I. INTRODUCTION

The Nebraska Probate Code, Nebraska's version of the Uniform Probate Code ("UPC"), became operative on January 1, 1977. Among the various provisions of this Code was Article 27, entitled "Nonprobate Transfers." This Article consisted of two parts: part 1 on "Multiple-Party Accounts" and part 2 on "Provisions Relating To Effect Of Death." Article 27, based on Article VI of the UPC, remained unchanged from 1977 to 1992.

Both this law review and Nebraska Continuing Legal Education Inc. published materials on the two parts of Article 27. In 1976, the Creighton Law Review published the proceedings from a Nebraska Continuing Legal Education seminar on the Nebraska Probate Code. Included therein was an Article that I authored entitled "Multiple-Party Accounts Under The Nebraska Probate Code," dealing with part one of Article 27. In 1979, the Creighton Law Review published an in-depth student comment on part 2 of Article 27, the "provisions relating to effect of death" section. In 1976, Nebraska Continuing Legal Education Inc. published materials on the two parts of Article 27. In 1976, the Creighton Law Review published the proceedings from a Nebraska Continuing Legal Education seminar on the Nebraska Probate Code. Included therein was an Article that I authored entitled "Multiple-Party Accounts Under The Nebraska Probate Code," dealing with part one of Article 27. In 1979, the Creighton Law Review published an in-depth student comment on part 2 of Article 27, the "provisions relating to effect of death" section.

† Professor of Law, Creighton University School of Law. The author gratefully acknowledges support provided by the Creighton University School of Law Faculty Research Fund. For their contributions in the research and production of this Article, the author thanks Nebraska Continuing Legal Education, Inc., West Publishing Company, and the staffs of: the office of Senator David Landis, the office of the Revisor of Statutes, and the Creighton University Law Library.

Legal Education Inc. published the *Nebraska Probate Manual*, which contained sections discussing both parts of Article 27.\(^7\)

Article 27 remained unchanged through 1992. In the fall and winter of 1992, Nebraska Continuing Legal Education began a long-awaited revision of the *Nebraska Probate Manual*. I participated in that revision, authoring the revised “multiple-party accounts” section of the manual.\(^8\) What happened thereafter is the genesis for the present Article.

On May 6, 1993, Governor E. Benjamin Nelson signed into law Legislative Bill 250 (“L.B. 250”).\(^9\) L.B. 250 is a complete revision of Article 27 of Chapter 30 of the Nebraska Probate Code. This revision includes the existing law on multiple-party accounts. Thus, the discussion in the *Nebraska Probate Manual* of multiple-party accounts became obsolete within a few months of its publication.

Nebraska lawyers need to face the reality of the changes in the multiple-party accounts Article of the Nebraska Probate Code and other changes wrought by L.B. 250. The present Article, along with an updating of the *Nebraska Probate Manual*, is my attempt to assist the bench and bar, as well as the public, in understanding and appreciating the changes brought about by the passage of L.B. 250. This Article also will include a review of the existing case law, which is of continuing vitality.

II. LEGISLATIVE BILL 250 AND REVISED ARTICLE VI OF THE UNIFORM PROBATE CODE

Legislative Bill 250 (“L.B. 250”) replaces the current Article 27 provisions, sections 30-2701 to 30-2714, which were repealed. For ease of reference, I will refer to these repealed sections as “Old Article 27.”

The substantive provisions of L.B. 250 will be placed in Article 27 of Chapter 30, with new sections numbers beginning with section 30-2715 and concluding with 30-2746.\(^10\) I will refer to these sections as “New Article 27.”

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\(^7\) *Nebraska Probate Manual* chs. 14 and 15 (Nebraska Continuing Legal Education, Inc. 1976) [hereinafter *Nebraska Probate Manual*].

\(^8\) *Nebraska Probate Manual*, supra note 7, ch. 14 (1993). The individual authors’ names are not associated with the chapters of the manual. For the record, I wrote chapter 14 — “Multiple-Party Accounts.”


