § 4-401(1) (1977).

61. *McSweeney*, 91 A.D.2d at 9, 457 N.Y.S.2d at 278. The court cited a 1966 Court of Appeals decision, *General Stencils v. Chiappa*, 18 N.Y.2d 125, 129, 219 N.E.2d 169, 171, 272 N.Y.S.2d 337, 340, for support. Apparently the joint tenancy concept only applies when there is a positive balance in the account; when overdrafts occur, each co-depositor is not allocated a moiety of the overdrawn amount.

62. In general, the joint signature cards utilized by banks for opening joint deposits impart little information as to the rights of the co-depositors vis-à-vis each other except as to survivorship. For further discussion on the use of various types of signature cards, see Note, *supra* note 9, at 219 nn.52-55.

II. DEVELOPMENTS IN OTHER JURISDICTIONS

As the above discussion illustrates, New York judges and legislators have struggled with the law governing joint bank accounts for some time. The frequency with which remedial legislation has been introduced over the past several years⁶³ is an implicit indication of the success encountered. In order to gauge the potential of the most recent proposal, it is helpful to look not only at New York law and decisions, but also at the problems encountered and solutions enacted in other states. Two states which had experienced conflicting judicial decisions and have attempted to remedy the situation statutorily within the past six years are Virginia and Michigan.

A. *Virginia*

In 1979, the Virginia General Assembly enacted a Multiple-Party Accounts Act,⁶⁴ closely patterned after article VI of the Uniform Probate Code.⁶⁵ Prior to the enactment of that legislation, case law in Virginia had created a presumption that joint accounts were made for the convenience of the depositor, unless the co-depositors were husband and wife.⁶⁶ Thus, except for spousal joint accounts, the right of survivorship did not necessarily attach even though the joint signature card provided for survivorship. The survivor had to rebut the presumption of convenience, either by relying on the detailed explanation printed on the bank's signature card if it was unambiguous, or by introducing extrinsic evidence.⁶⁷

The judicially created presumption as to convenience was introduced into the Virginia law with no requirement of disclosure to the depositors opening the account, in the same manner in which present New York law presumes that joint depositors intend to make a gift of half the funds in the account without informing the depositors of that fact. A survey conducted by State Senator Emmanuel R. Gold indicated that ninety percent of the

63. See *supra* notes 1-2 and accompanying text.

64. VA. CODE §§ 6.1-125.1 to 6.1-125.16 (1983).

65. UNIF. PROBATE CODE § 6-101 to 6-113, 8 U.L.A. 520-33 (1983).

66. See Note, *Multiple Party Accounts*, 14 U. RICH. L. REV. 851, 853-55 (1980).

67. *Id.* at 853-54. The first method of rebuttal was based on contract theory, while the second method was based on the intent of the depositor under common law gift theory.

people questioned did not know that the law presumes joint depositors have rights to half the funds in an account.⁶⁸ A similar situation has arisen due to nondisclosure of the law relating to survivorship. A 1979 survey of seven hundred Virginia users of short-form signature cards revealed that a little over sixty-one percent of them believed that survivorship would attach if the forms were used by non-spousal depositors.⁶⁹ Clearly the intentions of depositors were not being met in Virginia under case law and are still not being addressed by New York law.

Due to the conflicting resolution of Virginia's joint-account cases and resulting unpredictability, the Virginia legislature enacted the Multiple-Party Accounts Act to replace the rebuttable presumption of convenience with a rebuttable presumption of survivorship. The apparent advantage of replacing one presumption with another was that the latter—survivorship—more closely conformed to the expectations of Virginia depositors. The Commission also has conceded that the "presumption of survivorship contained in the present law probably reflects the intent of most joint depositors"⁷⁰ yet nonetheless proposes to abolish the presumption in New York and require the depositor to designate whether or not survivorship is intended.⁷¹ The New York proposal allows the depositor greater freedom of choice and ensures that he or she will be made aware of the existence of the survivorship feature.

Under the Virginia Act, the ownership of funds between living depositors to a joint account is based on net contributions, as is the case under the Uniform Probate Code and the proposed New York law. This adoption of the net-contributions concept was not a reaction to Virginia case law, as prior to the passage of the statute there were no decisions dealing with lifetime interests in joint accounts. All case law dealt with survivorship rights.⁷² The statute repealed by the Multiple-Party Accounts Act had provided that joint accounts in savings and loan associations were vested in

68. Senator Gold's survey was a letter distributed to senior citizens' groups in the 13th state senatorial district (Queens) in 1982 asking them to check one of four options they believed would occur if a joint account was opened at a bank. Approximately 300 persons responded to the survey, according to Jack McPadden, Legislative Director for Senator Gold. Telephone interview with Jack McPadden (March 8, 1985).

