Joint Bank Accounts: Who Needs Them?

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ABSTRACT: Joint bank accounts, once known as a "poor man's will," emerged more than a century ago as a probate avoidance device. This Article contends that joint accounts no longer serve a useful estate planning function, and they pose an unacceptably high risk to banking consumers because the legal framework governing lifetime ownership rights is deeply flawed and underdeveloped. Courts typically apply one of two prevailing models for allocating lifetime rights: (1) the traditional joint tenancy approach, which presumes equal ownership of account funds by each party; and (2) the Uniform Probate Code's approach, which presumes ownership in proportion to each party's net contribution.

Neither ownership model is well-suited to implement the depositor's actual intent, and both are plagued by unacceptable levels of uncertainty. Most depositors (except for married couples) do not open a joint account for the purpose of lifetime gifting, so the joint tenancy presumption of equal ownership is contrary to majoritarian preferences. The net contribution rule, conversely, presumes no lifetime gifting between unmarried joint accountholders, but it requires parties to preserve evidence of their net contribution, an unrealistic expectation when joint accounts remain in use for years or decades. Moreover, both presumptions can be overcome by evidence of contrary intent. As a result, joint accounts have generated a hotbed of litigation in three troublesome contexts: (1) disputes among joint accountholders when parties withdraw more than their net contribution; (2) garnishment proceedings by creditors seeking

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to attach joint-account funds to satisfy nonjoint debts; and (3) criminal prosecution of embezzlement and larceny from joint accounts.

This Article makes three novel claims: first, in light of widespread acceptance of payable-on-death accounts, joint accounts no longer serve any useful function outside marriage; second, that joint account ownership disputes are frequent and expensive to litigate; and third, that most depositors who open joint accounts do not understand the attendant risks. It then reports findings from an original empirical field test in which funds supplied by the authors were used to open a series of joint accounts to document onboarding procedures currently used by banks for new accounts. That study revealed that bank clerks provide little to no information about lifetime ownership rights during the onboarding process, that written account agreements (provided only after the initial deposit) are generally silent regarding the rights of joint depositors as against each other, and that some banks fail to provide any written disclosures at all.

The Article concludes with a menu of reform options designed to deter depositors from using joint bank accounts except within marriage.

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INTRODUCTION

The turn of the twentieth century marked a period of ascendency for the American middle class, which found itself commanding unprecedented purchasing power in the modern consumer-driven economy.[1] Middle-class consumption preferences, in turn, supercharged demand for a burst of new mass-market inventions, including the radio,[2] vacuum cleaner,[3] toaster,[4] and (shortly thereafter) presliced bread,[5] to name a few. Innovation was also afoot in the financial services industry, which began marketing bank accounts to consumers seeking to avoid the perceived burden and cost of probate administration.[6] Among these accounts were joint accounts and bank account trusts, novel products that allowed bank depositors to bypass probate for funds remaining at death by employing account-titling language that conveyed

1. *See, e.g.*, Kerryn Higgs, *A Brief History of Consumer Culture*, MIT PRESS READER (Jan. 11, 2021), https://thereader.mitpress.mit.edu/a-brief-history-of-consumer-culture [https://perma.cc/RG3S-DHVV].

2. *See generally* FED. COMMC'NS COMM'N, A SHORT HISTORY OF RADIO (2004), https://www.fcc.gov/sites/default/files/a-short-history-of-radio.pdf [https://perma.cc/G3XS-5TED].

3. *See The Invention of the Vacuum Cleaner, from Horse-Drawn to High Tech*, SCI. MUSEUM (Apr. 3, 2020), https://www.sciencemuseum.org.uk/objects-and-stories/everyday-wonders/invention-vacuum-cleaner [https://perma.cc/G79X-DNFS].

4. *See* Ana Lopes Ramos, *The History of Toasters: The Evolution of Appliances Created to Toast Bread*, JOHN DESMOND LTD., https://www.johndesmond.com/blog/products/the-history-of-toasters [https://perma.cc/L56F-DJ7H].

5. *See History of Sliced Bread - Modern Baking Industry*, HISTORY OF BREAD, http://www.historyofbread.com/bread-history/history-of-sliced-bread [https://perma.cc/WV26-EP9L].

6. *See infra* Section I.A.

survivorship rights to intended death beneficiaries.[7] Although these devices initially faced doctrinal challenges because they did not fit neatly into traditional classifications of inter vivos gifts or testamentary transfers, bank account trusts and joint accounts went on to become mainstays of modern estate planning as decades of "benign experience" revealed nonprobate transfers to be generally reliable and efficient without the statutory protections applicable to traditional wills.[8] In Professor John Langbein's canonical endorsement of the "nonprobate revolution," he boldly pronounced that "standard form instruments that serve as mass will substitutes satisfy [the manifestation of donative intent] requirement so easily that the issue of intent almost never needs to be litigated."[9] But Langbein was careful to include an important caveat: "[T]he mode of nonprobate transfer [must be] sufficiently formal to meet the burden of proof on the question of intent to transfer."[10] In fact, subsequent empirical research (including by one of us) later revealed that the standardized forms used by many leading financial institutions often fail to clearly or reliably capture the donor's intent, a problem that can result in "accidental inheritance" of retirement assets by unintended beneficiaries.[11]

This Article examines long-standing but unresolved questions about intent and administrability regarding the *lifetime* ownership rights of joint bank accounts. Indeed, a major source of contention arises from the fact that, while joint accountholders are legally entitled to withdraw funds, withdrawal authority alone does not necessarily dictate ownership of the withdrawn funds. Consider, for example, the recent case of *McDaniels v. Rutter* from Pennsylvania: After five years of dating, Michael added his girlfriend Heather as joint owner of his bank account, but three years later, the couple broke up.[12] Nine years after the breakup, Michael deposited $700,000 from a family inheritance into the joint account.[13] Michael transferred his inheritance into a separate account, presumably upon realizing that Heather was still a joint accountholder.[14] Heather challenged that transfer, claiming that she was entitled to keep

7. *See infra* Section I.A.

8. *Cf.* UNIF. PROB. CODE § 6-101 cmt. (UNIF. L. COMM'N 2001) (noting "that the benign experience with such familiar will substitutes as the revocable inter vivos trust, the multiple-party bank account, and United States government bonds payable on death to named beneficiaries all demonstrated that the evils envisioned if the statute of wills were not rigidly enforced simply do not materialize" and that "the danger of fraud is largely eliminated").

9. John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108, 1132 (1984).

10. *Id.*

11. *See* Stewart E. Sterk & Melanie B. Leslie, *Accidental Inheritance: Retirement Accounts and the Hidden Law of Succession*, 89 N.Y.U. L. REV. 165, 167–69 (2014) (describing the problem of "accidental inheritance" caused by the failure of accountholders to update beneficiary designations and the limited options provided by financial intermediaries on death beneficiary forms).

12. *See* McDaniels v. Rutter, 262 A.3d 600, 602 (Pa. Super. Ct. 2021).

13. *Id.*

14. *Id.*

$350,000 because Michael's $700,000 deposit constituted a lifetime gift of one-half to her as the other joint accountholder.[15]

The bank's boilerplate account agreement proved unhelpful. It provided that "all sums . . . paid into the account[] . . . shall be owned by [the accountholders] jointly, with right of survivorship and be subject to withdrawal or receipt of any of them," but it did not explain what that status meant regarding lifetime gifting.[16] To resolve the dispute, the court looked to Pennsylvania's joint-account statute, which contains the default rule enacted in most states: "A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a different intent."[17] Applying that default, the court held that any gift from one joint accountholder to another was presumptively testamentary and revocable, and Heather had failed to prove Michael's contrary intent by clear and convincing evidence.[18]

McDaniels illustrates an old problem that has quietly generated a surprisingly large number of preventable ownership disputes in the seemingly staid world of joint bank accounts. As one leading property scholar observed more than fifty years ago, "No type of personal property generates more litigation than accounts with financial institutions held in a joint and survivor form."[19] Unfortunately, that observation has withstood the test of time, as joint-account disputes continue to manifest in various forms and contexts.[20] *McDaniels*, for instance, involved one large, contested transaction, but how would the "net contribution" rule help resolve hundreds of contested transactions occurring over a period of decades? For a joint accountholder accused of criminal embezzlement, how would a prosecutor prove beyond a reasonable doubt that the victim depositor did not intend a gift? What result if a creditor sought to garnish a joint account by attaching funds deposited by the nondebtor accountholder, and who would have the burden of proving the nondebtor's net contribution? These questions have proven difficult to answer.

As we will explain, banking consumers rarely understand the lifetime ownership implications of depositing funds into a joint account, a point of confusion that banks exacerbate by failing to enumerate joint accountholder rights in their depository agreements or signature card instruments. The legal framework governing joint accounts is also largely unhelpful because it makes litigating disputes difficult and expensive, and courts have inconsistently applied some of the core principles of joint bank account ownership law.

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15. *Id.*

16. *Id.*

17. 20 PA. STAT. AND CONS. STAT. § 6303(a) (West 2019).

18. *McDaniels*, 262 A.3d at 604.

19. N. William Hines, *Personal Property Joint Tenancies: More Law, Fact and Fancy*, 54 MINN. L. REV. 509, 526 (1970).

20. *See infra* Part II.

These are among the myriad of dynamics that have led us to this Article's central claim: that, at best, joint accounts are unnecessary for most banking consumers seeking probate avoidance in light of widespread statutory authorization of payable-on-death ("POD") accounts. At worst, joint accounts are risky financial products that rely on poorly designed boilerplate forms which often contain titling language that is undefined, ambiguous, or flatly contrary to depositor intent. We believe that most joint-account products today are plainly bad for consumers, who are often either uninformed or misled about lifetime ownership rights concerning their deposits. Supporting that contention, this Article reports findings from a novel empirical limited experiment in which we supplied our own funds to open a series of joint accounts to investigate modern account onboarding practices employed by a sample of major banks.

To their credit, most banks do not aggressively market joint accounts, but they do advertise several benefits for married and partnered couples, including "transparent money management," a "shared sense of ownership," and the ease of meeting minimum balance thresholds.[21] Some of those benefits find support in psychology literature, which suggests that "pooling finances in joint accounts (vs. keeping money in separate accounts) is positively associated with couples' relationship satisfaction."[22]

Although all of that sounds desirable, the legal framework governing lifetime ownership rights in joint accounts remains underdeveloped and deeply flawed despite decades of experience in regulating them. The problem is that when depositors open a joint bank account without the assistance of an attorney, as is usually the case, they are often uninformed about the various options for allocating lifetime ownership rights as well as the legal consequences associated with each option. Indeed, depositors use joint accounts for various purposes other than or in addition to designation of a death beneficiary, such as lifetime gifting (e.g., by authorizing nondepositor accountholders to make withdrawals and retain any amounts withdrawn for themselves) and agency delegation (e.g., by authorizing nondepositors to transact on the depositor's behalf but solely for the depositor's benefit and convenience).

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21. *Joint Bank Account Pros & Cons*, PNC INSIGHTS (June 6, 2024), https://www.pnc.com/insights/personal-finance/spend/joint-bank-account-pros-cons.html [https://perma.cc/6SXE-EPF9]; *accord Joint Bank Accounts: What You Need to Know*, BANK AM., https://bettermoneyhabits.bankofamerica.com/en/personal-banking/joint-bank-account [https://perma.cc/XX73-LKRB].

22. Joe J. Gladstone, Emily N. Garbinsky & Cassie Mogilner, *Pooling Finances and Relationship Satisfaction*, 123 J. PERSONALITY & SOC. PSYCH. 1293, 1309 (2022). For example, one recent empirical study "found that pooling finances is associated with greater relationship satisfaction, especially for couples who experience their financial resources as scarce (measured both in terms of objective income level and subjective perceptions of financial resource availability)." *Id.* That study also "found that the positive effect of having pooled finances on relationship satisfaction carries over to impact other important relationship outcomes, such as how committed one feels to the relationship . . . and the likelihood of the couple breaking up." *Id.*

Uninformed depositors are unlikely to know what titling language they should select on the bank's standardized forms to describe their intentions regarding lifetime powers and ownership rights. Nor are they likely to read or understand boilerplate titling language buried in the fine print of depository agreements supplied by banks during a short account onboarding process.[23] Banks, however, are protected by statutory safe harbors and contractual indemnification for ownership disputes between joint accountholders, so they lack incentives to develop account-origination procedures that accurately memorialize the intentions of their depositors.[24] A similar misalignment of incentives prevents banks from ensuring that depositors are adequately informed of the various joint-account titling options and how each option affects ownership rights during life.[25]

As a result, joint-bank-account titling documents often inadequately reflect actual depositor intent. Limited public data from an adjacent context suggests that confusion about joint bank accounts may indeed be widespread.[26] Pervasive confusion about bank account ownership, in turn, generates disputes about lifetime withdrawal rights and donative intent. When those disputes are litigated, they are difficult to resolve because courts are forced either to consider extrinsic evidence of depositor intent (often in the form of uncorroborated testimony about a deceased depositor's preferences) or rely on the bank's inadequate boilerplate titling language.

Uncertainty about lifetime ownership rights also causes ripple effects that impact outside parties, such as creditors and government prosecutors. For example, when a creditor seeks to garnish a joint account to collect on debt owed by one of multiple accountholders, confusion about the account's ownership often leaves courts to choose between two bad options: force the creditor to pursue discovery of ownership information known exclusively by the accountholders (and which often turns on proof of the depositors' subjective intent) or presume (absent contrary proof) that the debtor owned the entire account, thereby allowing the creditor to garnish funds deposited by nondebtor accountholders.[27] Likewise, when the government seeks to prosecute a joint accountholder for embezzlement, confusion about lifetime ownership rights can render it impossible for the prosecution to prove that the defendant's

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23. *See* Stewart E. Sterk, *Accommodating Legal Ignorance*, 42 CARDOZO L. REV. 213, 253–59 (2020).

24. *See infra* notes 74–75 and accompanying text.

25. *See infra* notes 282–84 and accompanying text (discussing the incentives facing banks).

26. In 2023, for instance, the Federal Deposit Insurance Corporation fielded 37,779 telephone cases that the agency identified as "deposit insurance-related inquiries." FED. DEPOSIT INS. CORP., ANNUAL REPORT 2023, at 79 (2024), https://www.fdic.gov/about/financial-reports/reports/2023annualreport/2023-arfinal.pdf [https://perma.cc/QH4F-4GUQ]. Among the most frequent inquiries were those involving various types of bank account trusts (thirty-seven percent) and joint accounts (seven percent). *Id.*

27. *See infra* Section II.B.

withdrawals exceeded the scope of the depositor's consent beyond a reasonable doubt.[28]

As one might expect, courts and legislatures have developed presumptions to deal with ambiguities of ownership allocation, but application of those presumptions in actual disputes reveal them to be deeply flawed. A minority of states follows the *joint tenancy* approach, which presumes joint bank accounts are owned in equal shares during the accountholders' joint lives.[29] But there are two problems with that presumption. First, it runs contrary to the most likely preferences of most depositors, who use joint accounts to confer survivorship rights but not for lifetime gifting.[30] Second, the presumption is rebuttable by evidence that the depositor intended a convenience account, so most disputes turn on the sufficiency of rebuttal evidence that undercuts the litigation-saving effect of the initial presumption.[31]

Most states follow the Uniform Probate Code's ("UPC") *net contribution* rule, which presumes lifetime ownership in proportion to each party's own net contribution.[32] That presumption aligns with the common preferences of depositors who do not use joint accounts as gift-giving vehicles, but is problematic to administer because it requires each accountholder to adduce proof of their own contribution, a tall order when finances are intertwined in an ongoing joint account for long periods of time. Curiously, the UPC drafters *intentionally* declined to include a statutory presumption of ownership allocation for disputes in which unmarried accountholders lack proof of actual net contribution.[33] That omission forces accountholders to choose between commissioning the costly forensic accounting necessary to establish proof of net contribution and rolling the dice on a judicially determined default allocation. The net contribution presumption is also rebuttable by clear and convincing evidence of contrary intent, thus mirroring the joint tenancy approach's invitation of costly litigation about extrinsic evidence.[34]

In theory, the ownership presumptions under both approaches should apply in garnishment proceedings to determine how much of a joint account

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28. *See infra* Section II.C.

29. *See infra* notes 91–97 and accompanying text.

30. *Cf.* UNIF. PROB. CODE § 6-211 cmt. (UNIF. L. COMM'N 2019) ("This section reflects the assumption that a person who deposits funds in an account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, the person usually intends no present change of beneficial ownership."); *see also* Carolyn Satenberg, *Joint Bank Accounts in New York: Confusion, Discrimination, and the Need for Change*, 9 CARDOZO PUB. L., POL'Y, & ETHICS J. 607, 634–36 (2011) (arguing that most depositors do not intend to make a gift of half of each deposit).

31. *See, e.g.*, *In re* Estate of Johnston, No. 22-1801, 2023 WL 7391796, at *3 (Iowa Ct. App. 2023), *aff'd*, 16 N.W.3d 700 (Iowa 2025).

32. *See infra* notes 122–23 and accompanying text.

33. *See infra* Section II.B.

34. UNIF. PROB. CODE § 6-211; *see infra* notes 107–08 and accompanying text (discussing UPC section 6-211, titled "Ownership During Lifetime").

is reachable by creditors of a single accountholder. But in most states, nondebtors bear the burden of proving their contributions; if they fail to do so, creditors can reach the entire account.

To better understand the practices and procedures currently used by banks when opening joint accounts, we conducted a limited experiment in which our own funds were used to open joint accounts at six separate banks in three different states. We documented every stage of the account onboarding process to present a snapshot of how much information and advice about lifetime ownership rights banks provide to prospective depositors, and what procedures banks follow to memorialize the depositors' intentions. We found that banks no longer ask depositors to fill out a hard copy signature card when opening a joint account. Instead, we found that depositors are asked by bank clerks to click through a series of prompts on a computer screen. In most cases, the prompts concerning joint withdrawal rights do not address ownership of funds during life. At some banks, clerks do not even provide copies of the documents that had been signed electronically. Our findings suggest that even the existing flawed framework governing the lifetime ownership of joint accounts has been made obsolete by new technologies used by banks when onboarding new accounts.

The Article proceeds as follows: Part I describes the history and legal evolution of joint bank accounts from early attempts to circumvent the Wills Act to their modern status as mainstays in the estate planning toolkit. Part II examines litigation of joint bank accounts in three common dispute types: those involving co-owners, those involving creditors, and those involving alleged criminals. Part III reports findings from our limited experiment, which documents the evolution of bank practices and the changing role of traditional bank forms. Part IV presents a menu of possible options for law reform.

I. The Legal Evolution of Joint Bank Accounts

This Part explores the legal evolution of joint bank accounts from their origin as experimental forms of nonprobate transfers to the modern banking products that have proliferated across the financial services industry. We focus, in particular, on the two dominant approaches governing lifetime ownership rights among joint accountholders: the joint tenancy approach, based on common law property doctrine, which was initially favored by most jurisdictions but now remains only in a minority of states; and the net contribution rule, introduced by the UPC, and subsequently adopted in a majority of state legislatures.

A. Nonprobate Origins

As we have noted, in the late nineteenth century the burgeoning American middle class began to clamor for nonprobate alternatives to avoid the perceived burdens of drafting a formal will and subjecting their estates to judicially

supervised probate administration.[35] In response, joint bank accounts and bank account trusts emerged as will substitutes for financial assets.[36] The earliest bank account trusts and joint accounts were somewhat experimental because they preceded statutory validation of nonprobate transfers.[37] Banks therefore structured them strategically to avoid triggering invalidation under the Wills Act, which applied to testamentary transfers of property titled in the owner's name at the time of death.[38]

With both of these devices, if everything went according to plan, the account balance would pass to the death beneficiary outside probate rather than to the depositor's intestate heirs or will beneficiaries.[39] But if a court refused to validate the account's survivorship feature, the funds would pass through the decedent's probate estate. Personal representatives therefore had strong incentives to challenge the validity of joint bank accounts intended as nonprobate transfers. The quandary for courts was that bank account trusts and joint bank accounts, when used for estate planning, did not fit neatly into traditional doctrines governing donative transfers. Then-prevailing concepts of property law drew a rigid, binary distinction between inter vivos gifts completed during life and testamentary transfers by will at death.[40] Different substantive and procedural rules applied to each type of transfer, so the validity of a death beneficiary designation often turned on the account's classification as inter vivos or testamentary.

At common law, an inter vivos gift was enforceable if the donee could prove donative capacity, donative intent, delivery of the gifted property,

35. *See, e.g.*, David Horton, *In Partial Defense of Probate: Evidence from Alameda County, California*, 103 GEO. L.J. 605, 608, 615 (2015).

36. *See* Harold C. Havighurst, *Gifts of Bank Deposits*, 14 N.C. L. REV. 129, 129–30, 143 (1936).

