

## CHAPTER 705

## MULTIPLE-PARTY AND AGENCY ACCOUNTS

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**705.01 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking or savings account, certificate of deposit, share account and other like arrangement. All such contracts in which there are 2 or more parties or one or more agents shall be evidenced by a writing signed by each party making a deposit to the account, prior to or within a reasonable time after such deposit, containing language in substantially the form set forth in s. 705.02. For purposes of this chapter, the term "account" does not include contracts established for the deposit of funds of a partnership, joint venture, or other association for business purposes, accounts controlled by one or more persons as the duly authorized agents or trustees for a corporation, unincorporated association, or charitable or civic organization, or regular fiduciary or trust accounts where the relationship is established other than by deposit agreement.

(2) "Agent" means a person who, by the terms of an account, has a present right, subject to request, to payment therefrom as agent for all of the parties to the account.

(3) "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 associations and credit unions.

(4) "Joint account" means an account, other than a marital account, payable on request to one or more of 2 or more parties whether or not mention is made of any right of survivorship. "Joint account" also means any account established with the right of survivorship on or after January 1, 1986, by 2 parties who claim to be husband and wife, which is payable on request to either or both of the parties.

(4m) "Marital account" means an account established without the right of survivorship on or after January 1, 1986, by 2 parties who claim to be husband and wife, which is payable on request to either or both of the parties and which is designated as a marital account. An account established by those parties with the right of survivorship under s. 766.58 (3) (f) or 766.60 is a joint account.

(5) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits made by or for him, less all withdrawals made by or for him which have not been paid to or applied for the use of any other party, plus a proportional share of any interest or dividends included in the current balance as adjusted to reflect time of deposit. It 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.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment therefrom other than as agent. A beneficiary of a P.O.D. account is a party only after the account becomes payable to

him by reason of his surviving the original payee. A minor may be a party to an account, subject to the withdrawal restrictions of s. 705.04 (2). Unless the context indicates otherwise, "party" includes a guardian, conservator, personal representative or assignee, including an attaching creditor, of a party.

(7) "Payment" of sums on deposit includes withdrawal, payment on check or other order of a party, any pledge of sums on deposit by a party and any setoff, or reduction or other disposition of all or part of an account pursuant to a pledge.

(8) "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. beneficiaries, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. beneficiaries. It includes 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 includes a marital account for which a party named one or more P.O.D. beneficiaries for that party's interest.

(9) "P.O.D. Beneficiary" means a person designated on a P.O.D. account as one to whom all or part of the account is payable on request after the death of one or more parties.

(10) "Request" means a proper request for withdrawal, or a check or other order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution. Unless the signature card, passbook, contract or instrument evidencing the account clearly provides to the contrary, a request by all parties to a joint or marital account is required for payment if the account is designated with their names conjunctively joined by the word "and". If the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter 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.

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

**History:** 1973 c. 291; 1979 c. 110 s. 60 (11); 1983 a. 186.

Multiple-party and agency accounts Evans, 1975 WBB No. 3.

### 705.02 Creation of multiple-party or agency relationship.

(1) Provisions in substantially the following form contained in a signature card, passbook, contract or instrument evidencing an account shall be effective to create the multiple-party accounts described in this chapter when conspicuously printed or typewritten immediately above or adjacent to the place for the signatures of the parties to the account:

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(a) Joint account: "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS JOINTLY OWNED BY THE PARTIES NAMED HEREON. UPON THE DEATH OF ANY OF THEM, OWNERSHIP PASSES TO THE SURVIVOR(S)."

(b) P.O.D. account with single party: "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED BY THE PARTY NAMED HEREON. UPON THE DEATH OF SUCH PARTY, OWNERSHIP PASSES TO THE P.O.D. BENEFICIARY(IES) NAMED HEREON."

(c) P.O.D. account with multiple parties: "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS JOINTLY OWNED BY THE PARTIES NAMED HEREON. UPON THE DEATH OF ANY OF THEM, OWNERSHIP PASSES TO THE SURVIVOR(S). UPON THE DEATHS OF ALL OF SUCH PARTIES, OWNERSHIP PASSES TO THE P.O.D. BENEFICIARY(IES) NAMED HEREON."