69. Note, *supra* note 66, at 856 n.29.

70. *Commission Report*, *supra* note 2, at A-436.

71. *Id.*

72. Note, *supra* note 66, at 853.

the depositors as joint tenants, but studies conducted by the Virginia House Committee on Banking revealed that no true joint tenancy existed.⁷³ Therefore, the net contributions concept in Virginia represented the first attempt to clearly define rights between depositors while alive. Further refinements in the area of husband and wife accounts may be undertaken since the current Virginia Multiple-Party Accounts Act does not distinguish these types of accounts. In contrast, New York's proposed bill adopts the net contributions concept in reaction to the long history of depositors who did not intend to convey a gift of half the funds in the account and found themselves in court trying to rebut that presumption because they were not aware of its existence at the time they opened the joint account. The slight administrative inconveniences which may arise as a result of instituting a net contributions system, which available data indicate will probably be minimal,⁷⁴ is clearly outweighed by the merits of having the customer's beneficial interest in an account equal the net amount of funds he or she has deposited.

B. *Michigan*

In sharp contrast to the approach to the problem of multiple accounts taken in Virginia, the Michigan legislature has incorporated into the Michigan Statutory Joint Account Act⁷⁵ a requirement that financial institutions provide depositors who open joint accounts with an opportunity to select exactly the type of account which best suits their interests.⁷⁶ The Michigan law eliminates

73. *Id.* at 862.

74. According to G. Philip Cheatham, Vice President and Operations Coordinator of United Virginia Bank, Richmond, Virginia, "[i]t does take a minute or so longer to open a new account" under the new law but the bank viewed this as "simply another law we have to comply with along with many others." Letter from G. Philip Cheatham to Virginia McEldowney (Dec. 12, 1983).

75. MICH. COMP. LAWS ANN. §§ 487.711-487.719 (West 1978).

76. Form of Statutory Joint Account Contract

1. Name of financial institution:

2. Nature of Account:

Check _____ Savings Account;

_____ Commercial Account; _____ Certificate of Deposit; _____

Other Credits (describe):

3. Name and address of person designated as A:

4. Name and address of person designated as B:

5. Who may withdraw funds during lifetime of A and B:

both the rebuttable presumption as to half ownership of such an account as well as the need to determine net contributions.

While the Virginia Act may not be comprehensive enough to meet depositor's intentions,⁷⁷ Michigan's statute may represent too much regulation. Not only is each bank required to use the same contract format, but each time a depositor wishes to make a withdrawal, the bank must check the depositor's individual agreement to determine whether the release of the funds requested comports with the prior designation.⁷⁸ New York's proposed bill represents a compromise between these extremes in that it provides for needed substantive changes yet allows each depositor to freely withdraw money from the account, thus avoiding the burden on the bank to check the agreement before each transaction.

Under the Michigan law, a bank can set off funds in an account if the owner has another financial obligation to the bank,

Check _____ A; _____ B; _____ Either A or B;
 _____ Signatures of both A and B:

6. Who may revoke this contract by written notice to the financial institution:

Check _____ A; _____ B; _____ Either A or B;
 _____ Signatures of both A and B. In the event of revocation, the right to withdraw funds shall be determined by designation of ownership in item 7.

7. Who owns the funds during the lifetime of A and B:

Check _____ A; _____ B; _____ Equally by A and B; Other proportions (describe): _____.

8. Who owns the funds and has the right to withdraw if A dies first:

Check _____ B; _____ A's estate; _____ Equally by B and A's estate;
 Other proportions (describe): _____.

9. Who owns the funds and has the right to withdraw if B dies first:

Check _____ A; _____ B's estate; _____ Equally by A and B's estate;
 Other proportions (describe): _____.

10. If A and B should die simultaneously without proof of who survives, which provision shall control:

Check _____ Item 8 above; _____ Item 9 above.

11. Signature of persons having right of withdrawal:

12. Date of signature: _____.

Note: (1) Each person who signs this contract shall receive a copy of this contract and their signature shall constitute acknowledgment of receipt.

MICH. COMP. LAWS ANN. § 487.715 (West 1978).

77. An example is the failure of Virginia's statute to distinguish husband and wife accounts. See VA. CODE §§ 6.1-125.1 to 6.1-125.16 (1983).