37. *See generally* Grayson M.P. McCouch, *Will Substitutes Under the Revised Uniform Probate Code*, 58 BROOK. L. REV. 1123, 1131–32 (1993) (describing UPC section 6-101's subsequent validation of nonprobate transfers as will substitutes that are expressly excepted from the Wills Act).

38. *See, e.g.*, Farkas v. Williams, 125 N.E.2d 600, 603 (Ill. 1955) (holding that "[i]f no interest passed to [trust remainder beneficiary] before the death of [the settlor-qua-depositor], the intended trusts are testamentary and hence invalid for failure to comply with the statute on wills" (citations omitted)).

39. *See* A. James Casner, *Estate Planning—Avoidance of Probate*, 60 COLUM. L. REV. 108, 112 (1960) ("A joint bank account established by *O* for himself and another that allows either to make withdrawals and provides that on the death of one the survivor will be entitled to the balance in the account is another method that may be available to *O* to avoid probate.").

40. As one court explained:

> The distinguishing feature of a testamentary disposition is that it remains ambulatory until the death of the one who makes it. Until he dies, his title remains unimpaired and unaffected. A testamentary disposition becomes operative only upon and by reason of the death of the owner who makes it. It operates only upon what he leaves at his death. If the interest in question passes from the owner presently, while he remains alive, the transfer is inter vivos and not testamentary.

Nat'l Shawmut Bank of Bos. v. Joy, 53 N.E.2d 113, 122 (Mass. 1944).

"and acceptance by the donee."[41] Delivery, in turn, required the donor's relinquishment of dominion and control to the donee.[42] Thus, when categorized as inter vivos gifts, bank account trusts and joint accounts posed a problem for depositors seeking to convey funds at death without ceding control during life because some courts held that the depositor's reservation of lifetime rights violated the delivery requirement.[43]

Probate law, in contrast, supplied the conventional legal framework for estate planning and testamentary gifts because it allowed testators to revoke or amend a will during life and did not alter property ownership rights until the testator's death.[44] Most states, however, required testators to comply strictly with formal execution requirements imposed by the state Wills Act.[45] So, if classified as testamentary, bank account trusts and joint accounts were vulnerable to contest because banks typically utilized boilerplate origination forms that allowed depositors to open an account without complying with statutory will execution requirements.[46]

Joint accounts, however, rested on a stronger doctrinal foundation than bank account trusts. First, some courts avoided the gift-versus-will conundrum by applying the common law doctrine of joint tenancy with right of survivorship.[47] Under common law principles of property law, joint tenants enjoy

41. *See, e.g.*, Cluck v. Ford, 152 P.3d 279, 282 (Okla. Civ. App. 2006).

42. *See, e.g.*, Rice v. Bennington Cnty. Sav. Bank, 108 A. 708, 710 (Vt. 1920) ("The delivery must be made with the intention, on the part of the donor, that title to the subject-matter of the gift shall pass immediately, and it must be so full and complete that, if he resumes control over it without the consent of the donee, he will be answerable in damages as a trespasser. It matters not whether the subject of the gift be a horse, carriage, bond, note, certificate of credit, or bank deposit; both a donative intention and delivery must be clearly established.").

43. *See* Clark v. Bridges, 136 S.E. 444, 445 (Ga. 1927) (holding that because "the depositor retained for herself unlimited right to check against the account," she had "the right to withdraw the deposit altogether," so "the transaction fail[ed] to measure up to the legal requisites of a valid gift"); *see also* Donald Kepner, *Five More Years of the Joint Bank Account Muddle*, 26 U. CHI. L. REV. 376, 376 (1959) ("The reservation of dominion over the gift res by the donor runs counter to a long established rule that delivery of the chose to the donee or one acting in his behalf is an essential element of every gift.").

44. *See, e.g.*, Langbein, *supra* note 9, at 1110 ("We say that a will is revocable until the death of the testator and that the interests of the devisees are ambulatory — that is, nonexistent until the testator's death.").

45. *See, e.g.*, David Horton, *Wills Law on the Ground*, 62 UCLA L. REV. 1094, 1105–06 (2015).

46. *See, e.g.*, Nutt v. Morse, 6 N.E. 763, 764 (Mass. 1886) (characterizing a joint account as "in the nature of a testamentary disposition, and [thus] an attempted evasion of the statute of wills"); Stevenson v. Earl, 55 A. 1091, 1093 (N.J. 1903) ("Our conclusion is that the moneys remaining to the credit of [decedent], at his death, in the savings fund . . . did not become the property of his wife, notwithstanding the provisions in the agreement between him and the company that such moneys should be paid to her at his death [because] such agreement constituted a testamentary disposition of his property, which was invalid because not made in the manner prescribed by the statute of wills.").

47. *See* Weaver v. City of New Bedford, 140 N.E.2d 309, 310 (Mass. 1957) (applying common law rules of joint tenancy in determining the validity of a lien because "[a] joint tenancy is created

undivided possessory rights during their joint lives and, at death, the deceased tenant's interest vanishes, vesting ownership of the whole in the surviving joint tenant(s).[48] A joint tenancy requires that all tenants share four unities: time (i.e., all interests commence simultaneously); title (i.e., all interests accrue from the same conveyance); interest (i.e., all property interests are identical); and possession (i.e., all enjoy right to possess the whole property).[49]

It took no great conceptual leap to treat joint bank accounts with a right of survivorship as a species of joint tenancy.[50] But a few courts, particularly in Maine, refused to take that step, concluding that the unities were lacking because any withdrawal by one party would necessarily dispossess the other parties of the withdrawn funds.[51] Conversely, if an intended death beneficiary did not have the power to withdraw funds during the depositor's life, then the joint accountholders lacked identical lifetime ownership rights, thereby violating the unity-of-interest requirement.[52] And yet, even when courts did not apply joint tenancy analysis to joint bank accounts, they nevertheless validated those accounts by treating the obligation to pay the surviving accountholder as the product of a contract with the bank.[53] Legislative action to validate joint bank accounts soon emerged. In 1907, New York enacted a

by the common law and the incident of survivorship grows out of the application of common law principles wholly independent of statute").

48. *See, e.g.*, Case v. Owen, 38 N.E. 395, 395 (Ind. 1894).

49. *See id.*

50. *See, e.g.*, Mardis v. Steen, 141 A. 629, 630 (Pa. 1928); Erwin v. Felter, 119 N.E. 926, 927–28 (Ill. 1918); Kennedy v. Kennedy, 146 P. 647, 650–51 (Cal. 1915); Farrelly v. Emigrant Indus. Sav. Bank, 87 N.Y.S. 54, 55–56 (App. Div. 1904); Recent Case Notes, *Joint Tenancies—Right of Survivorship Denied Joint Depositor*, 36 YALE L.J. 1024, 1024–25 (1927).

51. *See* Staples v. Berry, 85 A. 303, 305 (Me. 1912) (holding a joint account to be "utterly at variance with the attributes of a joint tenancy" where "either party could at any time withdraw the entire deposit, so that the joint property would be dissipated and the survivor would take nothing"); Appeal of Garland, 136 A. 459, 464 (Me. 1927) (holding that "an essential condition of [joint tenancy is] that the unity of interest must continue until the death of one of the joint tenants; that a transfer of the interest of one cotenant will destroy the joint tenancy; and that proof of a right of appropriation of any part of the property alleged to be so held for the sole use of either party is inconsistent with a claim of a joint tenancy"); Recent Case Notes, *supra* note 50, at 1025 (criticizing the Maine cases and concluding that "[t]he tendency today is in favor of considering joint bank accounts joint tenancies, where the intent of the parties to provide for survivorship is clear"); *see also* Langbein, *supra* note 9, at 1126, 1128 (criticizing courts for "indulging in [the] pretense" of treating joint bank accounts as inter vivos gifts by classifying them "as a true joint tenancy, despite the depositor's power to exercise total lifetime dominion over the account").

52. *See* Donald Kepner, *The Joint and Survivorship Bank Account—A Concept Without a Name*, 41 CALIF. L. REV. 596, 601 (1953) ("There is no real unity in the usual joint account, since one party reserves the right to use all of the funds without accounting to the other.").

53. *See* Chippendale v. N. Adams Sav. Bank, 111 N.E. 371, 372–73 (Mass. 1916); Deal's Adm'r v. Merchs.' & Mechs.' Sav. Bank, 91 S.E. 135, 135–36 (Va. 1917); Metro. Sav. Bank of Balt. v. Murphy, 33 A. 640, 640–41 (Md. 1896); Notes, *Joint Savings-Bank Deposits and Rights of Survivorship Therein*, 38 HARV. L. REV. 243, 244 (1924).

banking statute that formally authorized joint accounts with POD provisions.[54] That model served as a blueprint for national law reform, which eventually led to similar enactments by a majority of state legislatures.[55]

Joint accounts were nevertheless imperfect as a probate-avoidance device because they required the depositor to transfer a present interest to a beneficiary even though the depositor intended to postpone any conveyance of ownership to the beneficiary until death. Vesting a beneficiary with power to withdraw funds before the depositor's death undermined the utility of joint accounts as a "poor man's will."[56]

Another titling option avoided that problem by treating the depositor as the settlor of a revocable inter vivos trust and the intended survivor as the trust's remainder beneficiary. Because the trust technically came into effect during the settlor's life, it fell outside the Wills Act's purview. That innovation caught the attention of a young Professor George Gleason Bogert, who published some of the earliest scholarly commentary about bank account trusts before rising to prominence as one of the leading authorities on American trust law.[57] But because the bank account trust was intended to be entirely revocable during the depositor's lifetime, there was no assurance that courts would not invalidate the trust as a testamentary transfer absent the depositor's compliance with testamentary formalities.

In 1904, the New York Court of Appeals decided the landmark case, *In re Totten*, which broke new ground by validating a bank account trust as a POD will substitute in which the depositor conveyed survivorship rights without giving the beneficiary any lifetime withdrawal power.[58] The "Totten Trust," as

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54. *See* 1907 N.Y. Laws 456–57 ("When a deposit shall be made by any person in the names of such depositor and another person and in form to be paid to either or the survivor of them such deposit thereupon and any additions thereto made by either of such persons upon the making thereof, shall become the property of such persons as joint tenants and the same together with all interest thereon shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both or to the survivor after the death of one of them . . . ."). Today, some states still confine their statutory regulation of joint accounts to protecting banks against liability. *See, e.g.*, KAN. STAT. ANN. § 9-1205 (West 2008 & Supp. 2024).

55. *See* Kepner, *supra* note 52, at 604–06.

56. *Cf.* Note, *Disposition of Bank Accounts: The Poor Man's Will*, 53 COLUM. L. REV. 103, 107 (1953) [hereinafter *The Poor Man's Will*] (describing the joint bank account as "[p]robably the most common type of account used in an attempt to effect a testamentary disposition"); Notes, *supra* note 53, at 245 (describing the joint deposit as "an arrangement come to be regarded by people of small means and little legal knowledge as a way of designating where their pittances shall go after their deaths without the cost and the trouble of legal advice").

57. *See generally* George Gleason Bogert, *The Creation of Trusts by Means of Bank Deposits*, 1 CORNELL L.Q. 159 (1916). Professor Bogert served as the Cornell Law Quarterly's inaugural faculty editor and published his work on bank account trusts in the first volume of his law school's flagship review. *See About Cornell Law School: History*, CORNELL L. SCH., https://www.lawschool.cornell.edu/about-cornell-law-school/history [https://perma.cc/7DCX-SPD8].

58. The court described the arrangement as follows:

> A deposit by one person of his own money in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the

the device became known, became popular as a "poor man's will" that could be "employed by persons with small estates . . . to effectuate a testamentary disposition without the expense of will drafting or the delay of probate."[59]

Following *Totten*, the Restatement of Trusts endorsed the validity of bank account trusts, but not every state was quick to accept their validity.[60] In a number of states, it was not until the 1970s that statutes authorized POD accounts. As a result, for well into the twentieth century joint bank accounts remained, in many states, the safest device for avoiding probate. But eventually, POD accounts became accepted universally,[61] and, thereafter, joint accounts became largely unnecessary as a probate-avoidance device.[62]

When statutory reforms emerged in this area, the most important component was a safe harbor against bank liability: The New York legislation expressly required depositors to notify the bank of any beneficiary designation in writing but also provided that failure to comply with that notice requirement rendered the bank immune from claims for wrongful payment to an improperly revoked beneficiary.[63] Legislation rarely focused on the rights of depositors. For instance, the New York statute provided that joint account funds "*may* be paid . . . to the survivor after the death of one of" the accountholders, but did not include a legal standard for ascertaining whether the depositor intended a survivorship account or something else.[64]

> depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the passbook or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor.

In re Totten, 71 N.E. 748, 752 (N.Y. 1904).

59. *The Poor Man's Will*, *supra* note 56, at 103.

60. As recently as 1986, the Alabama Supreme Court declined to recognize the Totten Trust concept. *See generally* Underwood v. Bank of Huntsville, 494 So. 2d 619 (Ala. 1986). In 1987, the Kansas Supreme Court treated the validity of a Totten Trust as an issue of first impression (and ultimately validated the device). *See generally In re* Estate of Morton, 769 P.2d 616 (Kan. 1987). As of the 1970s, one commentator concluded that the Totten Trust concept had been adopted in at least eighteen jurisdictions—far from unanimous support among the states. *See* R. Wayne Estes, *In Search of a Less Tentative Totten*, 5 PEPP. L. REV. 21, 26 n.21 (1977).

61. Nearly every state has authorized POD bank accounts by statute. *See* JEFFREY A. SCHOENBLUM, MULTISTATE GUIDE TO ESTATE PLANNING 5017–34 tbl. 5.01 pt. 2 (Barbara L. Post ed., 2022) (fifty-state survey of POD bank account statutes).

62. A POD bank account avoids probate but still requires designated beneficiaries to provide the bank with the decedent's death certificate. *See, e.g.*, LA. STAT. ANN. § 6:314(A) (2024) ("Upon receiving a death certificate, the bank may disburse funds to the named beneficiaries."). In contrast, joint-account agreements may authorize surviving accountholders to liquidate funds immediately upon a deceased accountholder's death without producing a death certificate.

63. *See* 1907 N.Y. Laws 456–57 (immunizing banks of liability for wrongful payment to named accountholders "prior to the receipt by said bank of notice in writing not to pay such deposit").

64. *Id.* (emphasis added).

Eventually, a consensus emerged that survivorship rights should be presumed when the account is titled in the name of two depositors and the survivor. Statutes in some states made the presumption conclusive,[65] while in other states, the presumption was rebuttable by evidence of contrary intent.[66] The UPC later incorporated a variant of the conclusive presumption approach: "[O]n death of a party sums on deposit in a multiple-party account belong to the surviving party or parties."[67]

B. Allocation of Lifetime Ownership Rights

In contrast to reforms that validated survivorship rights, lawmakers were less successful in developing comparable standards and presumptions to govern the allocation of *lifetime* ownership rights among joint accountholders, an issue that has plagued joint bank accounts since their inception. Recall that, in New York, the original 1907 joint account statute provided that deposits would "become the property of such persons as joint tenants," but it did not define the term "joint tenants" or otherwise explain what it meant for joint tenants to own a joint bank account during their joint lives.[68] The statute also failed to address joint accounts created for nondonative purposes, such as an agency appointment in which the depositor authorized transactions solely on behalf of and for the depositor's convenience.[69]

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65. *See, e.g.*, Robinson v. Delfino, 710 A.2d 154, 160–61 (R.I. 1998) ("[T]he opening of a joint bank account wherein survivorship rights are specifically provided for is conclusive evidence of the intention to transfer to the survivor an immediate *in praesenti* joint beneficial possessory ownership right in the balance of the account remaining after the death of the depositor, absent evidence of fraud, undue influence, duress, or lack of mental capacity.").

66. *See, e.g.*, CAL. PROB. CODE § 5302(a) (2016) ("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 intent.").

67. UNIF. PROB. CODE § 6-212(a) (UNIF. L. COMM'N 2019). However, the survivorship presumption is conclusive only if the depositor agreement "contains provisions in substantially the [same] form" as the statutory template. *Id.* § 6-204(a); *see, e.g.*, *Robinson*, 710 A.2d at 161 ("[T]he opening of a joint bank account *wherein survivorship rights are specifically provided for* is conclusive evidence of the intention to transfer to the survivor an immediate . . . right in the balance of the account . . . ." (emphasis added)); *In re* Estate of Fulton v. Fulton-Jones, 287 A.3d 253, 265 (D.C. 2023) (holding that survivorship rights are not presumed when a multiparty account is established by nonstandard form, thus "leaving room for consideration of the decedent's intent where the contract of deposit is not in substantially the same form as" the statutory POD form); Govan v. SunTrust Bank, 289 A.3d 681, 693 (D.C. 2023) (holding that extrinsic evidence of a depositor's intent is admissible because the bank's signature card "provide[d] only a fraction of the menu of options available on the model form"). In some states, courts are more broadly permissive of extrinsic evidence of donative intent. *See, e.g.*, Kelso v. Applington, 548 P.3d 363, 366, 372–73 (Idaho 2024) (remanding for trial to consider extrinsic evidence of donative intent notwithstanding decedent's execution of bank signature card that designated his friend as "joint owner with right of survivorship").

68. 1907 N.Y. Laws 456–57.

69. *See, e.g.*, Bradford v. Eastman, 118 N.E. 879, 879 (Mass. 1918).

Uncertainty of depositor intent usually could be avoided by the inclusion of clear titling language. Thus, when a joint bank account agreement unambiguously manifested the depositor's intent regarding lifetime ownership rights, courts could resolve disputes without the aid of a default presumption. In *Gibbons v. Gibbons*, for instance, the depositor opened a joint account with his wife subject to titling language declaring that the balance was payable to the survivor, but the terms expressly stated that the

> transfer . . . was not made in any way as a gift . . . to his said wife, or with intent to pass title thereto to her, but solely under an agreement with his said wife that the same was to be and remain his property, with the right in him to make withdrawals thereon . . . .[70]

Five years later, the wife pilfered the account passbooks, using them to withdraw all remaining funds without the husband's knowledge.[71] Siding with the husband, the court found that clear titling on the account paperwork had "negative[d] any intention to vest a present interest in the wife, and declare[d] that the intention was merely testamentary."[72]

One would think that at least some depositors, especially those seeking to avoid the legal costs associated with probate, would go to the trouble of drafting precise language governing their joint accounts. But banks have little incentive to allow depositors to develop bespoke titling language for joint accounts because of the administrative burdens that banks would bear if each account generated a customized package of ownership and withdrawal rights. For instance, in one early case, a bank refused to open a joint account because the depositor sought to impose withdrawal restrictions that would have been too difficult to administer.[73]

Perhaps reflecting the influence of banks in the legislative process, the focus of much legislation has been on protecting banks from liability for wrongful payments rather than on ensuring that depositors understand their respective rights to joint-account funds.[74] Consider, for instance, the broad immunity conferred by the current version of UPC section 6-226(a): "Payment made . . . in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties,

70. Gibbons v. Gibbons, 4 N.E.2d 1019, 1019 (Mass. 1936).

71. *See id.*

72. *Id.* at 1020.

73. In *Bender v. Cleveland Trust Co.*, a physically infirmed depositor attempted to open a convenience joint account that would limit his wife's transactions to withdrawals solely on his behalf, "but the bank would not consent to such arrangement with a limitation upon the authority of [the wife] because of the trouble and inconvenience that it would cause the bank by requiring it to constantly check such withdrawals." Bender v. Cleveland Tr. Co., 176 N.E. 452, 453 (Ohio 1931).

74. By way of related example, a court recently recounted the life insurance industry's influence over revisions to the spousal elective share legislation in New York. *See In re* Greenough, 221 N.Y.S.3d 414, 416 (Surr. Ct. 2024).

beneficiaries, or their successors."[75] So long as banks pay an authorized party, they are immune from liability for causing disputes between accountholders. The statutory safe harbor gives banks strong incentives to clearly identify and memorialize which parties are authorized to withdraw funds. But it also weakens any incentive banks might otherwise have to worry about ownership disputes among accountholders, or to help accountholders avoid those disputes; the bank's legal obligation is merely to verify a party's authority to withdraw funds.

Until changes wrought by the advent of electronic banking, a depositor would open an account by completing and signing a form known as a "signature card, which serves as a contract between the depositor and the bank for the handling of the account."[76] A signature card typically incorporates by reference additional terms which are recited in greater detail in a separate accountholder agreement.[77] Commentators strongly advise that "[t]he right of any joint depositor to make withdrawals at any time should be clearly spelled out in the [depositor's agreement]."[78] But, in actuality, "the depositor will find that the [signature card's] major thrust is that he and his co-depositors agree to release the bank from all liability for payments made to either of the named parties."[79] The resulting dynamic is one in which depositors tend to execute bare-bones signature cards which, in turn, creates ambiguities about lifetime ownership rights, which, in turn, leads to disputes among accountholders who lack financial recourse against the bank.