(d) Marital account: "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED AS A MARITAL ACCOUNT BY THE PARTIES NAMED HEREON. UPON THE DEATH OF EITHER OF THEM, THE SURVIVOR OWNS 50% OF THE SUMS ON DEPOSIT."

(e) Marital account with P.O.D. beneficiaries: "THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED AS A MARITAL ACCOUNT BY THE PARTIES NAMED HEREON. UPON THE DEATH OF EITHER OF THEM, 50% OF THE SUMS ON DEPOSIT ARE OWNED BY THE SURVIVOR AND 50% ARE OWNED BY THE P.O.D. BENEFICIARY(IES) NAMED HEREON BY THE DECEASED PARTY."

(2) Provisions in substantially the following form contained in a signature card, passbook, contract or instrument evidencing an account shall be effective to create the agency relationship described in this chapter when conspicuously printed or typewritten immediately above or adjacent to the place for the designation of the agent or agents, which designation shall be separately subscribed or initialed by all of the parties to the account: "TRANSACTIONS REGARDING THIS ACCOUNT/CERTIFICATE OF DEPOSIT MAY BE MADE BY THE AGENT(S) NAMED HEREON. NO PRESENT OR FUTURE OWNERSHIP OR RIGHT OF SURVIVORSHIP IS CONFERRED BY THIS DESIGNATION." In addition, if such designation makes specific reference to s. 705.05 (3) or otherwise provides that the authority of an agent shall be exercisable notwithstanding the legal disability of any party to the account, or if the designated agent is the spouse of a party, then the authority of such agent shall be governed by s. 705.05 (3).

(3) Any deposit made to an account created on or after July 1, 1975, and within the scope of this chapter, which account is not evidenced by an agreement containing language in substantial conformity with this section, signed by the depositor in accordance with s. 705.01 (1), shall nonetheless be deemed to create either a single-party relationship, with agency, or a joint or P.O.D. relationship, with or without the designation of one or more agents, or a marital relationship if the account is created after January 1, 1986, in accordance with whatever competent evidence is available concerning the depositor's intent at the time the account was created. Such relationship may differ from that established by any other depositor. A deposit which is made in conformity with the language and signature requirements of this section and s. 705.01 (1) shall be deemed to create an account in accordance with this chapter, with respect to such deposit and all other deposits by the same person, notwithstanding whatever relationships may be established by other depositors.

History: 1973 c. 291; 1983 a. 186.

See note to 909.01, citing *Bruckner v. Prairie Fed. Savings & Loan Assn.* 81 W (2d) 215; 260 NW (2d) 256.

**705.03 Ownership during lifetime.** Unless there is clear and convincing evidence of a different intent:

(1) A joint account belongs, during the lifetime of all parties, to the parties without regard to the proportion of their respective contributions to the sums on deposit and without regard to the number of signatures required for payment. The application of any sum withdrawn from a joint account by a party thereto shall not be subject to inquiry by any person, including any other party to the account and notwithstanding such other party's minority or other disability, except that the spouse of one of the parties may recover under s. 766.70. No financial institution is liable to the spouse of a married person who is a party to a joint account for any sum withdrawn by any party to the account unless the financial institution violates a court order.

(2) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. beneficiary or beneficiaries. If 2 or more parties are named as original payees, during their lifetimes rights as between them are governed by sub. (1); and a surviving original payee may revoke or amend the P.O.D. beneficiary designation at will.

(3) A marital account belongs, during the lifetime of both parties, to the parties without regard to the proportion of their respective contributions to the sums on deposit or to the number of signatures required for payment. A party to a marital account may name one or more P.O.D. beneficiaries for that party's interest. No person may inquire about the application of any sums withdrawn from a marital account by a party to the account, except that if the parties are married to one another the other party to the account may recover under s. 766.70.

History: 1973 c. 291; 1983 a. 186.

Withdrawal of funds from joint account by either party while both are alive may not later be subjected to inquiry by other party's estate. *Matter of Estate of Frank*, 140 W (2d) 429, 410 NW (2d) 621 (Ct. App. 1987).