\(^10\) By “substantive provisions” of L.B. 250, I am referring to §§ 1 to 31 of the act. Sections 32, 33 and 34 of the act are not substantive: Section 32, the “uniformity section,” is duplicative of Neb. Rev. Stat. § 30-2202(b)(5) (Reissue 1989). Section 33 is the “short title” section authorizing reference to the term “Nebraska Probate Code.” Section 34 is the repealer section.
Old Article 27 was based upon the provisions of Article VI of the Uniform Probate Code ("UPC") as promulgated by the National Conference of Commissioners on Uniform State Laws in 1969. The Nebraska Unicameral made one slight change in the 1969 version of Article VI. However, Nebraska did not adopt a clarifying amendment to Article VI that was added in 1975.

L.B. 250 is based upon the revised Article VI of the UPC that was approved by the National Conference of Commissioners on Uniform State Laws in 1989. In 1991, the National Conference approved two "technical" amendments to revised Article VI, both of which are embodied in L.B. 250. With the passage of L.B. 250 Nebraska becomes the fourth state to enact revised Article VI in its entirety. As will be discussed, the Nebraska Unicameral made only one significant change from the text of revised Article VI in adopting L.B. 250.

The fact that L.B. 250 is a faithful replica of revised Article VI of the UPC is welcome news for anyone doing research on the New Arti-

13. Compare Neb. Rev. Stat. § 30-2706 (Reissue 1989) stating: "Accounts and transfers nontestamentary. Any transfers resulting from the application of section 30-2704 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles 22 to 25 of this code." with Uniform Probate Code § 6-106 (West 4th ed. 1975) stating:
Accounts and transfers nontestamentary. Any transfers resulting from the application of section 6-104 are effective by reason the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles I through IV, except as provided in sections 2-201 - 2-207, and except as a consequence of, and to the extent directed by, section 6-107.
17. See infra notes 67-88 and accompanying text.
As a practical matter, this means that the researcher may look for guidance to: (1) the “Prefatory Note” and official “comments” that are contained in the revised Article VI; and (2) Uniform Laws Annotated, which provides case citations and other pertinent information.

Before going into the particulars of the New Article 27, I think it would be helpful to locate the subject matter of New Article 27 within the larger framework and background of the law.

III. THE WORLD OF NONPROBATE TRANSFERS AND THE
ARTICLE VI OF THE UNIFORM PROBATE CODE

One of the charming anomalies of the Uniform Probate Code (“UPC”) is the subject matter of Article VI — “Non-probate Transfers.” Back in 1969, when the first version of the UPC was approved and promulgated, the UPC drafters saw fit to include “General Comments” to the other substantive Articles. These “General Comments” served as an introduction and provided an overview for the succeeding Article provisions. When it came to Article VI, the “Non-Probate Transfer” Article, no introductory comments appeared. What, it might be asked, do nonprobate transfers have to do with a probate code? No explanation appeared on the face of the Article, so to speak. Indeed, one can almost detect a bias against nonprobate transfers in one statement in the General Comment pertaining to wills: “If the will is to be restored to its role as the major instrument for disposition of wealth at death, its execution must be kept simple.”

Why Article VI on nonprobate transfers? As might be expected, the explanation is Holmesian: experience over logic.

While the crucible for the development and adoption of the UPC might be characterized and identified differently by various individuals, this much seems clear: during the 1960’s, the success of Norman Dacey’s How To Avoid Probate had a jarring effect on probate law and practice. While the villain might be characterized as the more narrowly defined concept of probate as estate administration, the remedy that Dacey offered as a remedy or cure for probate was not revolution-
The concept of a revocable inter vivos trust as a probate avoidance device was not exactly foreign to the law during the 1960's. The forces that Dacey unleashed are still with us: the necessity or desirability of avoiding probate. And how does one do that? By employing fairly standard legal devices that avoid the necessity for probate, the so-called “will substitutes.”

Some of these nonprobate avoidance devices are familiar property-based concepts, such as the common-law joint tenancy and the revocable inter vivos trust. Others are based on contracts, starting with the life insurance contract and moving into the whole field of pension and profit-sharing arrangements.

One of the legal stepchildren of this nether world was the fancifully dubbed “poor man’s will.” The bank account in joint or trust form had a checkered and beleaguered history, but the state legislatures, as well as the courts, looked kindly upon them.