In *Marshall & Ilsley Bank v. Voigt*, for instance, the depositor opened a joint bank account with his wife subject to titling language that failed to expressly address lifetime ownership rights: "The money now and hereafter deposited is owned, jointly, by the persons named and is subject to the order of either; the balance at death of either to belong to the survivor."[80] While the depositor was hospitalized, his wife scoured their home for the account passbook, which she used to withdraw all funds shortly before his death.[81] Unlike in *Gibbons*, the titling language in *Voigt* did not specify what the depositor meant by

75. UNIF. PROB. CODE § 6-226(a) (UNIF. L. COMM'N 2019).

76. Blackmon v. Hale, 463 P.2d 418, 422 (Cal. 1970).

77. In *Jureczki v. Banc One Texas, N.A.*, for example, the court reproduced the following text from the signature card in dispute: "By signing this Signature Card, I . . . apply to open a deposit account at Bank One, Texas, N.A. ("Bank") . . . I acknowledge receipt of the Bank's Account Rules and Regulations, including all applicable inserts, and agree to be bound by the agreements and terms contained therein." Jureczki v. Banc One Tex., N.A., 252 F. Supp. 2d 368, 373 (S.D. Tex. 2003) (explaining that "[t]his statement plainly refers to an external document, i.e., the Bank's Account Rules and Regulations, and plainly states that both plaintiffs agreed to be bound by the terms contained therein"), *aff'd sub nom.* Jureczki v. Bank One Tex., N.A., 75 F. App'x 272 (5th Cir. 2003).

78. Hines, *supra* note 19, at 556.

79. Richard V. Wellman & J. Foster Clark, *Multiple Party Accounts: Georgia Law Compared with the Uniform Probate Code*, 8 GA. L. REV. 739, 768 (1974).

80. Marshall & Ilsley Bank v. Voigt, 252 N.W. 355, 356 (Wis. 1934).

81. *Id.* After the husband's death, the personal representative of his estate contested the wife's withdrawal. *Id.*

"jointly" owned funds, so the court had to rely on extrinsic evidence to find "that the arrangement was merely one of convenience."[82] And, because of the safe harbor, the depositor's estate had no legal recourse against the bank.[83] Presumably, without the safe harbor's liability protection, the bank would have had a stronger incentive to ascertain and memorialize the same facts that the court uncovered in finding that the depositor intended to open an agency account.

In a prior empirical study, one of us observed a similar misalignment of incentives in the context of retirement account death beneficiary designation procedures, where financial intermediaries are primarily responsible for supplying contractual forms but are held harmless for any resulting ownership disputes.[84] That study concluded that "[t]he existing framework for succession of retirement accounts relies on the attentiveness and comprehension of lay accountholders confronted with often counterintuitive forms thrust in front of them by institutions with little incentive (and no obligation) to clarify or explain those forms."[85]

Absent the clear titling language that almost never appears in an account agreement, courts apply one of two default presumptions about lifetime ownership rights in a joint bank account: a minority of jurisdictions follow a *joint tenancy* approach, while the majority follows a *net contribution* approach.[86]

1. Joint Tenancy Approach

A minority of states follow New York's approach, which presumes that multiparty bank accounts are owned in a joint tenancy with right of survivorship.[87] An additional handful of states follow the joint tenancy approach when the account agreement contains titling language indicating the depositor's intent. Nevada, for instance, provides a statutory menu of titling terms that

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82. *Id.* at 357 (explaining further "that it was not intended to constitute a gift in præsenti or during his lifetime; or that any interest in the deposits was then vested in her excepting the bare authority to withdraw funds with his permission").

83. *Id.* ("The purpose and effect of [the safe harbor] are to render legally effective receipts or acquittances given to a bank upon its payment of a deposit to either of the persons to whom an account was made payable, regardless of the actual legal rights of such persons, as between themselves, to such deposits.").

84. Sterk & Leslie, *supra* note 11, at 204–05.

85. *Id.* at 212.

86. Interestingly, Maryland does not appear to have settled on a presumption yet. *See, e.g.*, Morgan Stanley & Co. v. Andrews, 123 A.3d 640, 647 & n.9 (Md. Ct. Spec. App. 2015) (explaining that "courts generally apply a presumption of ownership . . . when determining ownership of the funds within a joint account," however, because the depositor proved he was the sole owner, the court did not "need [to] determine precisely which type of presumption of ownership is appropriate under Maryland law").

87. *See, e.g.*, N.Y. BANKING LAW § 675(a) (McKinney 2020); ARK. CODE ANN. § 23-32-207(2)(A) (West 2021); 205 ILL. COMP. STAT. 625/3(a) (2024); MICH. COMP. LAWS ANN. § 487.703 (West 2005); MISS. CODE ANN. § 81-12-137(1) (2015); MO. ANN. STAT. § 362.470(1) (West 2015); N.C. GEN. STAT. ANN. § 53C-6-6 (West 2024).

raise a presumption of joint tenancy ownership: joint, joint account, jointly held, joint tenants, joint tenancy, and joint tenants with right of survivorship.[88] In Tennessee, joint tenancy ownership is not presumed from the creation of a multiparty account, but banks are required to "utilize account documents that enable the depositor to designate ownership" as "[j]oint tenants with right of survivorship" or "[a]dditional authorized signatory."[89] Delaware permits bank accountholders to opt into joint tenancy treatment, but, by default, property held by multiple parties is owned by them as tenants in common (with no survivorship rights) because state policy disfavors joint tenancies with right of survivorship.[90]

Most states that follow the joint tenancy approach, however, do not have a statutory rule or presumption for allocating lifetime ownership rights among joint accountholders. For example, Connecticut's joint account statute provides that a deposit "in the names of two or more natural persons and under such terms as to be paid to any one of them, or to the survivor or survivors of them, . . . is deemed a joint account."[91] The statute goes on to prescribe the accountholders' lifetime withdrawal rights ("any part or all of the balance of such account, including any and all subsequent deposits or additions made thereto, may be paid to any of such persons during the lifetime of all of them"), but it does not address the ownership consequences of lifetime withdrawals, aside from relieving banks of liability for wrongful payment.[92] In Tennessee, where banks are required to provide depositors with forms for opting in to joint tenancy treatment, the legislature provided banks with an optional statutory account disclosure form, but that statutory form does not address lifetime ownership rights:

> (f) Without incurring any liability, any bank may, but shall not be required to, provide to depositors disclosures in form similar to the following:
>
>> (1) JOINT TENANTS WITH RIGHT OF SURVIVORSHIP. This designation means that the deposit account or certificate of deposit shall become the property of each owner as joint tenants, and that the survivor is entitled to all moneys in the account or represented by the certificate even if the first person to die had a will specifically directing disposition to someone else. The bank may release all moneys in the account or represented by the

88. *See* NEV. REV. STAT. ANN. § 100.085 (4) (LexisNexis 2025). The statute also provides an express carve-out for joint accounts procured by elder financial exploitation. *Id.* at § 100.085(5).

89. TENN. CODE ANN. § 45-2-703(d)(1) (West 2009 & Supp. 2024).

90. Speed v. Palmer, No. Civ.A. 1435-K, 2000 WL 1800247, at *4 (Del. Ch. June 30, 2000) (noting that a joint tenancy "can only be created by clear and definite language not reasonably capable of any different construction" (quoting Short v. Milby, 64 A.2d 36, 52 (Del. Ch. 1949))).

91. CONN. GEN. STAT. § 36a-290(a) (2025).

92. *Id.* ("Any such payment constitutes a valid and sufficient release and discharge of such bank, Connecticut credit union or federal credit union, or its successor, as to all payments so made.").

> certificate to, or honor checks or orders drawn by, or withdrawal requests from, the survivor upon the death of any joint tenant[.][93]

That omission is unfortunate because it is not obvious what it means to share a bank account as joint tenants. Centuries of common law refinement have produced well-developed concurrent-ownership rules for joint tenancies in real property, but those principles are not perfectly suited to sorting out shared ownership of a joint bank account.[94]

Under traditional rules governing real property, unwinding a joint tenancy with right of survivorship usually entails a two-step process of severance and partition. In the first step, any tenant may unilaterally terminate the arrangement by severing the joint tenancy, an event triggered by acting in a manner "inconsistent with the continuation of the joint tenancy."[95] Severing a joint tenancy in real property converts co-ownership to a tenancy in common in which each tenant owns an equal fractional share that is individually alienable.[96] The second step may be initiated after severance if the parties no longer wish to continue ownership as tenants in common; in that case, the real property may be partitioned in kind or by sale, both requiring judicial approval.[97] In a sale partition, the property is liquidated and each tenant in common receives an

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93. TENN. CODE ANN. § 45-2-703(f). In contrast, the Michigan Statutory Joint Account Act includes a statutory form that allows joint accountholders to designate one of four options to determine

> Who owns the funds during the lifetime of A and B:
>
> Check ________ A; ________ B; ________ Equally by A and B;
>
> Other proportions (describe): ________.

MICH. COMP. LAWS ANN. § 487.715 (West 2005).

94. Professor N. William Hines explained:

> As applied to the majority of co-ownerships in intangibles, . . . the [joint tenancy] doctrine is clearly inappropriate. For example, a co-owner whose name appears on a joint and survivor account by the grace of another person ordinarily cannot compel a sharing in the account during the other's lifetime. If he makes withdrawals contrary to the intention of the co-owner who furnished the consideration, he can be required to reimburse the account.

Hines, *supra* note 19, at 533 (citations omitted).

95. Upchurch v. Upchurch, 386 So. 3d 1, 5, 8 (Ala. 2023) (joint tenancy severed by tenant's execution of sale agreement); *see also* Grout v. Sickels, 985 N.W.2d 144, 150 (Iowa 2023) ("[C]onveyance by an individual to their revocable trust terminates a prior joint tenancy with rights of survivorship.").

96. *See, e.g.*, Zanelli v. McGrath, 82 Cal. Rptr. 3d 835, 848 (Ct. App. 2008) ("Severance of the joint tenancy converts the joint tenancy into a tenancy in common."); *In re* Estate of Miller, No. 14-23-00492-CV, 2024 WL 3271711, at *3 (Tex. App. July 2, 2024) (describing the "right to partition" joint tenancy real property as "absolute" and that "[i]f the property cannot be partitioned in kind, there must be a partition by sale" (quoting Carter v. Charles, 853 S.W.2d 667, 671 (Tex. App. 1993))).

97. *See, e.g.*, Khotylev v. Spektor, 87 N.Y.S.3d 58, 59 (App. Div. 2018) ("[J]oint tenancies may be severed by the court-ordered partition of the property that adjusts the rights of the parties and permits its sale if it appears that a partition cannot be made without great prejudice to the owners." (quoting Trotta v. Ollivier, 933 N.Y.S.2d 66, 69 (App. Div. 2011))).

equal share of the sale proceeds, whereas a partition in kind redraws the property lines to give each tenant an equal, separately owned parcel.

The process of disentangling shared interests in a joint bank account differs from the real property context in that intangible financial assets can be liquidated more easily and without court involvement. Unlike a real property joint tenancy, a party to a joint bank account can make severance and partition seem irrelevant by simply withdrawing funds. Troubled by the unilateral power of one accountholder to divest the other accountholders of possession, some courts found that lifetime withdrawals require joint consent.[98] Another approach treated a unilateral withdrawal by the depositor as grounds for reevaluating the depositor's intent anew. As one court explained, "The withdrawal of moneys from the joint account does not destroy the joint tenancy, if one was created; it merely opens the door to competent evidence, if available, that no joint tenancy was originally intended or created."[99] Conversely, other courts hewed more closely to the traditional joint tenancy principles in holding that creation of a joint account transfers a present interest to the noncontributing tenant; thus, a unilateral withdrawal severed the joint tenancy and converted ownership to a tenancy in common.[100]

Another question raised by the joint tenancy approach was how to partition severed shares of a joint account among living accountholders. Most states following the joint tenancy approach mirrored the common law rule by presuming that joint bank accountholders owned an equal share of sums on deposit during their joint lives.[101] Other states presume the depositor's intent to treat up to the entire joint account as an inter vivos gift to nondepositors.[102]

98. *See, e.g.*, O'Connor v. Dunnigan, 143 N.Y.S. 373, 375 (App. Div. 1913) ("It would be preposterous to claim that an appropriation of personal property by one joint owner to his personal use could divest the interest of the other joint owner or could in any way be presumed to have been by the consent of his co-owner."), *aff'd per curiam*, 107 N.E. 1082 (N.Y. 1914).

99. Miller v. Wrona (*In re* Porianda's Estate), 176 N.E. 826, 827 (N.Y. 1931). Where, for instance, all funds were contributed by one depositor who retained sole possession of the bank passbook, the depositor's own withdrawals from the joint account provided evidence to rebut the presumption that she intended to create a joint tenancy. *See* Walsh v. Keenan, 59 N.E.2d 409, 412 (N.Y. 1944).

100. *See* Steinmetz v. Steinmetz, 21 A.2d 743, 745 (N.J. Ch. 1941) (withdrawal by one party converted joint tenancy to tenancy in common owned by tenants in equal shares); *see also* Hart v. Hart, 81 N.Y.S.2d 764, 769 (Sup. Ct. 1948) ("An account so established creates in each joint tenant a present vested right, and a transfer effected through the instrumentality of such a joint account is not illusory, but a valid *inter vivos* gift."), *aff'd*, 85 N.Y.S.2d 917 (App. Div. 1949).

101. Williams v. Menz, 246 N.Y.S.2d 886, 887 (App. Div. 1964) ("[W]here the funds constituting the deposit were previously the property of one of the two, a rebuttable presumption arises that a gift of one-half the deposit was made to the other."); Bricker v. Krimer, 191 N.E.2d 795, 797 (N.Y. 1963); Sicari v. First Fid. Bank, 668 N.Y.S.2d 406, 407 (App. Div. 1998) (joint account raises presumption that accountholders "are each entitled to an equal share").

102. *See* Henke v. Klawitter (*In re* Estate of Klawitter), 998 N.W.2d 579, 587 (Wis. Ct. App. 2023) ("Joint accounts are jointly owned by the parties . . . [during life], 'without regard to the proportion of their respective contributions,' and *with each having a right to withdraw 'any sum' without being 'subject to inquiry by any person, including any other party to the account.'*" (emphasis

Under that presumption, a depositor cannot recover funds withdrawn by a non-depositor, even when the nondepositor withdraws the entire account balance.

Some states follow a rule that confers special protection for joint bank accounts owned by married spouses.[103] In Florida, for instance, "[a]ny deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing."[104] Tenancy by the entirety status confers the account with protection that prevents creditors of an individual spouse from garnishing a joint account to enforce nonjoint debts.

2. Net Contribution Approach

The 1969 UPC rejected the joint tenancy approach, deeming it contrary to majoritarian preferences among contemporary joint bank account depositors.[105] The UPC's official comment offered the following rationale:

> This section reflects the assumption that a person who deposits funds in an account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit.[106]

UPC section 6-211, titled "Ownership During Lifetime," completely overhauled the joint tenancy approach by allocating lifetime ownership rights according to each accountholder's own actual net contribution (with a special rule for married joint accountholders, presuming each to have contributed one-half):

> During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.[107]

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added) (quoting WIS. STAT. § 705.03(1) (2022))); Heffernan v. Wollaston Credit Union, 567 N.E.2d 933, 937 (Mass. App. Ct. 1991) ("A party to a Massachusetts joint bank account . . . has the right to withdraw all the funds in a joint account, or any portion of them. Unlike a joint tenant of property held in a traditional joint tenancy, therefore, he may effectively exercise control over the entire interest, or any part of it, and divest, totally or partially, the interest of the other.").

103. *See generally* Fred Franke, *Asset Protection and Tenancy by the Entirety*, 34 AM. COLL. TR. & EST. COUNS. J. 210 (2009) (discussing how Delaware, the District of Columbia, Florida, Pennsylvania, Tennessee, and Vermont have special protections).

104. FLA. STAT. ANN. § 655.79(1) (West 2021).

105. *See* J. Rodney Johnson, *Joint, Totten Trust, and P.O.D. Bank Accounts: Virginia Law Compared to the Uniform Probate Code*, 8 U. RICH. L. REV. 41, 50 (1973) (explaining that the "UPC rejects the concept of a present joint tenancy").

106. UNIF. PROB. CODE § 6-211 cmt. (UNIF. L. COMM'N 2019).

107. *Id.* § 6-211(b). Subsection (a) defines the

> "net contribution" of a party [to] mean[] the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which

Under the UPC's new approach, the presumption of ownership according to net contribution was rebuttable only by clear and convincing evidence of contrary intent.[108] The UPC framework also provided that POD and agency designations conferred no lifetime ownership rights upon nondepositor accountholders.[109]

If the UPC drafters assumed correctly that most joint-account depositors do not intend to relinquish ownership rights during life, then the net contribution rule would create a fair system for allocating lifetime ownership rights among joint bank accountholders. In theory, it also avoids thorny questions about donative intent by presuming no inter vivos gifting between parties. In practice, however, the UPC's net contribution rule (at least, as codified in section 6-211) has proven difficult to apply in actual disputes between living joint bank accountholders.

Recall from our prior discussion that some of the earliest disputes involving joint bank accounts arose when a party withdrew more than their own net contribution.[110] But the UPC comment expressly disclaims any application of section 6-211 to such disputes:

> The section does not undertake to describe the situation between parties if one party withdraws more than that party is then entitled to as against the other party. Sections 6-221 and 6-226 protect a financial institution in that circumstance without reference to whether a withdrawing party may be entitled to less than that party withdraws as against another party. Rights between parties in this situation are governed by general law other than this part.[111]

Then, after expressly *disclaiming* the section's application to disputes between parties for withdrawals exceeding a party's own net contribution, the comment states that the statute's core reform—the net contribution framework—applies *exclusively* to disputes between joint accountholders:

> "Net contribution" as defined by subsection (a) has no application to the financial institution-depositor relationship. Rather, it is relevant

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> have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

Id. § 6-211(a).

108. *See, e.g.*, Erhardt v. Leonard, 657 P.2d 494, 497–98 (Idaho Ct. App. 1983) (grandson who withdrew funds from joint account established by his grandmother could not prove the depositor's intent to opt out of net contribution presumption by clear and convincing evidence).

109. *See* UNIF. PROB. CODE § 6-211(c), (d).

110. *See, e.g.*, Gibbons v. Gibbons, 4 N.E.2d 1019, 1019 (Mass. 1936); Marshall & Ilsley Bank v. Voigt, 252 N.W. 355, 356–57 (Wis. 1934).

111. UNIF. PROB. CODE § 6-211 cmt.

> only to controversies that may arise between parties to a multiple-party account.[112]

These statements are in some tension with one another. The comment then takes another unexpected turn: After stating that the net contribution framework applies only to disputes between joint accountholders, it explains that, except for disputes between married accountholders, the UPC drafters deliberately declined to provide a legal standard for resolving factual disputes concerning net contribution.[113] Commentary published shortly after the UPC's promulgation explained that the drafters feared that adopting a rule for resolution of those disputes "might have the undesirable effect of limiting one in his attempt to prove partial contributions as well as involving potential gift tax liability."[114] Although the official comment to the provision's original 1969 version emphasized that "[u]ndoubtedly a court would divide the account equally among the parties to the extent that net contributions cannot be proven,"[115] that meager guidance did not survive the UPC's 1989 revision.[116]

To summarize, although UPC section 6-211 is entitled "Ownership During Lifetime"[117] and adopts a net contribution rule for assets in multiple-party accounts, the statute leaves critical issues unresolved. First, it "does not undertake to describe the situation between parties if one party withdraws more than that party is then entitled to as against the other party,"[118] even though that is one of the most common ownership disputes to arise during the accountholders' joint lives. That is, because UPC section 6-211's net contribution rule is "relevant only to controversies that may arise between parties to a multiple-party account,"[119] the statute apparently does not apply to ownership disputes arising from withdrawals that exceed a party's own net contribution. Moreover, although the amount of each party's net contribution will frequently be a matter of dispute, the UPC's rule deliberately "contains no provision dealing with a failure of proof."[120]

We find this all perplexing. Why allocate ownership in proportion to each party's net contribution but then expressly except that allocation principle from disputes between accountholders regarding over-withdrawals? Similarly, why establish an ownership-allocation principle that requires proof of each party's net contribution but deliberately omit a default presumption applicable when the parties lack evidence of their net contribution? And if the UPC's net contribution rule applies exclusively to conflicts between joint accountholders,

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112. *Id.*

113. *Id.*

114. Johnson, *supra* note 105, at 51.

115. UNIF. PROB. CODE § 6-103 cmt. (UNIF. L. COMM'N 1969).

116. *See id.* § 6-211 cmt. (UNIF. L. COMM'N 2019).

117. *Id.* § 6-211 (noting section title).

118. *Id.* § 6-211 cmt.

119. *Id.*

120. *Id.*

but it does not apply to disputes in which an accountholder withdraws more than their net contribution, then what purpose, if any, does the rule serve? Answers to these questions are not obvious.