**705.04 Right of survivorship.** (1) 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 at the time the account is created. If there are 2 or more surviving parties, their ownership interests during lifetime shall remain subject to s. 705.03 (1); and the right of survivorship continues between the surviving parties.

(2) If the account is a P.O.D. account, on the death of the original payee or the survivor of 2 or more original payees, any sums remaining on deposit belong to the P.O.D. beneficiaries if surviving, or to the survivor of them if one or more die before the original payee. Payment may be made to a minor P.O.D. beneficiary, however, only in accordance with a procedure approved in ch. 880. If 2 or more P.O.D. beneficiaries survive, they shall be entitled to payment of the sums on deposit in accordance with such written instructions as may have been filed with the financial institution, and if none, to payment in equal shares. There is no right of survivorship in the event of the death of one of 2 or more P.O.D. beneficiaries after their entitlement to payment has matured unless the terms of the account expressly provide for survivorship or for the account's continuance as a joint account.

(2m) Unless a marital property agreement under s. 766.58 provides otherwise, after deducting all payments and certifications made under s. 404.405 50% of the sums remaining on deposit at the death of a party to a marital account belongs to and may, upon the maturity of the account, be withdrawn by the surviving spouse and 50% belongs to and may, upon the maturity of the account, be withdrawn by the decedent's estate. No financial institution is liable for any amount

withdrawn under this subsection by a party who falsely claims to be the decedent's spouse.

(3) Subject to s. 853.15, a right of survivorship arising from the express terms of the account or under this section, or a P.O.D. beneficiary designation, cannot be changed by will. Any transfers resulting from the application of this section are not to be considered testamentary dispositions.

(4) As to any deposit made on or after January 1, 1986, a surviving spouse who is not a party to the account may recover under s. 766.70 (6).

History: 1973 c. 291; 1983 a. 186; 1985 a. 37 s. 187.

**705.05 Designation and powers of agent.** (1) A party to an account, notwithstanding such party's minority, or if the account has multiple parties, all of them acting in concert, may appoint one or more agents for purposes of making withdrawals from the account. The authority of an agent to make withdrawals from an account may be terminated by any party to the account upon written notice to the financial institution, and this shall not preclude a party's liability for wrongful termination of such agency.

(2) The uses and purposes for which withdrawals may be made by an agent to an account shall be governed by agency principles of general application. The application of any sum withdrawn from an account shall only be subject to inquiry by a party to the account, and such party shall have the burden of proving breach of the agency relationship. A minor party may not disaffirm the appointment of an agent, but the period within which he may inquire into the propriety of any withdrawal shall be governed by s. 893.16 or 893.18. Unless there is clear and convincing evidence of a different intent, if the agent is a spouse of a party, the sums so withdrawn may be used, but not by way of limitation, for the support and maintenance of either spouse or any common minor children.

(3) The parties to an account may provide, by the terms of the account or by independent written power of attorney which, if later, shall have precedence over the terms of the account, that the authority conferred upon an agent shall be exercisable notwithstanding any party's legal disability. In such case the authority of the agent is also exercisable notwithstanding later uncertainty as to whether a party is dead or alive. Absent a written direction to the contrary, the foregoing power of withdrawal shall exist without the necessity of written provision if the agent is the spouse of a party, but in such a case funds so withdrawn, the application of which may be inquired into only as provided in sub. (2), may only be used for the support and maintenance of either spouse and any common minor children. This subsection shall apply to all accounts created prior to and after July 1, 1975.

History: 1973 c. 291; 1979 c. 323 s. 33.

**705.06 Protection of financial institutions.** (1) In accordance with the terms of an account, and subject to this chapter, ch. 112 and s. 72.29 and unless otherwise ordered by a court of competent jurisdiction:

(a) A financial institution may on request pay any sums on deposit in the account to any party or agent; and the financial institution shall not be required to look into the source of funds received for deposit or the proposed application of any funds withdrawn or requested to be withdrawn.

(b) Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is under legal disability or is deceased at the time the payment is requested.

(c) Any sums in a P.O.D. account may be paid, on request, to the P.O.D. beneficiary upon presentation to the financial

institution of proof of death showing that the P.O.D. beneficiary survived all persons named as original payees.