78. In a "unit banking" state such as Michigan, where branching is severely restricted, this may be feasible, but in New York (where one bank may have hundreds of branches statewide) it is not practical to refer to a paper checklist each time a withdrawal is made.

such as an overdue auto loan payment.⁷⁹ Although a right of set-off is not included in the New York banking law, financial institutions do enjoy that right under the New York law governing debtor/creditor relations.⁸⁰ Under the Michigan Act, creditors can only reach funds in the account to the extent of actual ownership; this contrasts with the New York proposal, under which creditors can reach the entire amount if proof of net contribution is lacking.⁸¹ The Michigan provision regarding creditors' rights seems more equitable in that it does not make any presuppositions as to ownership of the funds if proof is lacking; the matter is left up to the discretion of the court.⁸²

In general, it appears that the New York proposal espouses a policy more favorable to creditors than that of Michigan or the Uniform Probate Code.⁸³ Eliminating the confusion surrounding the moiety concept is a valid concern; however, in view of the experience of the defendants in *Denton*,⁸⁴ a statement to the effect that a creditor may be able to reach all the funds on deposit in a joint account if proof of ownership is lacking should be incorporated into the disclosure requirements of General Regulation Part 15.⁸⁵

III. THE NEW YORK PROPOSAL AND THE UNIFORM PROBATE CODE

In many respects, the proposed amendment to the New York banking law mirrors the provisions of the Uniform Probate Code.⁸⁶ UPC section 6-103(a), dealing with ownership of joint accounts during the lifetime of the parties, provides that the ac-

79. MICH. COMP. LAWS ANN. § 487.717(2) (West 1978).

80. N.Y. DEBT. & CRED. LAW § 151 (McKinney Supp. 1984). *See, e.g.*, *Aspen Industries v. Marine Midland Bank*, 52 N.Y.2d 575, 421 N.E.2d 808, 439 N.Y.S.2d 316 (1981) (bank had superior right of set-off against funds in judgment debtor's account as against claim of intervening judgment creditor).

81. *See supra* text accompanying note 58.

82. MICH. COMP. LAWS ANN. § 487.718 (West 1978).

83. *In re Granwell*, 20 N.Y.2d 91, 228 N.E.2d 779, 281 N.Y.S.2d 783 (1967). *See supra* text accompanying note 58.

84. *Denton v. Grumbach*, 2 A.D.2d 420, 157 N.Y.S. 191 (3d Dep't 1956) (discussed *supra* notes 41-47 and accompanying text).

85. Part 15.3(c) of the current General Regulation provides that "the depository may be required by service of legal process to remit funds held in the joint account to satisfy a judgment entered against, or other valid debt incurred by, any owner of the account." N.Y. ADMIN. CODE tit. 3, § 153 (1984). *See supra* note 7 and accompanying text.

86. *See supra* note 10.

count belongs to the parties in proportion to the net contributions made by each, unless there is "clear and convincing evidence" that the intent of the parties was otherwise. The proposed New York law is identical except that a lesser standard of proof is required, one based on a "preponderance of evidence."⁸⁷ Financial institutions are protected under both systems from liability for payments made to a depositor prior to receipt of written notice prohibiting payment of any sums on deposit in accordance with the terms of the account.⁸⁸ In addition, the financial institution is not obligated under either plan to inquire into the source of the funds received for deposit or the purposes for which withdrawn sums will be used.⁸⁹

The UPC and the proposed New York statute differ as to survivorship rights. The UPC provides that "[s]ums 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 at the time the account is created."⁹⁰ In contrast, the New York bill requires financial institutions to provide each joint depositor with the option of choosing whether or not he or she desires to have the property pass to the survivor upon the death of the depositor.⁹¹ The idea of giving depositors an option regarding survivorship at the time the account is opened rather than leaving the question for litigation is attractive in that it involves no extra recordkeeping responsibility for any party, allows customers input as to their intentions, and clarifies the position of the depositors, thereby fulfilling the mandate of recently-passed section 675(c).⁹² The depositor's decision regarding survivorship can be revoked, terminated, or modified by either withdrawing sums from the account or by a written document signed by all co-depositors. Following UPC section 6-104(e), the proposed New York survivorship provision would not be revocable by testamentary disposition;

87. *Commission Report, supra* note 2, at A-447 (proposed § 682(a)).

88. UNIF. PROBATE CODE § 6-112, 8 U.L.A. 532 (1983); *See Commission Report, supra* note 2, at A-449 (proposed § 684(b)).

89. UNIF. PROBATE CODE § 6-108, 8 U.L.A. 530-31 (1983); *See Commission Report, supra* note 2, at A-449 (proposed § 684(a)).