As we explain in the Part II, that confusion has predictably spawned a torrent of litigation about account ownership, which, in turn, injected uncertainty into other related legal fields including creditor rights and criminal law.[121] And yet, despite its flaws, the UPC's net contribution rule has become the dominant approach following its adoption by a majority of states.[122] Even New York, the longest adherent of the joint tenancy approach, is considering legislative reforms that would adopt the net contribution rule.[123]

C. *TAX IMPLICATIONS*

Joint accounts can carry federal transfer tax implications when used for lifetime gifting to accountholders and for nonprobate transfers at death to surviving beneficiaries. Receipt of gifts and inheritances by an individual, however, is generally excluded from gross income.[124]

During life, a gratuitous transfer of property is a taxable gift if "the donor has so parted with dominion and control as to leave in him no power to change its disposition."[125] A Treasury Department regulation illustrates how the completed gift rule applies to joint bank accounts: "If A creates a joint bank account for himself and B (or a similar type of ownership by which A can regain

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121. *See infra* Part II.

122. *See* ALA. CODE § 5-24-11(b) (LexisNexis 2021); ALASKA STAT. § 13.33.211(a) (2025); ARIZ. REV. STAT. ANN. § 14-6211(2012); CAL. PROB. CODE § 5301(a) (2016); COLO. REV. STAT. § 15-15-211(2) (2024); GA. CODE ANN. § 7-1-812(a) (2024); HAW. REV. STAT. § 560:6-103(a) (2006); IDAHO CODE § 15-6-103(a) (2019); IND. CODE ANN. § 32-17-11-17(a) (West 2103); KY. REV. STAT. ANN. § 391.310(1) (West 2017); ME. REV. STAT. ANN. tit. 18-C, § 6-211(2) (West 2020); MINN. STAT. § 524.6-203(a) (2025); MONT. CODE ANN. § 72-6-211 (2024); NEB. REV. STAT. § 30-2722(b) (2016); N.J. STAT. ANN. § 17:16I-4(a) (West 2022); N.M. STAT. ANN. § 45-6-211(B) (2025); N.D. CENT. CODE § 30.1-31-08(2) (2022); Slaughter v. Ohio Operating Eng'rs Fed. Credit Union, 831 N.E.2d 1034, 1036 (Ohio Ct. App. 2005) ("Funds in a joint-and-survivorship account belong, '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.'" (quoting Thompson v. Botts (*In re* Estate of Thompson), 423 N.E.2d 90, 94 (Ohio 1981))); OR. REV. STAT. ANN. § 708A.465(1) (West 2020); 20 PA. STAT. AND CONS. STAT. § 6303(a) (West 2019); 19 R.I. GEN. LAWS § 9-14.1(g)(2) (2017); S.C. CODE ANN. § 62-6-201(A) (2021); S.D. CODIFIED LAWS § 29A-6-103(1) (2024); TEX. EST. CODE ANN. § 113.102 (West 2020); UTAH CODE ANN. § 75-6-103(1) (LexisNexis 2024); VA. ANN. CODE § 6.2-606(A) (West 2025); WASH. REV. CODE § 30A.22.090(2) (2024); D.C. CODE § 19-602.11(b) (2025).

123. *See* A.B. A9230B, 2023–2024 Gen. Assemb., Reg. Sess. (N.Y. 2023) (amending N.Y. BANKING LAW § 678(6)(a) to provide that, "[i]n a multiple-owner account, during the lifetimes of all account owners, an account belongs to the account owners in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. In the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.").

124. *See* I.R.C. § 102(a) (2023) ("Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.").

125. 26 C.F.R. § 25.2511-2(b) (2020).

the entire fund without B's consent), there is a gift to B when B draws upon the account for his own benefit, to the extent of the amount drawn without any obligation to account for a part of the proceeds to A."[126]

Case law interpreting the treasury regulation is sparse and inconclusive about the moment at which a taxable gift occurs.[127] Tax implications depend on the state law rights of the accountholders, which may, in turn, depend on the intent of the depositors.[128]

The Code provides that at death, the entire balance of a joint account is included in the deceased accountholder's taxable estate except for portions "as may be shown to have originally belonged to" the surviving accountholders.[129] For married accountholders, one-half of the account is included in the decedent's gross estate for accounts held as tenants by the entirety or joint tenants with right of survivorship.[130] In practice, however, transfer tax liability is exceedingly rare for two reasons. First, many joint accounts are maintained by married spouses and most transfers to a spouse are fully deductible against both the gift and estate tax.[131] And second, donors do not incur any federal transfer tax liability until they have exhausted the unified gift and estate tax credit, which, as of 2024, permits $13.61 million in federally tax-free gifts.[132] Persons with assets exceeding that threshold will often consult lawyers who will ensure that joint accounts do not increase any tax liability the client would otherwise incur.

II. Joint Account Disputes: Co-Owners, Creditors, and Criminals

Disputes that involve living joint accountholders principally arise in three contexts. First, where one accountholder seeks to recover funds withdrawn by another accountholder. Second, where a judgment creditor of one accountholder seeks to garnish a joint account. Third, where the government attempts to prosecute an accountholder for wrongfully withdrawing joint account

126. *Id.* § 25.2511-1(h)(4).

127. *Compare* First Wis. Tr. Co. v. United States, 553 F. Supp. 26, 32 (E.D. Wis. 1982) (where donor establishes a joint account and cannot regain the funds without legal obligation to account, donor has made a completed gift), *with* Wilson v. Comm'r of Internal Revenue, 56 T.C. 579, 585 (1971) ("Gifts of the funds to [non-depositor accountholders] would not be completed unless and until they exercised the right conferred upon them to withdraw the funds.").

128. *See, e.g.*, Haneke v. United States, 548 F.2d 1138, 1140 (4th Cir. 1977) (citing Maryland law for the proposition that each joint owner could legally withdraw funds without the approval of the other, and concluding that depositor "did not make taxable gifts to his wife, since he retained the power to dispose of the funds for his own use"); *First Wis. Tr. Co.*, 553 F. Supp. at 29–30 (noting that courts have looked to state law to determine degree of control donor retained, and concluding that under Wisconsin law, determinative factor is the intent of the depositor).

129. I.R.C. § 2040(a) (2018).

130. *Id.* § 2040(b).

131. *See id.* § 2523 (marital gift tax deduction); *id.* § 2056 (marital estate tax deduction).

132. *See id.* § 2505; Rev. Proc. 2023-34.34, 2023–34.41, 2023–34.48 I.R.B. 1287.

funds. This Part explores the extensive litigation surrounding joint bank accounts in all three contexts, based on our survey of cases decided since 1990.

One theme resonated across all categories of joint account litigation: proving depositor intent regarding the allocation of lifetime ownership rights is difficult, and the banking forms depositors sign when opening an account often shed little light on the depositor's actual intent. Courts following both joint-account doctrines, the joint tenancy approach and the net contribution rule, have developed presumptions to deal with these difficulties. At the same time, they admit extrinsic evidence of depositor intent, including evidence that a depositor intended to create a convenience account rather than any lifetime transfers to nondepositor accountholders. The admission of evidence of events and conduct that occur after the execution of a depository agreement, in turn, tends to undercut the litigation-saving effects of ownership presumptions under both approaches. Prosecutors who must prove guilt beyond a reasonable doubt may decline to charge embezzlement cases because ownership disputes usually present a mixed bag of facts that turn on proof of the parties' subjective intentions.

Another theme we encountered was the difficulty of establishing proof of net contributions in states following the UPC approach. In creditor litigation, for instance, courts often apply a strong presumption that the entire joint account belonged to the debtor while requiring the nondebtor to bear the burden of rebutting that presumption. Finally, the volume of recent litigation unearthed by our survey suggests that joint bank accounts breed a large number of disputes involving accountholders, creditors, and government prosecutors.

A. Co-Owner Disputes

Ownership disputes among joint accountholders typically arise when one accountholder withdraws funds or entirely denudes an account and, in response, another accountholder (usually the depositor or the depositor's estate) contests the withdrawal as unauthorized. As explained in Part I, the joint tenancy and net contribution approach apply different presumptions about lifetime ownership rights, but both are generally rebuttable by evidence of contrary depositor intent.[133]

Our survey revealed that, in practice, most disputes among accountholders turn on the sufficiency of rebuttal evidence, so the default presumptions often fail to spare courts and parties the cost of litigating the depositor's intent.

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133. *See, e.g.*, *In re* Estate of Johnston, No. 22-1801, 2023 WL 7391796, at *5 (Iowa Ct. App. Nov. 8, 2023) (noting that "the critical intent question in examining whether the presumption was overcome is 'the intent of the parties in creating the joint tenancy account[s]'" (alteration in original) (quoting Anderson v. Iowa Dep't of Hum. Servs., 368 N.W.2d 104, 110 (Iowa 1985))), *aff'd*, 16 N.W.3d 700 (Iowa 2025).

1. The Joint Tenancy Approach

Joint tenancy doctrine, developed for land titling, is an imperfect fit for regulating joint bank accounts. A central feature of joint tenancy doctrine is the right of survivorship, which avoids the need for land held in joint tenancy to go through probate when a joint tenant dies.[134] Depositors who seek to avoid probate of their bank accounts could easily do so by establishing POD accounts. But joint tenancy doctrine with respect to land also governs the concurrent rights of joint tenants concerning each other during their joint lives.[135] When courts attempt to adapt these features of joint tenancy to joint bank accounts, analogies quickly break down.

For instance, each joint tenant in land has a right to use the whole.[136] Some courts apply the possession-of-the-whole rule to joint bank accounts, concluding somewhat dubiously that each accountholder has a right to withdraw the entire proceeds of the account, thereby dispossessing the other accountholders of funds they contributed to the account.[137] That outcome would not occur in a joint tenancy in land, which would be partitioned among the joint tenants if they chose to part ways. Other courts have focused on a different aspect of joint tenancy doctrine—the right of each joint tenant to an equal share of the jointly owned property, holding that an accountholder who withdraws more than half of the account balance is liable for conversion.[138]

134. Hines, *supra* note 19, at 509 n.2 ("[T]he term 'joint tenancy' is used by laymen and lawyers to describe a multitude of lawful co-ownership arrangements, the common characteristic of which is a right of survivorship.").

135. *See supra* text accompanying notes 48–49.

136. *See supra* text accompanying notes 48–49.

137. *See, e.g.*, Mack v. Mack, No. 4240-VCN, 2015 WL 1607797, at *1–2 (Del. Ch. Mar. 31, 2015) (a mother who deposited funds in joint account with her daughter not entitled to recover funds daughter withdrew; court concluded that "this is simply a matter of a joint tenancy arrangement and it is the nature of the joint tenancy arrangement that allowed Daughter to do what she did"); *In re* Estate of Vogel, 684 N.E.2d 1035, 1038, 1040 (Ill. App. Ct. 1997) (acknowledging that rules governing joint bank accounts differ from those involving joint tenancy in land, but holding that a husband's estate was not entitled to recover amounts withdrawn by his wife during the husband's lifetime because "where a joint tenant has the right to withdraw money unilaterally from a joint bank account, a court will not deem the joint tenant's exercise of that right as wrongful, unauthorized, improper, or unlawful"); Wakim v. Pavlic, 805 S.E.2d 442, 448–49 (W.Va. 2017) (holding that a wife's estate had no conversion claim against the husband's estate for the husband's withdrawals from a joint-tenancy bank account).

138. *See, e.g.*, Estate of Lewis v. Rosebrook, 941 N.W.2d 74, 87, 89 (Mich. Ct. App. 2019) (holding that the daughter of a deceased co-owner was entitled to recover half of withdrawals made by the co-owner's unmarried partner before the co-owner's death); Robbins v. Lemay, 636 S.W.3d 801, 805 (Ark. Ct. App. 2021) (reinstating a father's conversion claim against his daughter who withdrew all funds from joint account, noting that "[a] joint tenant who withdraws funds in excess of his moiety is liable to the joint tenant for the excess so withdrawn"); Lenczycki v. Shearson Lehman Hutton, Inc., 656 N.Y.S.2d 609, 610 (App. Div. 1997) ("[T]o the extent that [ex-wife] withdrew more than her one-half interest in the account, she is subject to suit . . . for conversion of that excess."); Kettler v. Sec. Nat'l Bank of Sioux City, 805 N.W.2d 817, 819, 826 (Iowa Ct. App. 2011) (a wife has a claim for conversion with respect to fifty percent of withdrawn funds).

Under either joint tenancy approach, the default rule operates on the assumption that the depositor who established the joint account was making a lifetime gift to the other accountholders.[139]

That assumption, however, is often at odds with the actual intent of most depositors, who usually seek to confer either survivorship rights at death or powers of attorney during life (or both).[140] The problem is that most depositors open joint accounts without knowing about the equal ownership presumption or, if they disagree with it, the need to expressly opt out. Courts deal with the problem by allowing depositors to prove that the joint account was created for nondonative purposes. In such cases, courts usually find the joint tenancy approach inapplicable and protect the depositor by concluding that the joint account was established for the depositor's convenience rather than to convey lifetime ownership rights.

When a court concludes that a depositor has created a joint account for convenience, the court treats the nondepositor as an agent of the depositor holding rights akin to those conferred by a power of attorney to transact on the depositor's behalf, but not for the nondepositor's own benefit. For instance, in *In re Estate of Nickles*, an elderly depositor opened a joint account with her caregiver to allow for management of the depositor's finances.[141] A few years later, a conservator appointed for the depositor withdrew $250,000.[142] After the depositor's death, the caregiver claimed a one-half ownership interest as to funds on deposit while the depositor was still alive.[143] The court disagreed, finding the equal ownership presumption did not apply because the joint account was opened for the depositor's convenience rather than as a joint tenancy.[144] The court emphasized that the caregiver's own conduct was consistent with that understanding because he had not used any account

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Under this approach, if there are more than two accountholders, they each have an equal right to the account proceeds. So, in *Stevens v. Smith*, 71 So. 3d 1230, 1232–33, 1237 (Miss. Ct. App. 2011), two siblings had made withdrawal from a joint account held by a total of four siblings and the court held that the excluded siblings had a conversion claim for half of the money withdrawn.

139. *See, e.g.*, Rosenzweig v. Friedland, 924 N.Y.S.2d 99, 102 (App. Div. 2011) (noting that a deposit "in a joint bank account is 'presumed to have conferred on the cotenant . . . a gift of a one-half interest in the deposited funds'" (quoting Adams v. Hickey, 828 N.Y.S.2d 105, 107 (App. Div. 2006))); Vitacco v. Eckberg, 648 N.E.2d 1010, 1013 (Ill. App. Ct. 1995) (noting that when a creator contributes all funds to a joint tenancy, "a presumption arises that the creator has made a valid *inter vivos* gift to the second tenant").

140. Powers of attorney are documents giving another "the power to act on your behalf as your agent." *Power of Attorney*, AM. BAR. ASS'N, https://www.americanbar.org/groups/real_property_trust_estate/resources/estate-planning/power-of-attorney [https://perma.cc/7QZL-XTW2]. These delegations of power can be general or limited to a specific activity, such as managing finances. *Id.*

141. *In re* Estate of Nickles, No. 15-1317, 2016 WL 4384687, at *1 (Iowa Ct. App. 2016).

142. *Id.*

143. *Id.* at *2.

144. *Id.* at *3.

funds for himself, nor had he made any claim to the funds during the depositor's lifetime.[145]

Conversely, courts have held nondepositors liable for conversion for withdrawing funds from a convenience account for any purpose contrary to the depositor's instruction. *In re Warren v. Warren*,[146] for instance, upheld a conversion claim against a nondepositor who withdrew $300,000 from joint accounts.[147] The depositor was childless and apparently treated the nondepositor as her daughter.[148] But the court held that the depositor did not create the joint accounts for the purpose of gifting funds to the nondepositor, emphasizing that the nondepositor had repeatedly referred to the joint accounts as "[the depositor's] accounts."[149] Other courts have found that a withdrawing party's lack of contribution can corroborate the depositor's intent to use the account for convenience rather than lifetime gifting.[150] Courts have also credited evidence that a depositor retained exclusive control over the account passbook, a document historically used by banks at the point of withdrawal to authenticate the withdrawing party's transactional authority.[151]

2. The Net Contribution Approach

Under the net contribution approach, as illustrated by *McDaniels v. Rutter* discussed in the Introduction, a nondepositing accountholder has no lifetime ownership interest because a nondepositor's net contribution to a joint account is zero.[152] Thus, a nondepositor who withdraws any amount from a joint account

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145. Moreover, in a separate dispute over the depositor's will that resulted in a negotiated settlement, the nondepositor had never raised any claim to the money withdrawn from the joint account. *Id.*

146. Warren v. Warren, 316 So. 3d 645 (Miss. Ct. App. 2021).

147. *Id.* at 647, 651.

148. *Id.*

149. *Id.* at 650.

150. *See* Oliver v. Oliver, 812 So. 2d 1128, 1133–34 (Miss. Ct. App. 2002) (stepson who never contributed to joint account is not entitled to funds because his name was added for convenience); White v. White, 769 A.2d 617, 618 (R.I. 2001) (daughter liable for conversion because joint account established by her mother was a convenience account).

151. In *Kai Hong Hom v. Hom*, 955 N.Y.S.2d 630, 632–33 (App. Div. 2012), for instance, the court acknowledged that deposit of funds into a joint account constitutes prima facie evidence of an intent to create a joint tenancy, but held that a father who had deposited all of the money into the account, received all brokerage statements and held a bank account's only passbook had successfully rebutted the presumption of a joint tenancy with his son and established that the son's name had been added to the account solely as a matter of convenience. As a result, the court held that the father was entitled to a declaration that he was the sole owner of the disputed brokerage and bank accounts. *Id.*; *see also* Pinasco v. Ara, 631 N.Y.S.2d 346, 347–48 (App. Div. 1995) (exclusive possession of checkbook introduced to rebut presumption that funds were held in joint tenancy).

152. McDaniels v. Rutter, 262 A.3d 600, 604 (Pa. Super. Ct. 2021).

is generally liable for conversion.[153] (Similarly, when two accountholders make deposits, any accountholder who withdraws more than the amount of their deposit is liable for conversion.) But the net contribution presumption is not a hard-and-fast rule, instead yielding to "clear and convincing evidence of a different intent."[154] Thus, nondepositor accountholders remain free to argue that the depositor intended to gift part or all of the account, which, if true, would negate liability for unauthorized withdrawal.

For instance, in *Shourek v. Stirling* when the sole depositor sought to add her late husband's niece as a joint accountholder on various accounts, "[b]ank employees explained . . . the different types of ownership available[and] she chose joint ownership with rights of survivorship and an unrestricted right of withdrawal by either joint tenant."[155] The depositor's estate later sued the niece for conversion to recover withdrawals made four hours before the depositor's death.[156] Under the net contribution rule, the niece had no right to withdraw funds while the depositor was still alive because the niece had not contributed funds to the account.[157] But the Indiana Supreme Court remanded for a trial on the issue of donative intent because the record revealed facts that could support a finding that the depositor opened the account to enable lifetime gifting.[158] The court emphasized that the depositor had given the niece keys to her home and provided instructions about where to find the passbooks.[159]

In states that follow the net contribution rule, the lifetime ownership rights of nondepositors are the same whether the account is characterized as a joint account or a convenience account. In either case, nondepositors have no lifetime ownership stake even if the depositor authorized them to make withdrawals.

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153. California courts, however, initially construed the net contribution rule more narrowly. In *Lee v. Yang*, the court held that a man could not prevail on a conversion claim against his former fiancée who had withdrawn more than $300,000 from joint bank accounts because

> ownership of withdrawn funds which exceed the withdrawing party's net contribution passes to that party by way of gift to the extent, but only to the extent, there is no independent legal obligation requiring the party to account for the proceeds. Whether such an obligation exists depends on the objective facts and circumstances of the transaction rather than on the transferor's subjective intent.

Lee v. Yang, 3 Cal. Rptr. 3d 819, 827 (Ct. App. 2003). The California Legislature subsequently plugged that gap to make it clear that the net contribution rule applies to all amounts withdrawn from a joint account. For discussion and application of the amended statute, see *Dennis v. Ho*, No. B277268, 2018 WL 1081912, at *3–4 (Cal. Ct. App. Feb. 28, 2018).

154. UNIF. PROB. CODE § 6-211(b) (UNIF. L. COMM'N 2019).

155. Shourek v. Stirling, 621 N.E.2d 1107, 1108 (Ind. 1993).

156. *Id.*

157. *Id.* at 1110.

158. *Id.*; *see also* Wells v. Salyers, No. 2005-CA-002049-MR, 2007 WL 625110, at *6 (Ky. Ct. App. Mar. 2, 2007) (question of fact about whether father, who deposited all funds, made gift to daughter who withdrew all of the funds); Carter v. Holland, 825 So. 2d 832, 836 (Ala. Civ. App. 2001) (establishment of a joint account constitutes evidence from which a fact finder can infer an intention to make a gift).

159. *Shourek*, 621 N.E.2d at 1110.