In the 1960s, the probate system was creaking and groaning under the weight of the pressures being brought to bear. The neat, binary distinctions between giving and leaving, testate and intestate, were being left in the dust. The Statute of Wills, designed as a bulwark to safeguard testamentary dispositions, was in danger of becoming obsolete. What Professor John Langbein has referred to as a “revolution” is an apt description of the changing dynamics of probate law in the 1960s. Had the UPC drafters simply tended to the business of reforming estate administration procedures, they would have

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26. Id. at 298. This moniker was applied to the “Totten Trust” form of account in a financial institution. See id.
29. See Olin L. Browder, Giving or Leaving — What is a Will?, 75 MICH. L. REV. 845, 848 (1977).
30. See id. at 848, 855.
performed a commendable, long-overdue public service. But to their credit, they sought to do more by tackling some of the more difficult substantive issues in the law of intestacy and wills.\textsuperscript{32}

The most basic issue underlying the law of wills also stared the code drafters in the face: The law of wills presupposes that the transfer in question is testamentary in character, thereby subjecting the transfer to wills act formalities. Although the courts had ostensibly created a test to determine whether a transfer was "testamentary," this area of the law, like that of the joint bank account, was muddled and confused.\textsuperscript{33}

With these problems lying in the shadows, the drafters of the UPC, in Article VI, sought to provide some certainty in an area of law where it seemed to be sorely lacking. The first area addressed was the long-standing problem inherited from the turn of the century: multiple-party accounts in financial institutions. The second area addressed was a bit more generic: contractually based payments or benefits arising at the death of an individual.

When the UPC first appeared in 1969, the code drafters first included a "long title" — a statement of the subject matter of the code that could be used to satisfy the varying statutory and constitutional requirements of the various states.\textsuperscript{34} This long title specified that the UPC was an act "relating to" a variety of topics, including the following: "providing for the validity and effect of certain non-testamentary transfers, contracts and deposits which relate to death and appear to have testamentary effect."\textsuperscript{35}

When Professor Richard Wellman, the Chief Reporter for the drafting committee, wrote of Article VI in summary fashion, he stated:

The subject of non-probate transfers at death bears a close function relationship to certain aspects of inheritance. Article VI is involved; it relates principally to joint and related forms of bank accounts. It rejects the idea that joint accounts are joint tenancies. Instead, it validates transfers at death via accounts in two or more names on contract principles, and makes it pointless to argue that testamentary intent is in-

\textsuperscript{32} See, e.g., Ronald R. Volkmer, Spousal Property Rights at Death: Re-evaluation of the Common Law Premises in Light of the Proposed Uniform Marital Property Act, 17 CREIGHTON L. REV. 95, 139 (1983) (stating that "[b]esides spurring probate administration reforms, the Uniform Probate Code has also been a catalyst for change in at least one area of intestacy law: the share to be allocated to the surviving spouse").

\textsuperscript{33} Browder, 75 MICH. L. REV. at 876.

\textsuperscript{34} UNIFORM PROBATE CODE at 1 and cmt. (1970). Neb. Const. art. III, § 14 (requiring that "[n]o bill shall contain more than one subject, and the same shall be clearly expressed in the title").

\textsuperscript{35} UNIFORM PROBATE CODE at 1 (West 1970) (emphasis added). This language has remained unchanged in the latest version. UNIFORM PROBATE CODE at 15 (West 10th ed. 1991).
volved. The Article includes a remedy for creditors of insolvent estates against persons who collect survivorship accounts on the death of another to the extent the survivor gets more than he put in. The remedy is framed so that bankers will be protected by payment in accordance with deposit contracts.\(^{36}\)

Professor Wellman was referring to part 1 of Article VI, the “Multiple-party Accounts” provisions. Part 2 of Article VI, consisting of a single section, was not mentioned.