(d) Any sums in a marital account may be paid, on request, to either party without regard to whether the other party is under legal disability or is deceased, unless the financial institution receives actual notice that the other party is deceased. After receipt of actual notice of the death of one party to a marital account, the financial institution may pay on request not more than 50% of the sums on deposit to the surviving party, and 50% of that amount, less any amount required to be withheld under s. 72.29, to the personal representative of the deceased party or if applicable to any P.O.D. beneficiary of the deceased party's interest, unless before payment is made the financial institution receives a verified statement under s. 865.201 or a certified copy of a certificate or recorded application concerning survivorship rights under s. 867.046, in which case the financial institution shall make payment as provided in that document.

(2) Payment made under this chapter discharges the financial institution from all claims for amounts so withdrawn. If the institution has reason to believe that a dispute exists as to the rights of the parties to an account or their successors it may, but shall not be required to, refuse to pay funds in the account to any persons. An institution may but need not recognize the authority of an agent, other than one with continuing authority under s. 705.05 (3), until it knows of the fact of death or adjudication of incompetence of all parties appointing such agent and has reasonable opportunity to act. The protection provided by this section shall have no bearing on the rights of parties or their successors in disputes concerning the beneficial ownership of funds in or withdrawn from an account.

History: 1973 c. 291; 1983 a. 186; 1987 a. 27.

NOTE: Subs. (1) (intro.) and (d) are amended by 1987 Wis. Act 27, ss. 2117r and 2117x, eff. 1-1-92 to read:

"(1) In accordance with the terms of an account, and subject to this chapter, ch. 112 and the duties prescribed for personal representatives in ch. 72 and unless otherwise ordered by a court of competent jurisdiction:

(d) Any sums in a marital account may be paid, on request, to either party without regard to whether the other party is under legal disability or is deceased, unless the financial institution receives actual notice that the other party is deceased. After receipt of actual notice of the death of one party to a marital account, the financial institution may pay on request not more than 50% of the sums on deposit to the surviving party, and 50% of that amount to the personal representative of the deceased party or if applicable to any P.O.D. beneficiary of the deceased party's interest, unless before payment is made the financial institution receives a verified statement under s. 865.201 or a certified copy of a certificate or recorded application concerning survivorship rights under s. 867.046, in which case the financial institution shall make payment as provided in that document."

Joint bank accounts in Wisconsin. O'Flaherty, 53 MLR 118.

**705.07 Rights of creditors.** (1) Only the creditors of any living party to an account may subject the entire sums on deposit to their claims, as if such sums resulted solely from contributions made by the debtor party. If a joint or P.O.D. account requires the signatures of all of the parties for purposes of withdrawal, such account shall not be subject to the claims of creditors of a debtor party to the extent of the net contributions of the other parties to the account. Such other parties shall have the burden of proving their net contributions by clear and convincing evidence.

(2) For purposes of ch. 242, a debtor party shall be deemed to have made a transfer only at the time some other party withdraws all or part of the sums on deposit, or at the time of the debtor party's death as to sums not previously withdrawn. In the case of a withdrawal while the debtor party is living, the sole grounds for determining any such transfer to be fraudulent shall be whether the debtor party is or will be thereby rendered insolvent under s. 242.05 (1) or whether the debtor party is engaged or is about to engage in a business or

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transaction for which the assets remaining in the debtor party's hands after the transfer are unreasonably small under s. 242.04 (1) (b) 1. In the case of a transfer by reason of the death of the debtor party, the sole ground for determining any such transfer to be fraudulent shall be whether the debtor party's estate subject to administration is insolvent under s. 242.02. For purposes of this subsection, the amount transferred shall be deemed to consist of those assets which the creditors of the debtor party could have made subject to their

claims immediately prior to the transfer, less any sums which such creditors could have made so subject to their claims immediately after the transfer.

**History:** 1973 c. 291; 1987 a. 192.

**705.08 Construction.** This chapter shall be construed in such a manner as to ensure reasonable certainty of legal result for those who establish a multiple-party or agency account.

**History:** 1973 c. 291.