For instance, in *Estate of Haynes v. Gaines*, the court held that the nondepositor was liable for more than $83,000 in wrongful withdrawals because the husband-and-wife depositors added her to the joint account "for the sole purpose of assisting the aged couple in handling their finances and paying . . . medical bills."[160] The court rejected the nondepositor's argument that the depositors intended to convey an ownership interest by naming her as a joint accountholder.[161]

In joint accounts with multiple depositors, the net contribution rule undoubtedly reflects the intentions of many depositors (especially outside the marital relationship), but those depositors are probably unaware of the bookkeeping obligations required to preserve the evidence of their individual net contribution that might be necessary in the event of a dispute. As explained in Part I, UPC section 6-211 requires joint accountholders to prove their own net contribution without the aid of a default presumption, except for joint accounts owned by married spouses, whose contributions are presumptively equal.[162] Our survey revealed a small number of litigated disputes involving multiple-depositor accounts, but the frequency of this type of litigation almost certainly undercounts the number of actual disputes. We suspect that accountholders in multiple-depositor accounts are often deterred from litigating disputes about net contribution because of the difficulty and expense of attributing every joint account transaction to an individual accountholder, a difficulty most depositors do not anticipate when opening a joint account.

Estate of Cowling v. Estate of Cowling, one of the few disputes between multiple depositors in our litigation survey, illustrates the challenge of proving the net contributions of multiple depositors even with the aid of the marital presumption.[163] A husband and wife had been married for nearly thirty years when the husband transferred assets from the couple's joint brokerage accounts to separate accounts that benefitted his children by a prior marriage.[164] When the husband died, the wife sought to impose a constructive trust upon the marital account funds he withdrew during life.[165] At trial, the wife's accounting expert testified that seventy-four percent of the assets contained

160. Estate of Haynes v. Gaines, No. L-22-1093, 2023 WL 384231, at *1 (Ohio Ct. App. Jan. 25, 2023).

161. *Id.* at *4–5. For other cases rejecting the same argument, see *Justice v. Justice*, No. CA2004–03–074, 2005 WL 880234, at *2 (Ohio Ct. App. Apr. 18, 2005); *Capuder v. Capuder*, No. 62035, 1993 WL 87816, at *2 (Ohio Ct. App. Mar. 25, 1993); *Fluke v. Westerman*, 609 S.E.2d 744, 748–49 (Ga. Ct. App. 2005); *Parker v. Kennon*, 530 S.E.2d 527, 529–30 (Ga. Ct. App, 2000); and *Lanning v. West*, 803 A.2d 753, 764 (Pa. Super. Ct. 2002).

162. *See supra* Section I.B.2.

163. *See generally* Estate of Cowling v. Estate of Cowling, 847 N.E.2d 405 (Ohio 2006).

164. The husband transferred some stocks directly to the children, and others into accounts in his own name, with a transfer-on-death designation for the children. *Id.* at 408.

165. *Id.*

in the stepchildren's accounts were attributable to the wife's contributions.[166] The jury found by a preponderance of the evidence that the husband's withdrawals exceeded his net contribution, causing the wife damages of $255,354.[167]

Had less money been at stake, the wife might not have been willing to incur the expense of the forensic accounting necessary to reconstruct the parties' respective contributions, especially in light of the UPC's presumption that when net contributions are unproven, married joint accountholders are presumed to have each contributed half. Similar disincentives are also likely to deter litigation between unmarried depositors because the UPC provides neither a default rule nor a burden of proof for factual disputes in which parties lack evidence of net contribution. That, in turn, makes litigation unattractive when the finances of joint accountholders have been intertwined for a significant period of time.

One final category of co-owner dispute emerged from our litigation survey: joint accounts into which no living accountholder contributed funds. That situation generally arises after the deaths of all depositors who, in turn, are survived by multiple nondepositor accountholders. In that case, UPC section 6-212 provides that the surviving beneficiaries are entitled to equal shares of the decedent's interest in the account.[168] In *Durso v. Vessichio,* for instance, the depositor opened joint bank accounts with his two daughters.[169] After the father's death, one daughter withdrew most of the funds and the other daughter sued for conversion.[170] Connecticut follows the joint tenancy approach, so the court had little difficulty determining that the daughter converted funds by withdrawing more than half the account,[171] but UPC section 6-212 would appear to embrace the same result under the net contribution approach because, after the depositor's death, the surviving nondepositors each acquired an equal ownership share in the account.

3. The Impact of Impermissible Withdrawals on Survivorship Rights

Most joint accounts are established with the expectation that upon the death of the first accountholder, surviving accountholders will own the remaining funds much as a surviving joint tenant of real property succeeds to

166. *Id.* at 409. Other evidence included tax returns, testimony of nonexpert witnesses, and stock certificates. *Id.* at 408–09.

167. *Id.* at 409.

168. *See* UNIF. PROB. CODE § 6-212(a) (UNIF. L. COMM'N 2019) ("If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 6-211 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under Section 6-211, and the right of survivorship continues between the surviving parties.").

169. Durso v. Vessichio, 828 A.2d 1280, 1282 (Conn. App. Ct. 2003).

170. *Id.* at 1282–83.

171. *Id.* at 1287–90.

the share of a deceased joint tenant. Consistent with that expectation, UPC section 6-212 recognizes a survivorship right in joint bank accounts. But what happens when a nondepositing accountholder who made excessive withdrawals survives the depositing accountholder? Should the nondepositor be entitled to keep money withdrawn during the depositor's life?

Technically, the answer should be *no* because the accountholder lacked ownership of the contested funds at the time of the withdrawal. But if the surviving accountholder had not made the withdrawal and had instead waited until the depositing accountholder's death, ownership of the exact same funds would have passed to the nondepositor as beneficiary of the survivorship right. To hold the nondepositor liable to the depositor's estate for conversion could enrich the estate in ways the depositor might not have anticipated. This tension arises under both the joint tenancy approach and the net contribution rule.

Courts are divided on the issue, though most hold that the estate has a conversion claim against the withdrawing accountholder. For instance, in *Shirley v. Sailors*, the Court of Appeals of Georgia held that the withdrawal of funds from a joint account "severed" the joint tenancy relationship and extinguished any presumption that withdrawn funds belonged to the surviving accountholder.[172] The depositors, an octogenarian couple, had approached their niece for assistance in handling their finances.[173] They established joint accounts with the niece and later executed wills naming the niece as executor, but not as residuary beneficiary.[174] The wills explicitly provided that, at death, existing joint bank accounts should pass to the persons named on the account rather than the residuary beneficiary.[175] The niece "essentially acted as [the couple's] full-time care giver," withdrawing funds from the accounts for their benefit.[176] But the niece also withdrew money from the joint accounts while the couple was still alive and transferred the proceeds into her own accounts.[177] Because the court concluded that the lifetime withdrawals extinguished the survivorship presumption with respect to withdrawn funds, the niece owed those amounts to the estate.[178] Thus, the withdrawn funds passed through probate to the residuary legatee, not the niece, even though the niece would have inherited those funds if the depositors had left them in the account until

172. Shirley v. Sailors, 766 S.E.2d 201, 205 (Ga. Ct. App. 2014).
173. *Id.* at 202–04.
174. *Id.* at 203–04.
175. *Id.* at 204.
176. *Id.*
177. *Id.*
178. *Id.* at 205.

both of them had died.[179] The niece was, however, entitled to funds remaining in the account after the last depositor's death.[180]

By contrast, in *In re Estate of Jones*, a caregiver daughter named by her father as joint account holder was allowed to keep amounts she withdrew while her father was still alive.[181] After the father died, the other children claimed that the withdrawn funds should pass through the father's estate.[182] The court disagreed, and in ruling for the caregiver daughter, the court noted that the daughter was uncompensated for her caregiving services and that there was no evidence that the father intended anything other than to give her the joint account funds at his death.[183]

B. *Creditor Claims*

Creditors can generally attach a debtor's property to satisfy an outstanding judgment. That simple principle, however, can be difficult to apply in the joint bank account context when it requires an allocation of ownership among the debtor and nondebtor accountholders. Should the same ownership presumptions apply when apportioning liability for creditor claims? If so, which party should bear the burden of rebutting those presumptions? The debtor, the nondebtor, or the creditor?

Most states follow the net contribution rule, but curiously, both UPC section 6-211 and its Comment are silent regarding creditor rights and the garnishment of joint accounts.[184] The closest hint of a default principle for apportioning liability for creditor claims is the net contribution rule itself.[185] The inference one might draw from that rule is that courts should allow creditors to attach the debtor's net contribution absent "clear and convincing evidence of a different intent."[186] But, in practice, many courts applying the net contribution rule have tacitly imposed a second presumption—one that strongly presumes that the entire account belonged to the debtor unless the nondebtors prove otherwise to an exacting degree of certainty. That second presumption is both creditor-friendly and administratively simple to apply. We found that courts depart from the presumption of full garnishment only

179. *Id.*

180. *Id.* For cases reaching similar conclusions, see generally *Pool-O'Connor v. Guadarrama*, 308 Cal. Rptr. 3d 1, 12–13 (Ct. App. 2023); and *Vaughn v. Bernhardt*, 547 S.E.2d 869, 870 (S.C. 2001).

181. *In re* Estate of Jones, 826 N.W.2d 540, 546–47 (Minn. Ct. App. 2012).

182. *Id.* at 542.

183. *Id.* at 546.

184. *See* UNIF. PROB. CODE § 6-211(b) (UNIF. L. COMM'N 2019); *id.* § 6-211 cmt.

185. *Id.* § 6-211(b).

186. *See id.* ("[A]n account *belongs* to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent." (emphasis added)).

when clear evidence exists that the debtor contributed virtually nothing to the joint account.

The presumption that the entire account belongs to the debtor is not limited to net contribution states. Although some joint tenancy states start with a presumption of equal ownership, the more common approach in joint tenancy states is identical to that in net contribution states: creditors of either accountholder may garnish the entire account absent proof that the account included the debtor's name, but none of the debtor's assets.

1. Hard-and-Fast Rules

In a small handful of states, courts expressly apply an inflexible "hard-and-fast" rule in garnishment proceedings: either the entire account or none of the account is garnishable by creditors for nonjoint debt.

In *Fleet Bank Connecticut, N.A. v. Carillo*, for example, a divided Connecticut Supreme Court announced a hard-and-fast rule permitting full garnishment of a joint account held by married spouses.[187] The court held that the husband's creditor could execute against the entire joint account even though the wife had allegedly contributed seventy percent of the funds.[188] Former Yale Law Professor Ellen Peters, writing for the court, concluded that the wife

> fails to offer any persuasive argument why, having agreed to assume the risk of unlimited withdrawals by the coholder of the joint account if the coholder decides *voluntarily* to honor his debts, she is entitled to shelter from the risk that the coholder of her joint account may be *compelled* to respond to legal process to pay such debts.[189]

The court then listed the "evidentiary and administrative burdens" that would be imposed on courts if creditors were permitted to attach only funds owned by the debtor:

> [W]ho would bear the burden of proving the ownership of the funds, the coholder or the third party creditor? Would parol evidence be admissible for such proof? Whatevidentiary [sic] presumptions, if any, would be applicable? If a presumption of partial ownership applies, how much of the funds would a court presume belong to each coholder? What principles should govern intermediate withdrawals and deposits? How would the court dispose of funds for which neither party could account?[190]

In answering those concerns, the majority concluded that "courts should not encourage parties to do their bookkeeping in court when [by establishing a joint bank account] they have virtually declared that they do not wish to be

187. Fleet Bank Conn., N.A. v. Carillo, 691 A.2d 1068, 1072 (Conn. 1997).

188. *Id.* at 1069–70.

189. *Id.* at 1073–74.

190. *Id.* at 1073 n.16.

inconvenienced by any strict accountability as between themselves."[191] Thus, under *Fleet Bank*'s hard-and-fast rule, all joint account funds are subject to attachment by creditors of either depositor, full stop.

Conversely, a few states have adopted a very different hard-and-fast rule in one common situation: when a married couple establishes an account as tenants by the entirety, creditors cannot garnish the account for nonjoint debt even if the debtor spouse deposited all or most of the funds.[192] In Florida and Missouri, for example, a joint account titled in the name of both spouses is presumed held as tenants by the entirety, which automatically places the account beyond the reach of creditors of one spouse.[193] Thus, in *Edgar v. Ruma* a Missouri court held that a husband's creditor could not garnish an account that he held jointly with his wife even though he had previously represented that his wife "had nothing whatever to do with . . . the funds on deposit in the bank account."[194] In *Versace v. Uruven, LLC,* a Florida court explained that "[t]he express designation of a tenancy by the entireties on a signature card of a bank account establishes the account as such, and no further inquiry should be made."[195] The court noted further that tenancy by the entirety statute "makes the signature card conclusive. No one need establish all the common law unities of tenancy by the entireties when a third party creditor seeks to garnish such an account."[196]

2. Rebuttable Presumptions

i. The Basic Principle

Most courts have been unwilling to articulate a hard-and-fast rule akin to the one adopted by the court in *Fleet Bank.* But courts in many joint tenancy states and net contribution states have essentially replicated the *Fleet Bank* approach by invoking a presumption that the debtor owned the entire account. That presumption is theoretically rebuttable by evidence of the nondebtor's actual ownership stake, but as a practical matter, that evidence is typically

191. *Id.* (alteration in original) (quoting Park Enters., Inc. v. Trach, 47 N.W.2d 194, 197 (Minn. 1951)).

192. *Cf.* Gibson v. Wells Fargo Bank, N.A., 255 So. 3d 944, 947 (Fla. Dist. Ct. App. 2018) ("[F]unds owned by a husband and wife as tenants by the entireties are 'beyond the reach of a creditor of either one of the tenants. Such funds are immune from garnishment except where the debt was incurred by both spouses.'" (quoting Branch Banking & Tr. Co. v. ARK Dev./Oceanview, LLC, 150 So. 3d 817, 821 (Fla. Dist. Ct. App. 2014))).

193. FLA. STAT. ANN. § 655.79(1) (West 2021); MO. ANN. STAT. § 362.470(5) (West 2015). *See generally* Beal Bank, SSB v. Almand & Assocs., 780 So. 2d 45 (Fla. 2001) (applying Florida statute to hold accounts held by debtors with their wives beyond the reach of creditors).

194. Edgar v. Ruma, 823 S.W.2d 59, 60–61 (Mo. Ct. App. 1991); *see also In re* Haines, 528 B.R. 912, 920 (Bankr. W.D. Mo. 2015) ("Missouri common law indisputably and strongly presumes that all property owned by a husband and wife is [tenancy by entirety] property if the four unities are established.").

195. Versace v. Uruven, LLC, 348 So. 3d 610, 614 (Fla. Dist. Ct. App. 2022).

196. *Id.*

difficult to come by. As a result, the presumption often permits the creditors of one accountholder to reach the entire account.

For instance, in *Savig v. First National Bank of Omaha*, a creditor garnished a joint account owned by a married couple to enforce a judgment against the debtor wife, but the garnishment reached funds belonging to the nondebtor husband; both spouses then sued the wife's creditor in federal court for violating the Fair Debt Collection Practices Act.[197] The federal district court asked the Minnesota Supreme Court to answer several certified questions about state law, in response to which the Minnesota Supreme Court established three principles: first, a judgment creditor may attach funds in a joint account even though not all of the accountholders are judgment debtors;[198] second, the accountholders bear the burden of establishing their own net contributions in any garnishment proceeding;[199] and third, the judgment debtor is rebuttably presumed to own all of the funds in the account, so that if the presumption is not rebutted, all account funds are subject to garnishment.[200] Minnesota is a net contribution state, but a number of courts in joint tenancy states have invoked the same presumption.[201]

A few joint tenancy states have adopted a different presumption: a creditor is entitled to garnish the debtor's proportionate share of a joint account—half if the account is in the names of two persons. For instance, in *M & I Marshall & Ilsley Bank v. Higdon*, the court held that a husband's judgment creditor was entitled to garnish half of a married couple's joint bank account in a case where the parties conceded that neither could rebut the presumption of equal ownership.[202]

ii. The Presumption in Operation

As cases like *Savig* illustrate, presumptions about liability apportionment for nonjoint debt are theoretically rebuttable but, in practice, they so strongly favor creditors as to render the presumption nearly absolute. In other words, most states seem to tacitly apply *Fleet Bank*'s bright-line rule allowing full

197. Savig v. First Nat'l Bank of Omaha, 781 N.W.2d 335, 336 (Minn. 2010). The complaint also alleged advanced claims for conversion, wrongful levy, and invasion of privacy. *Id.*; Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

198. *Savig*, 781 N.W.2d at 341.

199. *Id.* at 347.

200. *Id.* at 348.

201. *Id.* at 340 (citing MINN. STAT. § 524.6–203(a) (2008)); *see, e.g.*, Maloy v. Stuttgart Mem'l Hosp., 872 S.W.2d 401, 402 (Ark. 1994); Branch Banking Tr. Co. v. Bartley, No. 2004-CA-002663-MR, 2006 WL 1113632, at *3 (Ky. Ct. App. Apr. 28, 2006).

202. M & I Marshall & Ilsley Bank v. Higdon, 536 P.3d 898, 905 (Kan. Ct. App. 2023); *see also* Citibank (S.D.), N.A. v. Five Star Bank, No. 2006-161, 2006 WL 1909951, at *2 (N.Y. Sup. Ct. July 10, 2006) (failure to rebut presumption of half ownership); Danielson v. Lazoski, 531 N.W.2d 799, 801 (Mich. Ct. App. 1995) (presumption of fifty percent ownership rebutted when noncreditor demonstrated that he had deposited all of the funds in the account).

garnishment by demanding exacting proof of the nondebtor's contributions despite paying lip service to the nondebtor's right to rebut the presumption.

In *Gataric v. Colak*, for instance, a court in a joint tenancy state upheld garnishment of a joint account despite bank statements establishing that the nondebtor had contributed more than $30,000.[203] The court appeared to suggest that, to rebut the presumption, the nondebtor had to produce "clear and convincing evidence" that the debtor was added to the account for the nondebtor's convenience.[204] In *Ingram v. Hocking Valley Bank*, the court cited the UPC's net contribution rule,[205] but held nevertheless that banks should not be required to determine the proportion of funds owned by each depositor—the same objection raised in *Fleet Bank*:

> Banks should not be forced to perform the investigatory and judicial functions involved in determining what proportion of a joint account each holder owns. A bank's investigation of an account by necessity would extend far beyond the records in the bank's possession into the realities of ownership.[206]

Thus, in *Ingram*, the court upheld the garnishment despite evidence that the nondebtor husband had deposited some of the funds into the joint marital account shared with the debtor wife.[207]

Likewise, *Farooq v. Khan* upheld garnishment of a joint account despite bank statements indicating that no deposits were made after the debtor's name was added to the account.[208] The joint account was opened by the nondebtor, who was employed by the debtor as a nanny.[209] The nanny claimed that he was the sole depositor and that he added the debtor's name only so she could send money to his (the nanny's) family in Pakistan if anything happened.[210] But the court still sided with the creditor, finding that the account application form did not establish the date on which the debtor was added as an accountholder and that the bank statements showing the nondebtor nanny's deposits failed to account for the entire balance.[211]

Courts are understandably reluctant to allow debtors to rebut the presumption with evidence consisting largely of self-serving statements by the accountholders themselves. In most cases, the debtor and nondebtor account-holders are members of the same family, all of whom share a

203. Gataric v. Colak, 59 N.E.3d 109, 111–12 (Ill. App. Ct. 2016). The nondebtor submitted an affidavit asserting that she had deposited the money into the account, and attached bank statements for the period during which she made the deposits. *Id.* at 113.

204. *Id.* at 116.

205. Ingram v. Hocking Valley Bank, 708 N.E.2d 232, 240 (Ohio Ct. App. 1997).

206. *Id.*

207. *Id.* at 233 (listing deposits into the accounts).

208. Farooq v. Khan, No. 80970-9-I, 2021 WL 1530260, at *3 (Wash. Ct. App. Apr. 19, 2021).

209. *See id.* at *1.

210. *Id.*

211. *Id.* at *3.

common interest in preventing garnishment. For instance, in *Alcantar v. Sanchez*, a nondebtor father attempted to rebut the presumption by offering an affidavit from the debtor son that disclaimed ownership in the accounts.[212] The court denied the nondebtor father's motion for summary judgment, concluding instead that unilateral assertions by the nondebtor's own son about deposits to the accounts failed to conclusively establish the nondebtor's sole ownership.[213]

iii. Rebuttal When the Nondebtor Deposited All of the Funds: Convenience Accounts

Courts have been more receptive to rebuttal evidence when nondebtors can prove they contributed all of the joint account funds. In these cases, courts typically hold that the entire account is insulated from garnishment because the debtor's name was added for convenience rather than to convey ownership. In joint tenancy states, courts reach that conclusion by holding that the depositor never intended to create a joint tenancy account and, instead, added the nondepositor's name solely for the depositor's convenience.[214] In net contribution states, the ownership share of nondepositors is presumed to be zero because their contributions are zero.[215] By construing the depositor's intent to create a convenience account, courts can protect the sole depositor without a forensic accounting to determine the respective deposits and withdrawals by each party.