90. UNIF. PROBATE CODE § 6-104(a), 8 U.L.A. 525 (1983).

91. *Commission Report, supra* note 2, at A-448 (proposed § 683).

92. The primary purpose of the elective right of survivorship, however, is undoubtedly to ensure that the customer is notified that the right exists.

the Commission suggested that revocability would be unnecessary given the other methods available to revoke survivorship.⁹³ In the interests of reducing will contests it would seem that revocation by testamentary disposition is not necessary since the depositor may unilaterally revoke survivorship by withdrawal of the funds.

The UPC provides a more detailed statutory scheme in the area of creditor's rights than does the New York proposal. Section 6-107 of the UPC provides that a surviving party who receives payment from a multiple-party account after the death of the co-depositor is accountable to the deceased's personal representative for any amounts the deceased owned beneficially prior to death, to the extent necessary to discharge claims against his estate if the other assets are insufficient.⁹⁴ The New York bill simply grants creditors the right to that portion of the account to which the depositor was beneficially entitled, based on net contributions, up to the entire amount in the account.⁹⁵ By comparison, the New York bill sounds harsh, but the net result would be the same if the amount the deceased owned beneficially prior to death were determinable. Under the UPC, if proof of net contribution were lacking, the courts presumably would be called upon to decide an equitable division of the funds.⁹⁶ Although the New York bill flatly states that a creditor in that same situation is entitled to "the entire sum on deposit in the account,"⁹⁷ the effects of the New York law governing estates, powers, and trusts must also be considered. Under that law, a one thousand dollar exemption is available for the benefit of a surviving spouse, which sum is vulnerable to depletion by the personal representative of the deceased's estate in an amount required to pay funeral expenses if other estate assets are insufficient.⁹⁸ Thus, limited protection from creditors (other than those with funeral-related claims) is afforded the sur-

93. *Commission Report, supra* note 2, at A-439-40.

94. Such claims would include any debts, taxes owed, administrative expenses, and statutory allowances to the surviving spouse and children. UNIF. PROBATE CODE § 6-107, 8 U.L.A. 529-30 (1983).

95. See *supra* note 58 and accompanying text.

96. This assumption as to how the courts would act is based on language in the comment to section 6-103 relating to the division of an account when parties fail to prove net contributions: "undoubtedly a court would divide the account equally among the parties to the extent that net contributions cannot be proven." UNIF. PROBATE CODE § 6-103, comment, 8 U.L.A. 523-25 (1983).

97. *Commission Report, supra* note 2, at A-449 (proposed § 685).

98. N.Y. EST. POWERS & TRUSTS LAW § 5-3.1(a)(4) (McKinney 1981).

viving spouse or child in New York.

It seems that it would be preferable to leave the determination as to the amount of funds subject to creditors' interests to the wisdom of the courts on a case-by-case basis rather than risk turning over to creditors funds which did not belong to the deceased. If this is not done, creditors might receive money to which they are simply not entitled, at the expense of a non-debtor depositor, as occurred in *Denton*.⁹⁹

CONCLUSION

The enactment of section 675(c) and the adoption of General Regulation Part 15 are positive steps toward achieving the goal of increased consumer understanding. Nevertheless, if the substantive legal foundation underlying the disclosed information is not meshed with the intentions of a major share of the depositors, the basic dilemma remains unsolved. As Senator Gold's study suggests,¹⁰⁰ ninety percent of the population may not realize that either person named in the joint account can legally sue for half of the funds deposited therein. Informing customers that they will own the funds on deposit as joint tenants, without further explanation as to the ramifications of that terminology, does nothing to increase their awareness as to the rights they enjoy. At present, joint signature cards do not mention the "present gift of one-half" presumption and there is no reference to the concept in the section of the Savings Bank Association of New York State's training manual dealing with the opening of new multiple-party accounts.¹⁰¹ It is not necessary to mandate that the signature form be standardized since this could result in problems for banks, each of which has its own system of recording account information. As long as the bank's application form meets certain basic standards, such as compliance with the New York Plain Language Law,¹⁰² a concise explanation of the concept of net contributions, in both spousal and non-spousal situations, and a provision relating to the right of survivorship, potential depositors will be able to create joint accounts adapted to their individual requirements to a far

99. See *supra* text accompanying notes 41-47.

100. See *supra* note 68.

101. COMMITTEE ON BANK OPERATIONS AND SERVICES, SAVINGS BANKS ASSOCIATION OF NEW YORK STATE, MANUAL OF BANK OPERATIONS ¶ 205.1 (1979).

102. N.Y. GEN. OBLIG. LAW § 5-702 (McKinney 1978).