A common type of convenience account involves an elderly person who adds an adult child or friend to an existing account for assistance in handling finances. Bank of America, for instance, expressly advertises joint accounts to elderly patrons for that purpose: "Set up a joint account. Plan ahead: While you're still healthy, determine whether you want to add a trusted family member or friend to your account as a co-owner to help manage your finances."[216] In such accounts, the parent usually contributes all the funds, and the child is only authorized to make withdrawals for the parent's benefit. Creditors therefore cannot garnish the account to enforce nonjoint debts owed by the child.

For instance, in *Morgan Stanley & Co., Inc. v. Andrews*, a son's creditor was not entitled to garnish funds in a joint account established by the son's father

212. Alcantar v. Sanchez, 257 P.3d 966, 970 (N.M. Ct. App. 2011).

213. *Id.*; *see also* Signature Bank v. HSBC Bank USA, N.A., 889 N.Y.S.2d 242, 245 (App. Div. 2009) (holding debtor's conclusory concession that she did not own the accounts held jointly with her daughters was insufficient to rebut her ownership of the funds); Traders Travel Int'l, Inc. v. Howser, 753 P.2d 244, 247–48 (Haw. 1988) (holding husband's assertion that he was equitable owner of twenty-five percent of account he held jointly with wife and two children was insufficient to rebut presumption that he owned the entire account for garnishment purposes).

214. *See, e.g.*, Nat'l Collegiate Students Loan Tr. 2007-3 v. J.P. Morgan Chase, No. 2015-153112, 2015 N.Y. Misc. LEXIS 3409, at *4 (Sup. Ct. Sept. 21, 2015).

215. *See, e.g.*, Deutsch, Larrimore & Farnish, P.C. v. Johnson, 848 A.2d 137, 144 (Pa. 2004).

216. *Financial Care for Older Adults*, BANK AM., https://www.bankofamerica.com/signature-services/elder-financial-services [https://perma.cc/SU6U-79VX].

after a bout of pneumonia.[217] The parties had stipulated that the father "was the original source of all of the funds" in the account,[218] and the father retained the checkbook on the account, sending the son checks to write for the father's benefit.[219] The court held that the father had established, by clear and convincing evidence, that he was the sole owner of all funds in the account.[220] Courts have reached similar conclusions under both the joint tenancy approach and the net contribution rule.[221]

Applying similar logic, when all funds in a joint account held by a parent and their child belong to the child, courts have prevented the parent's creditor from reaching the account. For instance, in *Brooksby v. Nevada State Bank*, the Nevada Supreme Court precluded a judgment creditor from garnishing joint accounts held by the debtor and her three children because the accounts were funded entirely by birthday presents, college scholarships, and wages earned while the children were in high school.[222] And in *Schacht v. Kunimune* the Alaska Supreme Court reversed a judgment allowing a father's creditor to garnish a joint account funded with settlement proceeds payable to the son for injuries sustained in an automobile accident.[223] Both of those cases involved convenience accounts in which the parent was added as an accountholder for the purpose of managing funds on the child's behalf.

Courts have also applied the convenience account doctrine to insulate marital joint accounts from garnishment when a nondebtor spouse proves that all funds were contributed by the nondebtor and that the debtor spouse was added to the account for the nondebtor's convenience. In *Enright v. Lehmann* the Minnesota Supreme Court held that the creditor of a debtor husband could not garnish funds in two marital joint accounts after the creditor conceded that the nondebtor wife had deposited all the funds.[224] Even when the creditor makes no such concession, courts have held the presumption rebutted by evidence that the debtor spouse's name was added for convenience rather than to convey ownership.[225]

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217. Morgan Stanley & Co. v. Andrews, 123 A.3d 640, 652 (Md. Ct. Spec. App. 2015).

218. *Id.* at 642.

219. *Id.* at 643.

220. *Id.* at 652.

221. *See, e.g.*, Deutsch, Larrimore & Farnish, P.C. v. Johnson, 848 A.2d 137, 143–44 (Pa. 2004) (net contribution); Highsmith v. Dep't of Pub. Aid, 803 N.E.2d 652, 658 (Ill. App. Ct. 2004) (joint tenancy); Sears, Roebuck & Co. v. Cosey, 44 P.3d 582, 585 (Okla. Civ. App. 2002) (joint tenancy); Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800, 803 (Miss. 1989) (joint tenancy); Miller v. Clayco State Bank, 708 P.2d 997, 1002 (Kan. Ct. App. 1985) (joint tenancy); RepublicBank Dall. v. Nat'l Bank of Daingerfield, 705 S.W.2d 310, 311–12 (Tex. App. 1986) (net contribution).

222. Brooksby v. Nev. State Bank, 312 P.3d 501, 502–03 (Nev. 2013).

223. Schacht v. Kunimune, 440 P.3d 149, 151, 154–56 (Alaska 2019).

224. Enright v. Lehmann, 735 N.W.2d 326, 329, 335–36 (Minn. 2007).

225. *See* Nat'l Collegiate Students Loan Tr. 2007-3 v. J.P. Morgan Chase, No. 2015-153112, 2015 NY Misc. LEXIS 3409, at *4 (Sup. Ct. Sept. 21, 2015) (debtor-spouse's name added to the

Joint accounts involving more distant family relationships or business relationships are less common, but courts often apply the same approach, holding that garnishment is not available once the depositors prove that all funds were deposited by the nondebtor accountholder and the debtor's name was added for convenience. Thus, in *Banc of America Leasing & Capital, LLC v. Sferas, Inc.*, the court held that a nondebtor was entitled to the return of garnished funds because he established that he was the sole depositor of a joint account shared with his cousin.[226] And in *Trustmark National Bank v. Sunshine Carwash No. 5 Partners*, the judgment creditor was not entitled to garnish a joint account established by a nondebtor real estate developer who gave check-writing privileges to his business partner (the debtor) in connection with a real estate renovation project because the nondebtor was the sole depositor.[227]

iv. The Negligible Impact of the UPC's Net Contribution Rule

UPC section 6-211 creates a presumption that joint accounts belong to parties in proportion to their net contributions, absent clear and convincing evidence of a different intent. Analysis demonstrates, however, that when creditor claims are involved, the UPC's presumption yields to more practical factors that avoid embroiling depositors, banks, and courts in the thankless process of sorting through evidence about who deposited money into joint accounts and who withdrew it. Most of these rules and presumptions are creditor friendly, allowing creditors to reach the entire joint account, but others are not: some states completely insulate tenancy by the entirety accounts from creditor claims. But the primary factor in these creditor disputes is administrability, not perfect accounting.

C. Criminal Prosecution

States frequently prosecute joint accountholders for misappropriation, but we found that governments tend to be more circumspect in selecting cases for criminal prosecution. Prosecutors seem especially keen to avoid cases that rely on either the joint tenancy's equal-ownership presumption or the net contribution rule to establish the victim's ownership of misappropriated funds. In fact, virtually all criminal prosecutions that we encountered involved unauthorized withdrawals from convenience accounts in which the victim

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account after marriage, but the only checks drawn on the account were signed by nondebtor spouse and weekly deposits were nondebtor's compensation); House v. Malcolm Thomas Indus., Inc., 611 So. 2d 1085, 1086 (Ala. Civ. App. 1992) (account was solely in the nondebtor-spouse's name for nearly thirty years before debtor's name was added so he could write checks while nondebtor had surgery; only nondebtor's name was printed on checks and debtor never deposited any money into the account).

226. Banc of Am. Leasing & Cap., LLC v. Sferas Inc., No. B224787, 2011 WL 1744943, at *3, *6 (Cal. Ct. App. May 9, 2011) (noting that the account was created ostensibly because the cousin agreed to transfer the funds to the nondebtor's daughter upon the nondebtor's death).

227. Trustmark Nat'l Bank v. Sunshine Carwash No. 5 Partners, 558 S.W.3d 157, 158–59 (Tenn. Ct. App. 2018).

deposited most or all funds. Criminal prosecutions focus on convenience accounts because, as a practical matter, the difficulty of proving individual net contributions by multiple depositors is likely to sow reasonable doubt about the defendant's guilt. Recall from earlier discussion our finding that, in net contribution states, civil ownership disputes among multiple depositors are rare because such cases require costly forensic accountings and, even then, can be difficult to prove by a preponderance of the evidence.[228] Prosecutors are thus doubly deterred from bringing charges when multiple depositors are involved: To convict a joint accountholder for misappropriation, the state must prove beyond a reasonable doubt that the contested withdrawals exceeded the defendant's net contribution.

In prosecutions of joint accountholders, the precise crime charged varies by state.[229] Prosecutions also involve a broad range of relationships among joint accountholders. For example, we encountered charges brought against a former spouse who withdrew money from an account for which the victim spouse was the sole depositor.[230] More commonly, however, prosecutors tend to bring charges against caregivers,[231] financial advisors,[232] or family members[233] of a disabled or elderly depositor.[234] Some states have criminal statutes specifically targeting exploitation of elderly victims,[235] and prosecutors have invoked those statutes in cases where caregivers use their power over joint

228. *See supra* Section I.B.2.

229. In a number of states, defendants have been prosecuted under generalized statutes prohibiting theft. *See, e.g.*, Walch v. State, 909 P.2d 1184, 1187–88 (Nev. 1996) (applying Nevada theft statute). In other states, statutes have more particularized prohibitions on embezzlement that apply when a person wrongfully appropriates property of another that was in the defendant's care or custody. *See, e.g.*, Lilly v. Commonwealth, No. 1220-23-3, 2024 WL 3498820, at *4–5 (Va. Ct. App. July 23, 2024) (explaining that Virginia's elder abuse statute "criminalizes the financial exploitation of vulnerable adults [by] defining the crime as a form of 'larceny'"; convictions affirmed for misappropriation from infirmed brother's convenience account); State v. Lavigne, 57 A.3d 332, 340–42 (Conn. 2012) (applying Connecticut embezzlement statute); State v. Steele, 868 S.E.2d 876, 880–83 (N.C. Ct. App. 2022) (applying North Carolina embezzlement statute that applies to fiduciaries who misapply funds to their own use); State v. Schwersenska, 2018AP1619-CR, 2020 WL 2071596, at *4 (Wis. Ct. App. Apr. 30, 2020) (applying Wisconsin statute that applies when a person, as bailee, converts property to his own use).

230. *See generally* State v. Nye, No. WD-20-058, 2021 WL 3161206 (Ohio Ct. App. July 23, 2021); State v. Cratsenberg, No. 71448-1-I, 2015 WL 6447749 (Wash. Ct. App. Oct. 26, 2015).

231. *See generally* State v. Turner, No. 2013AP686–CR, 2014 WL 6676709 (Wis. Ct. App. Nov. 26, 2014) (caregiver for a priest); People v. Trujillo, No. G055320, 2019 WL 90659 (Cal. Ct. App. Jan. 3, 2019) (caregiver).

232. *See generally Walch*, 909 P.2d 1184.

233. *See generally* Wagner v. State, 102 A.3d 900 (Md. Ct. Spec. App. 2014) (daughter); *Lavigne*, 57 A.3d 332 (niece); Chittum v. Commonwealth, No. 0783-20-3, 2022 WL 210071 (Va. Ct. App. Jan. 25, 2022) (daughter); People v. Antilla, 569 N.E.2d 868 (N.Y. 1991) (grandnephew).

234. *See generally Schwersenska*, 2020 WL 2071596 (mother withdraws from joint account funded by her deaf daughter).

235. *See, e.g.*, CAL. PENAL CODE § 368 (2025); CONN. GEN. STAT. § 53a-123(a)(4) (2025). *See generally* David Horton & Reid Kress Weisbord, *Inheritance Crimes*, 96 WASH. L. REV. 561 (2021) (surveying state criminal statutes targeting exploitation of elderly individuals).

accounts to denude their victims of assets.[236] Most prosecutors target theft, and although the elements necessary to establish a theft crime are not uniform across the states, a taking of property is not generally considered a theft if done with the victim's consent or authorization.[237] As a result, the defendant's legal defense is usually straightforward: Because the account agreement authorized each accountholder to withdraw funds from the account, my withdrawals could not constitute theft.[238]

A few cases have invoked the accountholder agreement as a basis for dismissing criminal charges that allege unauthorized withdrawals. In *State v. Kane*, the Montana Supreme Court affirmed dismissal of a theft prosecution against a defendant who opened a joint checking account to assist a longtime friend in his eighties in managing finances; the defendant subsequently transferred $26,000 from the joint account to her personal account.[239] Quoting the comment to UPC section 6-211, the court held that the net contribution rule did not apply to controversies between cotenants.[240] The court explained that joint bank accounts are special relationships which "may create an equal unrestricted and absolute interest in such co-owners with neither co-owner having an interest to which the other is not entitled."[241] The court explained that, while the defendant's "actions may have breached the duty of loyalty as an agent, because the State does not allege that [the defendant] deceived or threatened [the depositor] into establishing the joint tenant arrangement her actions do not make out the elements of the criminal theft statute."[242] Similarly, *People v. Vandermuelen* reversed a larceny conviction of a granddaughter who withdrew funds from a joint account with her grandmother, holding that once the grandmother added the granddaughter to the joint account, the granddaughter could not be held criminally liable for making unauthorized withdrawals.[243]

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236. *See generally Lavigne*, 57 A.3d 332. These statutes are not always a panacea for prosecutors. In *State v. Anderson*, No. 103,484, 2011 WL 4563072, at *4 (Kan. Ct. App. Sept. 30, 2011), the court reversed a felony conviction for mistreatment of a dependent adult while noting that the facts might have supported a conviction for theft—a crime for which defendant had not been charged.

237. *See, e.g.*, OHIO REV. CODE ANN. § 2913.02(A)(1) (West 2025) (defining theft to require obtaining control over property "[w]ithout the consent of the owner").

238. *See, e.g.*, *Wagner*, 102 A.3d at 905 ("Wagner . . . argues that . . . as a party to the joint account, she was an 'owner' of the property, and thus could not be convicted of stealing her own property.").

239. State v. Kane, 992 P.2d 1283, 1284 (Mont. 1999).

240. *Id.* at 1286 (citing to MONT. CODE ANN. § 72-6-211 (1993), adopting the language of UNIF. PROB. CODE § 6-211 (UNIF. L. COMM'N 2019)).

241. *Id.* at 1285 (quoting State v. Haack, 713 P.2d 1001, 1002 (Mont. 1986)).

242. *Id.*

243. People v. Vandermuelen, 839 N.Y.S.2d 835, 837 (App. Div. 2007). The court, however, upheld the granddaughter's conviction of other crimes, including identity theft for opening a credit card in her grandmother's name. *Id.* at 838.

Kane, *Vandermuelen*, and a handful of similar cases,[244] however, are outliers. In most prosecutions alleging unauthorized withdrawals by non-depositors, theft convictions have been affirmed. When the victim is the sole depositor, juries and trial courts are generally capable of answering straightforward factual questions about who owned the account funds and whether the defendant wrongfully withdrew them.[245] Courts have also made it clear that authority to withdraw funds does not establish ownership of the account, but prosecutors often struggle to identify the precise event or act by the defendant that crosses the line between a withdrawal authorized by the account agreement and an illegal theft.[246]

In some cases, courts have held that establishing the joint account itself constituted theft. For instance, in *People v. Antilla*, the New York Court of Appeals affirmed the larceny conviction of a grandnephew who withdrew $180,000 from a joint account he established with his eighty-four-year-old great-aunt who had asked him to manage her financial affairs.[247] The court held that the facts supported the inference that the grandnephew induced the great-aunt to establish the joint account with a larcenous intent.[248] The defendant had argued that because he was a joint owner authorized to make withdrawals, he could not be convicted of misappropriating money.[249] The court disagreed, explaining that "[t]his argument misses the point that the larcenous creation

244. In *Natko v. State*, 435 P.3d 680, 683 (Nev. Ct. App. 2018), the court overturned a criminal construction based on a jury instruction that "[a] person's status as a joint account holder does not by itself provide lawful authority to use or transfer another['s] assets for their own benefit." The court concluded that the instruction was erroneous because a 1995 Nevada statute provided that "[i]f an account is intended to be held in joint tenancy, the account or proceeds from the account are *owned* by the persons named . . . ." *Id.* at 682.

In 2023, the Nevada legislature effectively overruled *Natko*, providing that

> the mere fact that an account of an older person or a vulnerable person is held in joint tenancy . . . does not, in and of itself, convey to all persons named on the account legal ownership of the account and the deposits and proceeds of the account in a manner that would preclude such a person from committing or being prosecuted for exploitation . . . .

NEV. REV. STAT. ANN. §100.085(5) (LexisNexis 2025).

245. *See, e.g.*, Dawes v. State, 236 P.3d 303, 310 (Wyo. 2010) (upholding conviction after concluding that ownership of the joint account was a question of fact for the jury to determine).

246. *See, e.g.*, State v. Gagne, 79 A.3d 448, 456 (N.H. 2013) ("The fact that the defendant did not need the victim's permission in order to withdraw funds from the account, however, does not mean that the defendant was privileged to appropriate the victim's interest in those funds."); Hicks v. State, 419 S.W.3d 555, 558–59 (Tex. App. 2013) (noting that authority to withdraw does not establish ownership); State v. Nye, No. WD-20-058, 2021 WL 3161206, at *4 (Ohio. Ct. App. July 23, 2021) (upholding jury instruction that names on a bank account did not establish ownership of the account).

247. People v. Antilla, 569 N.E.2d 868, 869 (N.Y. 1991).

248. *Id.* at 870.

249. *Id.*

of the joint account, not defendant's withdrawals from it, provided the basis for his conviction."[250]

Other courts have acknowledged that, although the creation of a joint account implies the depositor's consent to withdrawals by other accountholders, the scope of that consent is limited, so criminal liability may attach to withdrawals exceeding the scope of limited consent. For instance, *State v. Woodburn* affirmed a conviction of a joint accountholder for the criminal offense of obtaining property "[b]eyond the scope of the express or implied consent of the owner or person authorized to give consent," but the same court overturned the defendant's conviction for the offense of obtaining property "[w]ithout the consent of the owner or person authorized to give consent."[251] The court held that the depositor's daughter, who withdrew funds from their joint account, clearly had her mother's consent to withdraw the funds, but that the trier of fact could reasonably have concluded that the daughter's withdrawal was beyond the scope of the mother's consent.[252]

In other cases, courts look to the defendant's misuse of withdrawn funds for evidence that the withdrawal exceeded the scope of limited consent. For instance, in *State v. Steele*, the court acknowledged that the depositor gave the defendant access to her accounts,[253] but upheld an embezzlement conviction because there was sufficient evidence that the depositor had not authorized the defendant to use the money for his personal benefit.[254] Use for personal benefit is, in effect, use beyond the scope of the depositor's authorization.[255] Whether the defendant withdrew the contested funds with criminal intent is a factual question for a jury, but courts have held that juries can infer intent from conduct that occurs both before and after the withdrawal of funds.[256]

250. *Id.*; *see also* Walch v. State, 909 P.2d 1184, 1189–90 (Nev. 1996) (upholding caregiver's conviction when she used money from a joint account for her own benefit because the jury could have found theft when the caregiver put money into the joint account if she did so with the intent of withdrawing the funds); Gurrola v. State, No. 08-01-00107-CR, 2003 WL 22370207, at *5 (Tex. App. Oct. 16, 2003) (upholding conviction because of lack of evidence that there was consent to creating the joint account).

251. State v. Woodburn, 140 N.E.3d 66, 71, 74 (Ohio Ct. App. 2019).

252. *Id.* at 73–74.

253. State v. Steele, 868 S.E.2d 876, 878–79 (N.C. Ct. App. 2022).

254. *Id.* at 883 ("Defendant was not entitled to convert the money to his use without her permission."); *see also* Bailey v. State, No. 03-02-00622-CR, 2003 WL 22859984, at *11 (Tex. App. Dec. 4, 2003) (holding evidence insufficient to support a conviction for withdrawals without any indication of what defendant did with funds withdrawn, but holding evidence sufficient to support a conviction when defendant transferred funds from the joint account to her personal account).

255. *See generally* Commonwealth v. Czerkawski, No. 15-P-1573, 2017 WL 1065767 (Mass. App. Ct. Mar. 21, 2017) (upholding conviction when defendant deposited funds in his own account, although court also held that a rational jury could have determined that the theft occurred earlier, when the parties established the joint account).

256. *See* Law v. State, 824 S.E.2d 778, 784–85 (Ga. Ct. App. 2019) (noting that there was sufficient evidence for the jury to conclude that withdrawals were made with criminal intent). *But see* Skillern v. State, 355 S.W.3d 262, 270 (Tex. App. 2011) (holding evidence insufficient to support a jury verdict).

In sum, all of the successful criminal prosecutions we encountered start with the premise that the joint account was owned by the depositor. That premise is consistent with both the UPC's net contribution rule and the convenience account doctrine, which have always treated single-depositor joint accounts as owned entirely of the sole depositor.

III. EVOLVING BANK PRACTICES: THE ROLE OF FORMS

The volume of case law suggests strongly that many depositors open joint accounts with an inadequate understanding of the risks associated with their actions. In some cases, the depositor may understand the legal consequences of opening a joint account but may underestimate the risks of insolvency or disloyalty of the joint accountholder. It appears, however, that in many cases neither the depositor nor the joint accountholder fully understands the legal landscape surrounding joint accounts. The Uniform Multiple-Persons Accounts Act, later incorporated into the Uniform Probate Code, attempted to address this problem by incorporating forms designed to clarify the rights associated with each account.[257] The disclosure-based approach may have been doomed from its inception, but changes in bank practices have eliminated meaningful disclosure.

A. The Form-Based Approach

Section 6-204 of the Uniform Probate Code includes a "Uniform Single- or Multiple-Party Account Form" that includes nine separate checkboxes.[258] Under a heading entitled "Ownership," the depositor is first to select from a single-party account or a multiple-party account.[259] Then, under a heading entitled "Rights at Death," the depositor is to select from five separate choices: single-party account, single-party account with POD designation, multiple-party account with right of survivorship, multiple-party account with right of survivorship and POD designation, and multiple-party account without right of survivorship.[260] Finally, the form includes an optional power of attorney designation that gives the depositor who chooses the designation the choice between a designation that survives disability or incapacity and one that terminates upon disability or incapacity.[261]

Despite the plethora of choices the form offers a depositor, it provides no options for the rights of joint accountholders while they are all still alive. If a depositor elects a multiple-party account, the form provides: "[p]arties own account in proportion to net contributions unless there is clear and convincing

257. UNIF. MULTIPLE-PERSON ACCTS. ACT § 4 (UNIF. L. COMM'N 1998); UNIF. PROB. CODE §§ 6-201 to -227 (UNIF. L. COMM'N 2019).

258. UNIF. PROB. CODE § 6-204.

259. *Id.*

260. *Id.*

261. *Id.*

evidence of a different intent."[262] The form provides no option for creating the rights incident to a common law "joint tenancy," or for electing to treat the deposit as a gift of all or part of the account assets. Nor is there any explanation of the rights creditors might have against account assets. Survivorship rights, not lifetime rights, are the form's primary concern.

If a contract of deposit adheres to the statutory form, the UPC provides that it is governed by the statute's provisions "applicable to an account of that type."[263] During the lifetime of the depositors, that means principally that the net contribution rule applies.[264] But section 6-204 does not mandate that banks use the statutory form when offering joint accounts to depositors; banks can elect other forms, in which event the contract of deposit is "governed by the provisions of this [part] applicable to the type of account that most nearly conforms to the depositor's intent."[265]

As a directive to courts confronting disputes between accountholders, the UPC's form-based approach has one advantage: it avoids the need to determine whether the account was a convenience account; the court can point to the deposit agreement's "net contribution" language and charge other accountholders with knowledge that only the depositor has a right to the funds.

As a tool for ensuring that depositors understand what rights they retain and what rights they relinquish, the UPC's form is more problematic. First, the "in proportion to net contributions" language may provide reasonable guidance to lawyers and judges, but it is more doubtful that those five words communicate to ordinary depositors the entire gamut of rights and liabilities attendant to a joint account. Second, in many cases the depositor creates the joint account because he or she is particularly incapable of handling his financial affairs and is likely to fill out the form as directed by the joint accountholder or with the counsel of a bank officer. Third, many states that have adopted the UPC's net contribution rule have not enacted the statutory form provision.

B. Evolving Bank Practices

Even in states that have not enacted any statutory form for joint accounts, courts have often looked to the signature card signed by the accountholders as evidence of their intent. Most often, courts have examined signature cards to determine whether the accountholders contemplated survivorship rights, but sometimes courts have invoked those cards as evidence of the parties' intent with respect to inter vivos rights. For instance, in *Mack v. Mack*, the court denied a mother's right to recover funds her daughter had withdrawn from a joint account they had held for a quarter century, emphasizing that when they

262. *Id.*

263. *Id.*

264. *Id.* § 6-211(b).

265. *Id.* § 6-204(b) (alteration in original).

opened the account the parties "executed signature cards that allowed each of them to withdraw funds from the account and prescribed no restriction on the subsequent use of the funds."[266]

Whatever the merits of using signature cards as evidence of the parties' intent, hard copy signature cards are becoming less common in an era of online banking. Often, banks permit parties to open joint accounts without any education about the rights of the depositors.

In an effort to understand what information banks provide depositors seeking to open a joint account, we sent testers to six banks in three different states: New York, a joint tenancy state; Minnesota, a net contribution state; and Connecticut, a state in which statutes do not expressly embrace either approach. The banks we selected range in size from J.P. Morgan Chase to regional banks.[267] In each case, we instructed the depositors to ask whether all joint accounts are the same, or whether there are differences among them. We also instructed the depositors to ask for copies of any forms they were asked to sign, and if they were not asked to sign forms, to ask for copies of any depositor agreements governing the account.[268]

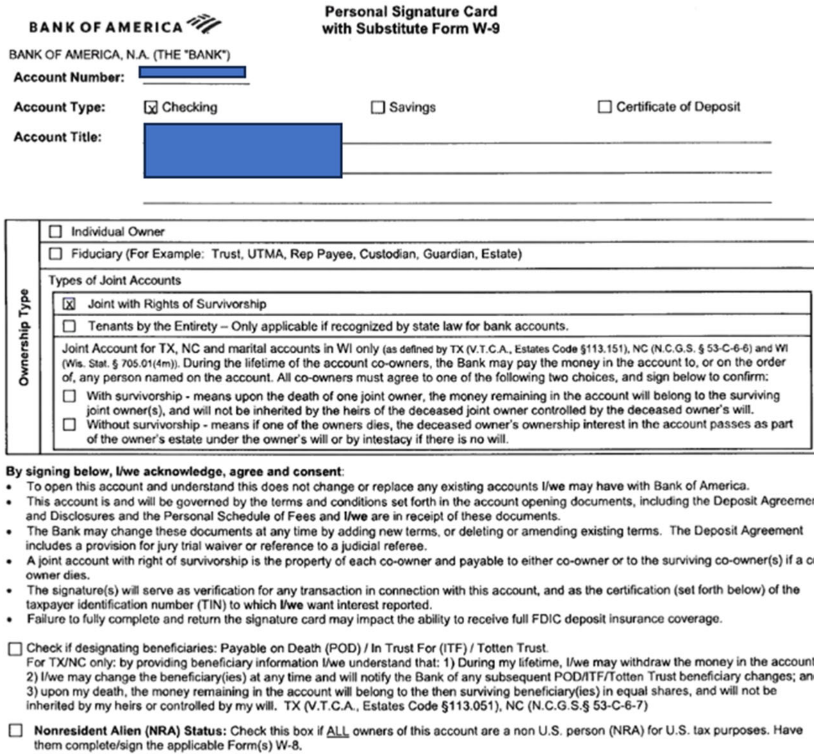
Each bank required the testers to sign a document—most likely the online equivalent of a signature card—on a computer screen. Two banks provided the testers with copies of the electronically signed document; the other four did not, with some explaining that the documents were for internal bank use only. Of the signed documents returned to the testers, one included a box with "Joint with Rights of Survivorship" checked off (Figure 1, below); there was no other box available for depositors within the state.

266. Mack v. Mack, No. 4240-VCN, 2015 WL 1607797, at *1, *4 (Del. Ch. Mar. 31, 2015).

267. The banks were J.P. Morgan Chase, Bank of America, Republic Bank, and TD Bank in New York, Bremer Bank in Minnesota, and Newtown Savings Bank in Connecticut.

268. Reid K. Weisbord & Stewart E. Sterk, Tester Depositor Written Instructions (on file with the *Iowa Law Review*).

Figure 1. Bank of America Signature Card



BANK OF AMERICA

Personal Signature Card with Substitute Form W-9

BANK OF AMERICA, N.A. (THE "BANK")

Account Number:

Account Type: ☒ Checking ☐ Savings ☐ Certificate of Deposit

Account Title:

Ownership Type

☐ Individual Owner

☐ Fiduciary (For Example: Trust, UTMA, Rep Payee, Custodian, Guardian, Estate)

Types of Joint Accounts

☒ Joint with Rights of Survivorship

☐ Tenants by the Entirety – Only applicable if recognized by state law for bank accounts.

Joint Account for TX, NC and marital accounts in WI only (as defined by TX (V.T.C.A., Estates Code §113.151), NC (N.C.G.S. § 53-C-6-6) and WI (Wis. Stat. § 705.01(4m)). During the lifetime of the account co-owners, the Bank may pay the money in the account to, or on the order of, any person named on the account. All co-owners must agree to one of the following two choices, and sign below to confirm:

☐ With survivorship - means upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owner(s), and will not be inherited by the heirs of the deceased joint owner controlled by the deceased owner's will.

☐ Without survivorship - means if one of the owners dies, the deceased owner's ownership interest in the account passes as part of the owner's estate under the owner's will or by intestacy if there is no will.

By signing below, I/we acknowledge, agree and consent:

- To open this account and understand this does not change or replace any existing accounts **I/we** may have with Bank of America.
- This account is and will be governed by the terms and conditions set forth in the account opening documents, including the Deposit Agreement and Disclosures and the Personal Schedule of Fees and **I/we** are in receipt of these documents.
- The Bank may change these documents at any time by adding new terms, or deleting or amending existing terms. The Deposit Agreement includes a provision for jury trial waiver or reference to a judicial referee.
- A joint account with right of survivorship is the property of each co-owner and payable to either co-owner or to the surviving co-owner(s) if a co-owner dies.
- The signature(s) will serve as verification for any transaction in connection with this account, and as the certification (set forth below) of the taxpayer identification number (TIN) to which **I/we** want interest reported.
- Failure to fully complete and return the signature card may impact the ability to receive full FDIC deposit insurance coverage.

☐ Check if designating beneficiaries: Payable on Death (POD) / In Trust For (ITF) / Totten Trust.
For TX/NC only: by providing beneficiary information I/we understand that: 1) During my lifetime, I/we may withdraw the money in the account; 2) I/we may change the beneficiary(ies) at any time and will notify the Bank of any subsequent POD/ITF/Totten Trust beneficiary changes; and 3) upon my death, the money remaining in the account will belong to the then surviving beneficiary(ies) in equal shares, and will not be inherited by my heirs or controlled by my will. TX (V.T.C.A., Estates Code §113.051), NC (N.C.G.S.§ 53-C-6-7)

☐ **Nonresident Alien (NRA) Status:** Check this box if ALL owners of this account are a non U.S. person (NRA) for U.S. tax purposes. Have them complete/sign the applicable Form(s) W-8.

The second (Figure 2, below) merely specified that the account was "joint or 2 owners" without any explanation about what that meant.

Figure 2. TD Bank Signature Card

TD Bank

America's Most Convenient Bank®

NEW PERSONAL ACCOUNT

REGION: NYC Metro/Long Island (12) STORE RC: 5411 ACCOUNT NUMBER:

TYPE OF ACCOUNT: TD Convenience Checking TYPE CODE: 630

DATE OPENED: 03/04/2024 OPENED BY:

ACCOUNT TITLING / MAILING ADDRESS:

ACCOUNT RELATIONSHIP:
JOINT_OR_2_OWNERS

CUSTOMER # 1:

IDENTIFICATION (Describe below): PRIMARY

ID Type #1: STATE ISSUED ID W/PHOTO AND SIGNATURE

State/Country of Issuance:

ID Type #2:

State/Country of Issuance:

Number:

Expiration Date:

Verification:

LEGAL ADDRESS (No PO Boxes):

03-04-2024 02:33:35 EST

SIGNATURE DATE

CUSTOMER # 2:

IDENTIFICATION (Describe below): PRIMARY

ID Type #1: STATE DRIVERS LICENSE W/PHOTO AND SIGNATURE

State/Country of Issuance:

ID Type #2:

State/Country of Issuance:

Number:

Expiration Date:

Verification:

LEGAL ADDRESS (No PO Boxes):

03-04-2024 02:32:25 EST

SIGNATURE DATE

None of the banks appears to have provided the depositors with a menu of choices resembling those described in UPC section 6-204.

The four banks that did not provide depositors with a copy of an electronically signed document instead provided an unsigned "deposit agreement" or "terms of agreement" after the account was established. Two of those four agreements listed "joint account with rights of survivorship" and "joint account without right of survivorship" as possible joint accounts, but neither agreement indicated which one the testers had established. The other two either explicitly indicated that the account created a joint tenancy with the right of survivorship, or provided that an account in two or more names would be deemed to be a joint account with right of survivorship.

None of the documents provided to testers after the fact provided any explanation of the rights of the depositors with respect to each other, except to indicate that either had the right to withdraw funds. Of the four deposit agreements provided to the testers after the fact, one (Figure 3, below) indicated (on page six of the twenty-six-page agreement) that the bank "may . . . pay" funds pursuant to a garnishment order; that agreement and one other provided explicitly that the bank has a right to use the funds in the account to pay off debts to the bank incurred by any of the accountholders.

Figure 3. Chase Deposit Account Agreement

II. Opening Your Account

A. Personal Accounts

THE TYPE OF ACCOUNT OWNERSHIP MAY DETERMINE HOW YOUR FUNDS ARE PAID IF YOU DIE, EVEN IF YOUR WILL STATES OTHERWISE. PLEASE CONSULT YOUR ESTATE PLANNING ADVISOR OR ATTORNEY ABOUT YOUR CHOICES.

If your account is a type listed under "Personal Accounts" in our product information, you agree not to use it for business purposes. Ownership of your account is determined by the most current signature card. However, we are authorized to rely on the account ownership information contained in our deposit system unless we are notified that the most current signature card and the deposit system contain different information.

1. Solely owned account

When only one individual is listed as the owner of an account, we will treat the account as a solely owned account.

2. Joint accounts

When two or more people are listed as owners of a personal account, the account is a "joint account" and each owner is a "joint owner."

Each joint owner has complete control over all of the funds in the account.

DEPOSIT ACCOUNT AGREEMENT
JPMorgan Chase Bank, N.A. Member FDIC — Page 5 of 26
© 2023 JPMorgan Chase & Co. — Return to Table of Contents — Effective 10/15/2023

If your joint account becomes overdrawn, each joint owner is liable for the full amount the account is overdrawn, regardless of who initiated or benefited from the activity that caused the overdraft.

If one joint owner requests that we not pay transactions initiated by a different joint owner, we may block the account, but we are not required to do so. That means we will refuse to pay all transactions, including transactions initiated by the owner making the request. If we block the account, we may not release the block unless all joint owners agree in writing to remove it. No request to block the account will affect transactions that we paid before the request. If we decide not to block the account, all joint owners remain responsible for transactions subtracted from the account.

Any joint owner may close the account without the consent from any other joint owners. We may choose whether or not to act upon other instructions of any joint owners, including adding another owner to the account, without the authorization of the other joint owners. We may also pay all or any part of the funds in the joint account to a court or government agency if we receive a garnishment, levy or similar legal process that identifies any of the joint owners.

Joint account with rights of survivorship

If a joint account has rights of survivorship, and one joint owner dies, the account ownership will be transferred to the surviving joint owners. The estate of the deceased owner will have no rights to the account. If there is more than one surviving joint owner, the account will continue as a joint account with rights of survivorship among the remaining owners. If an account is designated "JAWROS" or "JTWROS," it has rights of survivorship.

Joint account with no right of survivorship (also called "tenants in common")

If a joint account does not have rights of survivorship, and one joint owner dies, that owner's interest passes to the owner's estate. Either the surviving joint owners or the deceased owner's estate may withdraw the funds at any time, and we have no responsibility for determining the respective interests of the owners. If an account is designated "Tenants in common" or "JTIC," it does not have rights of survivorship.

When survivorship rights apply

Except as otherwise stated in this paragraph, a joint account has rights of survivorship unless you clearly indicate on the signature card and in the account title that the account is created without these rights. Accounts in Louisiana do not have rights of survivorship. Accounts in Texas do not have rights of survivorship unless you clearly indicate on the signature card and in the account title that the account is created with these rights.

If a joint account also contains a "payable on death" or "in trust for" designation, the account always includes a right of survivorship and is payable to the beneficiary only upon the death of the last surviving owner, except as stated in the paragraph below.

Marital account (Wisconsin only)

If one owner of a marital account dies, the survivor is entitled to 50% of the account funds and the estate of the deceased is entitled to the other 50%. If a marital account contains a payable on death designation, the POD beneficiary is entitled to the deceased spouse's 50% share. However, we have no responsibility to determine the respective interests of the owner and the POD beneficiary.

Tenants by the entirety (Florida only)

A Florida joint account owned solely by two spouses is a "tenants by the entirety" account unless the signature card indicates otherwise. We are not required to determine whether an account is a tenants by the entirety account before responding to a garnishment or other legal process. We may assert our right of setoff or security interest in a tenants by the entirety account in order to collect debts of either owner.

3. "Payable on death" account

If you establish your account payable on death to one or more beneficiaries, the account is a "POD" account. If we receive proof you've died, we will pay the balance of the account to the beneficiary or beneficiaries you designated. Multiple beneficiaries will be paid in equal shares unless the signature card provides otherwise. We do not offer POD accounts in all states.

4. "In trust for" (informal trust) account

If you establish your account as in trust for ("ITF") or as trustee for one or more beneficiaries without presenting formal trust documents, we may treat the account as an "ITF" account. If we receive proof you've died, we will pay the balance of the account to the beneficiary or beneficiaries you designated. Multiple beneficiaries will be paid in equal shares unless the signature card provides otherwise. We do not offer ITF accounts in all states.

5. Convenience account

If you have a convenience account, you are its sole owner, but you authorize an additional signer to write checks or authorize other transactions. You are solely responsible for the actions of the additional signer (legacy accounts only).

6. Power of attorney

A power of attorney is a document you sign that authorizes someone else, called the agent, to act on your behalf. If you sign a power of attorney, the agent can sign on your behalf and do anything you could do regarding the account, including withdrawing or spending all of the money in the account. Do not sign a power of attorney unless you trust the agent to act in your best interest. If you choose to add an agent, you must provide a power of attorney form that we agree to accept. We may rely on a copy of an original power of attorney. We are not required to investigate the facts relating to any power of attorney provided to us on your behalf, including whether your signature on the power of attorney is authentic or whether the agent continues to have authority. We may follow or refuse to follow the agent's instructions at any time, including if we suspect fraud or abuse on your account, unless state law requires otherwise. We may also refuse an agent's request to become a joint owner or a beneficiary of an account, but we have no liability to anyone if we do so. We have no liability when we follow or refuse to follow any instructions from an agent, for

Another deposit agreement (Figure 4, below) provided that "if more than one (1) person opens an Account, each of you must complete and sign our

signature card to record the owners of, and authorized signors for, your Account." The agreement goes on to provide that any of the parties may withdraw amounts deposited by any of the parties, but does not indicate what rights the parties have with respect to each other. Indeed, the agreement explicitly provides that the depositors bear the "responsibility to determine the legal effect of opening and maintaining an Account of this nature."

Figure 4. Newtown Savings Bank Consumer Deposit Account Agreement

B. Signature Card Completion. A signature card will be prepared and kept on file for each Account you open with us. You must sign our signature card when you open your Account and if more than one (1) person opens an Account, each of you must complete and sign our signature card to record the owners of, and authorized signers for, your Account. Each owner of an Account shall have a continuing obligation to provide any other documentation we may request from time to time.

V. ACCOUNT OWNERSHIP

A. Individual Accounts. An Individual Account is an Account in the name of one Consumer only. Only that person may write checks against the Account or withdraw money from the Account.

B. Joint Accounts, Trust Accounts, Custodial Accounts. You acknowledge that if your Account is set up as a joint account, trust account, or custodial account, it is your responsibility to determine the legal effect of opening and maintaining an Account of this nature.

C. Joint Accounts with Right of Survivorship. An Account in the names of two or more individuals will be deemed a joint account with right of survivorship as defined in Section 36a-290 of the Connecticut General Statutes or the successors to that statute. This means that each of you is making this agreement with each other and with us. Each of you agrees that all amounts deposited by any of you, as well as any Interest or bonus payment earned, can be paid to or withdrawn by any one or more of you while you are all alive. After the death of any one of you, we can pay any money in the Account to and allow withdrawals by any one of you who is then alive. Each of you gives to any of the others authority to deposit to the Account any check payable to any or all of you. For certain checks, such as a check payable by the government, we may require all persons to whom the check is payable to endorse the check for deposit. We have the right to limit the number of owners on any Account. If we honor a check, which was signed by any one of you, and this causes an overdraft, each of you is liable for the overdraft, whether or not you signed the check or benefited from its proceeds. Each joint owner is jointly and severally liable to us for all fees, charges and other amounts owed to us under this Agreement and in relation to your Account.

At another bank, after questioning by testers, the representative indicated that the account would be subject to claims by creditors of either depositor, but the representative also indicated that not many depositors inquired about that issue. No bank inquired about the source of the deposited funds.

J.P. Morgan Chase's deposit agreement, provided to our testers, illustrates how ambiguous banks can be about lifetime ownership rights.[269] The agreement provides that "[e]ach joint owner has complete control over all of the funds in the account," but then provides that "if one joint owner requests that we not pay transactions initiated by a different joint owner, we may block the account, but we are not required to do so." The agreement goes on to provide that "[i]f we decide not to block the account, all joint owners remain responsible for transactions subtracted from the account," a statement that appears at odds with the notion that each joint owner has complete control. Finally, the agreement provides that "[w]e *may* also pay all or any part of the funds in the

269. JPMORGAN CHASE BANK, DEPOSIT ACCOUNT AGREEMENT AND PRIVACY NOTICE 5–6 (2023) (on file with the *Iowa Law Review*).

joint account to a court or government agency if we receive a garnishment, levy or similar legal process that identifies any of the joint owners."[270] The primary concern of this agreement is insulating the bank from liability, not clarifying the lifetime ownership rights of depositors.

In sum, our research indicates that bank practices do little to inform potential depositors about the rights incident to joint bank accounts.[271] When banks do provide written disclosures to depositors, they are deficient in several ways. First, they are not provided to depositors until after the account has been opened, when depositors are unlikely to focus on paperwork. Second, they virtually never advise depositors about their rights against each other, and only sometimes advise depositors about creditor rights. Third, the disclosures are so laden with boilerplate that only the most fastidious depositors are likely to find relevant paragraphs. And, of course, some banks appear to provide no written disclosures at all.

Bank employees are not any more helpful. In many cases, they themselves do not appear to understand the rights associated with joint accounts. As a result, attempting to infer the intent of depositors from an examination of bank records or bank practices is futile. Depositors who open joint accounts are largely flying blind.

IV. POLICY IMPLICATIONS

A. *RECAPPING THE BASIC PROBLEMS: INTENT AND ADMINISTRABILITY*

Both the joint tenancy approach and the net contribution approach purport to effectuate the parties' intent regarding the bank account. Neither is well designed to accomplish that objective, and both raise significant issues of administrability.

1. Intent

No one opens a joint bank account with the expectation that courts will total up deposits and withdrawals to determine the respective parties' net contributions, which is what the net contribution approach theoretically demands. And no one opens a joint account with the intent to make a gift of precisely half of the funds, which is what some courts adopting the joint tenancy approach seem to assume. Rather, people typically open joint accounts for one of two reasons.

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270. *Id.* (emphasis added).

271. *Estate of Manley*, No. 05-24-00043-CV, 2025 WL 2262403 (Tex. App. Aug. 7, 2025), illustrates the difficulty of determining what information institutional representatives provide to their clients. In *Manley*, the issue was whether a married couple created an account that would pass to the survivor upon the death of the first to die. *Id.* at *10–11. The brokerage house's form indicated that the account was to be held by the couple "JTWROS," but there was no indication that the couple knew what those letters meant and the brokerage house's representative could not recall the details of how the form was completed twenty years earlier. *Id.* at *2. The court nevertheless upheld a jury verdict establishing that the account was a survivorship account. *Id.* at *16–17.

First, the principal depositor might intend to use the account for convenience by allowing someone else to do his or her banking. But a depositor could achieve that same objective with a limited power of attorney—one designed to give the named attorney-in-fact signing power over the depositor's bank account. And if the depositor wanted to add a survivorship provision, that could be accomplished using a POD designation—an alternative not widely recognized when joint accounts were initially conceptualized.[272] So, for this kind of depositor, a joint account is completely unnecessary.

Second, married depositors often intend a true merger of their interests in the account, with each consenting to the other's use of the account funds. In effect, such parties view ownership of the account as communal, based on mutual trust rather than as an arrangement that would necessitate imposing legal constraints on each other's banking transactions. If one spouse were to breach the marital trust, divorce proceedings, with their attendant division of the parties' assets, provide a backstop for the injured spouse—a backstop not generally available to unmarried cohabiting couples.[273] There are good reasons for spouses to retain a significant degree of financial independence, but joint bank accounts remain a useful tool for married couples. Unfortunately, neither prevailing approach reflects the parties' most likely expectations because neither the joint tenancy approach nor the net contribution rule treats bank accounts as communally owned during marriage.

Less commonly, parties outside of a marriage or committed partnership may choose to open a joint account to pool resources for a business venture or for cost-sharing purposes among roommates.[274] But superior banking alternatives are more suitable for those purposes. When pooling resources for a business venture, for instance, parties could easily create a separate entity such as a limited liability company ("LLC") to accomplish the same banking objective without the uncertainty of ownership rights that accompany joint accounts.[275] And for cohabitating individuals seeking to simplify payment of

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272. *See* Langbein, *supra* note 9, at 1128 (noting that courts persistently invalidated POD accounts until statutes validated them).

273. *See* Barbara Bennett Woodhouse & Katharine T. Bartlett, *Sex, Lies, and Dissipation: The Discourse of Fault in a No-Fault Era*, 82 GEO. L.J. 2525, 2533–34 (1994) (noting that, upon divorce, economic fault in the form of misuse of assets often figures as a factor in equitable redistribution of assets). Unmarried but committed partners may also intend a true merger of interests in a joint bank account, but in most states, they lack the legal protections regarding property division enjoyed by married spouses in a divorce proceeding. *See* E. Gary Spitko, *Integrated Nonmarital Property Rights*, 75 SMU L. REV. 151, 155 (2022) (contrasting "[s]tate law[s] governing the property rights of unlicensed nonmarital cohabitants during the joint lives of the partners").

274. *See, e.g.*, Trustmark Nat'l Bank v. Sunshine Carwash No. 5 Partners, 558 S.W.3d 157, 158–59 (Tenn. Ct. App. 2018) (parties establish joint account for business reasons).

275. *See* John M. Cunningham, *What LLC Lawyers Should Know About Forms—Ten Questions and Answers (Part 4 General Purpose Form 6.1)*, 36 PRAC. TAX LAW. 22, 52 (2022). LLCs are among the most popular legal entity forms for the operation of a business. *How Many LLCs Are Formed Each Year in the United States?*, SMALLBIZSTATISTICS (Nov. 2025), https://smallbizstatistics.com/statistics/how-many-llcs-formed-per-year [https://perma.cc/SA5D-EZ55].

shared household expenses such as rent and utilities, modern payment systems like Venmo and Zelle allow parties to instantaneously transfer funds to a single payee.[276] Joint bank accounts, if they were ever helpful for that purpose, are now completely unnecessary.

2. Administrability

Because both prevailing approaches are default rules that yield to contrary evidence of the parties' actual intent, joint accounts generate considerable litigation. In a net contribution regime, parties may litigate, or threaten litigation, over the source of contributions to the account.[277] They may also disagree about the depositors' original intent and offer competing evidence to prove whether or not the net contribution default should apply.[278] Within a joint tenancy regime, litigation arises over whether the account was established for convenience,[279] and, in those jurisdictions that presume a lifetime gift of fifty percent of the account proceeds, parties litigate whether the withdrawals exceeded that percentage.[280] Only a regime that eliminates liability for withdrawals would avoid these administrative costs.

The optimal framework, then, would be one in which depositors create joint accounts only when they expect to have no legal recourse against each other for allegedly wrongful withdrawals. For reasons discussed above, such an expectation of no legal recourse tends to arise almost exclusively within the marital relationship.[281] For depositors without that expectation, mechanisms other than the joint account—particularly a power of attorney—are better suited to their objectives. Existing law, however, permits parties to open joint accounts even when they are unnecessary, potentially intent defeating, and litigation generating.

B. *Crafting Solutions*

Embracing a legal regime that eliminates all claims by one joint accountholder against all others would eliminate administrative costs, but would frustrate the intent of accountholders who establish joint accounts for convenience. In this Part, we consider various alternatives that would reduce administrative costs without frustrating the intent of depositors.

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276. For a discussion of Venmo, Zelle, and other peer-to-peer payment systems, together with critical analysis, see Peter Conti-Brown & David A. Wishnick, *Private Markets, Public Options, and the Payment System*, 37 YALE J. ON REGUL. 380, 393–97 (2020).

277. *See, e.g.*, Estate of Cowling v. Estate of Cowling, 847 N.E.2d 405, 408–09 (Ohio 2006).

278. *See, e.g.*, Shourek v. Stirling, 621 N.E.2d 1107, 1109–10 (Ind. 1993).

279. *See, e.g.*, Kai Hong Hom v. Hom, 955 N.Y.S.2d 630, 632 (App. Div. 2012).

280. *See, e.g.*, Estate of Lewis v. Rosebrook, 941 N.W.2d 74, 87 (Mich. Ct. App. 2019).

281. *Cf.* Estate of Manley, No. 05-24-00043-cv, 2025 WL 2262403, at *8 (Tex. App. 2025) (noting that with respect to survivorship agreements, requirements are less restrictive with respect to spouses than non-spouses "because agreements between spouses are less vulnerable to fraud").

1. Addressing the Inadequacy of Bank Disclosures

If potential accountholders understood the advantages of powers of attorney and the risks associated with joint accounts, the traditional convenience joint account we described above would likely disappear. One approach, then, would be to require disclosure to depositors who open joint accounts about the rights and liabilities they have with respect to each other and third parties. For several reasons, however, a disclosure regime is unlikely to be an effective deterrent to misguided creation of joint accounts.[282]

First, the most effective disclosure would probably be a detailed explanation provided by the banker supervising the joint account's origination. But requiring that face-to-face oral explanation presents two insuperable problems. First, most bank clerks have neither the requisite knowledge nor the incentive to provide adequate guidance. Second, without a contemporaneous writing to memorialize what the banker said during the onboarding process, disputes are likely to challenge the adequacy of the bank's disclosure in litigation conducted long after memories of the original conversation have faded.

Written disclosure would surmount the evidentiary problem, but would present other difficulties. First, depositors are unlikely to read written disclosures included in a deposit agreement laden with boilerplate.[283] Scholars have long recognized that consumer ignorance of terms recited in standard-form contracts is entirely rational because the cost of reading and considering each term is high, although many of those terms deal with improbable contingencies.[284]

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282. In 2018, New York enacted legislation that tried such an approach:

> The superintendent shall conduct a public awareness campaign to educate consumers on different banking services available in the state, particularly those that can assist vulnerable adults in financial planning, including, but not limited to, citizens of an advanced age, individuals with cognitive or developmental disabilities, or those who have health or physical issues that impair their financial independence. The public awareness campaign shall include information regarding the differences between types of accounts, including joint and convenience accounts, as well as the rights and responsibilities generally recognized for each. The public awareness campaign shall also include, but not be limited to, answers to general concerns and questions that individuals may have with respect to the establishment of certain types of accounts and services, as well as information and recommendations for obtaining more information.

N.Y. BANKING LAW § 679 (McKinney 2020). It appears, however, that the campaign had little if any impact.

283. *See* Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 STAN. L. REV. 545, 546–47 (2014).

284. *See* Avery Katz, *Your Terms or Mine? The Duty to Read the Fine Print in Contracts*, 21 RAND J. ECON. 518, 520 (1990) (noting that signing form contracts without knowing or understanding their terms "is individually rational, since the cost of reading and considering each term is high, and many of the terms deal with improbable contingencies"); Omri Ben-Shahar, *The Myth of the 'Opportunity to Read' in Contract Law*, 5 EUR. REV. CONT. L. 1, 15 (2009) ("Spending effort to read and to process what's in the contract boilerplate would be one of the more striking examples of consumer irrationality and obsessive behavior."). For debates about how to deal with boilerplate, compare MARGARET JANE RADIN, BOILERPLATE: THE FINE PRINT, VANISHING RIGHTS, AND THE RULE

Second, as illustrated by the experience of our testers, current banking practices typically call for depositors to sign deposit agreements on a computer screen before the bank provides an opportunity for depositors to review the agreement.[285] The practice is akin to the problem presented by shrink-wrap licenses in which users cannot learn the contract terms until after purchasing the software, and where a consumer would be likely to open the package even if unaware of the license.[286] In the banking context, depositors are even less likely to focus on the terms of a deposit agreement after signing the unseen agreement during the onboarding process and opening the account.

i. Additional Formalities

Although disclosure alone is unlikely to focus depositor attention on the consequences of opening a joint bank account, requiring additional formalities might be more promising. Consumers and banks generally have reasons to prefer a smooth and seamless process for opening accounts, but a modicum of friction might be warranted when depositors propose to open accounts with the potential to generate unfortunate and unanticipated consequences. Formalities serve a number of functions in the law of wills—among them the "cautionary" or "ritual" function designed to ensure that a testator takes the will seriously and executes it only after careful reflection.[287] As Professor John Langbein has put it, "[t]hey caution the testator, and they show the court that he was cautioned."[288] Formalities might serve a similar function with respect to opening joint accounts. Imagine if opening a joint account outside of marriage required the signatures of two witnesses who attest before a notary that the depositors have been informed that creditors of either depositor may reach the entire account, and that if either depositor withdraws the entire amount, the other depositor has no recourse against the other depositor or the bank. In that environment, depositors who open joint accounts knowingly assume the risk associated with those accounts.

There is no magic to any particular set of formalities, but formalities that impress on depositors the serious consequences of establishing a joint account would reduce the volume of disputes over ownership, in large measure by

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OF LAW 154–66 (2013), with Randy E. Barnett, *Consenting to Form Contracts*, 71 FORDHAM L. REV. 627, 634–36 (2002). For a summary of the positions, see Sterk, *supra* note 23, at 253–59.

285. *See supra* Section II.B.

286. *See* Mark A. Lemley, *Terms of Use*, 91 MINN. L. REV. 459, 467–68 (2006).

287. For the classic article identifying the functions of wills formalities, see Ashbel G. Gulliver & Catherine J. Tilson, *Classification of Gratuitous Transfers*, 51 YALE L.J. 1, 5 (1941) (identifying the "ritual function," along with evidentiary and protection functions). As John Langbein has explained, using the term "cautionary" rather than "ritual," the cautionary function "is to impress the testator with the seriousness of the testament, and thereby to assure the court 'that the statements of the transferor were deliberately intended to effectuate a transfer.'" John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489, 495 (1975) (quoting Gulliver & Tilson, *supra*, at 5).

288. Langbein, *supra* note 287, at 495.

reducing the number of joint accounts. Not only would fewer depositors be ready to assume the risks associated with joint accounts, but banks would likely discourage creation of those accounts because of the administrative burden in establishing them. That result would be excellent, because in almost all nonmarital situations, depositors would be better served by more suitable alternatives.

2. Voluntary Action by Banks

Even in the absence of legal formalities that increase the friction associated with opening joint accounts, banks could voluntarily decide to prohibit creation of joint accounts outside of marriage. Current law imposes no affirmative requirement on banks to provide depositors with a joint account option. A voluntary ban on joint accounts outside of marriage would not imperil the profitability of banks, most of which do not generate significant additional fees from or aggressively market their joint account products. Banks, in turn, could offer suitable alternatives, such as a limited power of attorney account for depositors seeking the convenience of an agency delegation, a POD account for depositors seeking to avoid the probate process, or a combination of the two options.

Such voluntary action is unlikely, however, because banks appear to have little incentive to improve upon their joint account banking products. One reason is that most consumers are not knowledgeable enough about joint bank account laws to generate demand for banks to change their product offerings. Another reason is that the typical deposit agreement insulates the bank from liability to joint accountholders for payments made to any of the accountholders.[289] Some of the deposit agreements explicitly insulate the bank from liability for paying creditors of one accountholder when served with a garnishment order.[290] Banks therefore have little reason to voluntarily counsel depositors against opening joint accounts.

3. Incentivizing Banks to Avoid Joint Accounts

If banks prove unwilling to voluntarily restrict joint accounts to married depositors, lawmakers could catalyze reform by imposing liability on banks for losses suffered when a joint accountholder withdraws funds that belong to another accountholder. We view the objective of a liability rule to be a form of deterrence, not compensation. If banks lost the immunity conferred by the current safe harbor for joint accounts maintained by unmarried accountholders, then they would almost certainly abstain from offering joint accounts outside of marriage and channel any customer seeking an agency delegation to individual accounts giving a designated agent a limited power of attorney.

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289. *See, e.g.*, BREMER BANK, PERSONAL ACCOUNT AGREEMENT 4–5 (2024) (on file with the *Iowa Law Review*).

290. *See, e.g.*, JPMORGAN CHASE BANK, *supra* note 269, at 6, 24.

Liability could be based on the net contribution model (e.g., amounts withdrawn that exceed the withdrawing accountholder's net contribution), the joint tenancy approach (e.g., amounts withdrawn that exceed one half of sums on deposit), or a maximalist approach (e.g., liability imposed for any contested withdrawal). Because the objective is not to compensate aggrieved depositors, but rather to discourage banks from offering nonmarital joint accounts at all, the measure of damages is of secondary importance. If banks could avoid liability by steering depositors to limited power of attorney accounts, even trivial potential liability should provide adequate deterrence.

The challenge, however, would be developing a sound and administrable theory of liability. Courts are reluctant to impose tort liability on parties who have entered into a contract that outlines their respective rights and liabilities.[291] Even if courts were willing to invoke public policy or unconscionability to invalidate deposit agreement provisions insulating banks from liability, invalidating those provisions would not necessarily establish an affirmative basis for bank liability.[292] In all likelihood, legislation would be necessary to impose liability as an incentive to limit joint accounts to married couples.

4. Statutory Limitations on Joint Accounts

If legislation would be necessary to deter banks from creating joint accounts outside of marriage, a reasonable case can be made for going a step further and enacting an outright prohibition. Because banks would respond to potential liability by making joint accounts unavailable, the consequences of a statutory prohibition would be equivalent to those associated with a liability rule.

The legislation need not be radical. In form, it could resemble UPC section 6-204[293] in giving depositors a menu of options for creating accounts, but improve upon the UPC's statutory model form in three respects. First, the revised form could expressly restrict multiple-party accounts to married couples. Second, the revised form could explain that either spouse can withdraw all or part of the funds without incurring liability to the other spouse. Third, the revised form could be mandatory rather than optional, as currently designated by the UPC.[294] A bank's failure to use the statutory form would vitiate the

291. RESTATEMENT (THIRD) OF TORTS: LIAB. FOR ECON. HARM § 3 (AM. L. INST. 2025) provides that "[e]xcept as provided elsewhere in this Restatement, there is no liability in tort for economic loss caused by negligence in the performance or negotiation of a contract between the parties." Comment b explains that "the rule protects the bargain the parties have made against disruption by a tort suit." *Id.* § 3 cmt. b.

292. *Cf.* Mark P. Gergen, *Negligent Misrepresentation as Contract*, 101 CALIF. L. REV. 953, 966 (2013) (describing the history of negligent misrepresentation and proposing a theory of liability under contract law).

293. UPC section 6-204 includes a statutory model form single and multiparty accounts. UNIF. PROB. CODE § 6-204(a) (UNIF. L. COMM'N 2019).

294. Because section 6-204(a) does not make the form mandatory, section 6-204(b) explains that "[a] contract of deposit that does not contain provisions in substantially the form provided

bank's immunity from liability in suits by an accountholder contending that he or she was unaware of the other depositor's right to withdraw funds from the account.

States could vary the statutory form to reflect policy differences concerning the ownership of property within marriage. As we have already noted, some states allow married couples to create tenancy by the entirety accounts that are insulated from garnishment by nonjoint creditors.[295] The merits of shielding spousal joint accounts from creditor claims while allowing a debtor spouse to withdraw funds that are exempt from garnishment is contestable as a policy matter. Nonetheless, a state that provides such protection for married persons could adopt a mandatory statutory form that prohibits joint accounts outside of the marital relationship without displacing existing tenancy by the entirety policy.

Conclusion

Although they once played an important role in the intergenerational transmission of wealth, joint bank accounts have outlived their usefulness for that purpose, and for nearly all others. The legal regimes that govern joint accounts, while clear in theory, are so murky in practice that they generate litigation that often frustrates depositor intentions while dissipating depositor assets. In the current legal environment, depositors who create joint accounts outside of marriage do so largely out of misplaced trust, out of ignorance of legal consequences, or both.

Bank employees, depositors' primary source of information about the legal consequences attendant to joint accounts, have neither the expertise nor the incentive to provide that information in a form depositors will be able to absorb. The most promising avenues of reform (short of an outright ban on joint accounts outside of marriage) would include increased formalities or liability rules that incentivize banks to limit the availability of joint accounts to the one situation in which they continue to have utility: true communal ownership within a marriage.

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in subsection (a) is governed by the provisions of this [part] applicable to the type of account that most nearly conforms to the depositor's intent." *Id.* § 6-204(b) (alteration in original). The comment to section 6-204 explains, "[a] financial institution that uses the statutory form language in its accounts is protected in acting in reliance on the form of the account." *Id.* § 6-204 cmt.

295. *See supra* Section I.B.1.