Part 2 of Article VI, a curious and somewhat vaguely worded section, was designed as a safe harbor provision, with the “safe harbor” being the law of contracts. Certain payments arising at death would be regarded as contractual in nature, not testamentary and not subject to the Statute of Wills.\(^{37}\)

The testament to the wisdom and vision of the UPC drafters is the fact that Article VI became one of the most broadly accepted articles of the UPC. By 1989, Article VI had been adopted “as part of the code or independently by over half the states.”\(^{38}\) It was with this track record of success that the UPC drafters went back to the drawing board and promulgated a revised Article VI that was approved in 1989. And, this time around the Joint Editorial Board published a very helpful and informative “Prefatory Note” to Article VI, which highlights the changes from the prior version.\(^{39}\)

IV. STRUCTURE OF NEW ARTICLE 27

Old Article 27 contained two parts; New Article 27 contains three parts. The three parts of New Article 27 are entitled:

Part 1: Provisions Relating To Effect Of Death
(§ 30-2715)

Part 2: Multiple-Person Accounts
(§§ 30-2716 to -2733)

Part 3: Uniform TOD Security Registration Act
(§§ 30-2734 to -2746)

Part 1 is very similar to the prior version. Part 2 contains substantial changes from Old Article 27. Part 3 had no counterpart in Old Article 27; it is brand new to Nebraska law.

The next three sections of this Article will review, in fairly summary fashion, the three parts of New Article 27. The emphasis will be on the changes and new concepts embodied in the new legislation.


\(^{37}\) See UNIFORM PROBATE CODE § 6-201 and cmt. (West 1970).

\(^{38}\) UNIFORM PROBATE CODE, Article VI, Prefatory Note, (West 1989).

\(^{39}\) Id.
brief review of existing Nebraska case law under Old Article 27 will follow, concluding with the author’s comments.

Given the fact that the subject matter of this Article is statutory, a caveat is in order: There is no substitute for a reading of the statutory language as the best method of learning the statutes. To assist the reader, the substantive New Article 27 provisions are included as an Appendix at the end of this Article.

V. PROVISIONS RELATING TO DEATH

(§ 30-2715)

Section 30-2715 is a new version of repealed section 30-2714.\(^{40}\) According to the official comment to Article IV of the Uniform Probate Code, “[T]he sole purpose of this section is to prevent the transfers authorized from being treated as testamentary.”\(^ {41} \) There appears to be little, if any, substantive change embodied in section 30-2715.\(^ {42} \) Since section 30-2715 is substantively the same as former section 30-2714, the existing authorities on section 30-2714 are still pertinent and relevant. These authorities provide exhaustive commentary on the philosophy and application of section 30-2715.

VI. MULTIPLE-PERSON ACCOUNTS

(§§ 30-2716 to -2733)

A. HIGHLIGHTS AND STRUCTURE

The 1989 revision of Article VI of the Uniform Probate Code (“UPC”) resulted in significant and substantial changes in the “multiple-party accounts” sections. New Article 27 reflects these changes. One of the leading casebooks in the field of trusts and estates makes these comments about the 1989 revision of Article VI:

The 1989 revision of Article VI’s coverage of multiple-party accounts is basically consistent with the pre-1989 version. The major changes include: (1) folding Totten trust account into the definition and coverage of POD accounts; (2) providing statutory forms for joint accounts with or without survivorship, transfer-on-death (TOD) accounts, and joint and single-name accounts designating an agent to act for the owner[;] (3) subjecting survivors’ benefits in accounts covered by the legislation to an order (check) of any party who dies


\(^{41}\) Uniform Probate Code, Article VI, part 1 cmt. (West 1991).

before the check is paid; and (4) providing that, when two persons named as parties to a survivorship joint account are married to each other and the account includes one or more additional parties, only the surviving spouse may receive additional ownership of account balances following the other spouse's death. In addition to these changes, the two-year statute of limitations is reduced to one year.

A major goal of the 1989 revision is to encourage financial institutions to use the statutory forms and abandon their practice of routinely offering joint accounts to customers who merely wish to add another person's name to an account for agency, death beneficiary, or multiple-owners-with-no-survivorship purposes. The new statutory forms and depository protection provisions extend greater and more explicit protection to financial institutions in connection with payments they make, pursuant to an agent's instructions, after a principal's death and payments they make to a surviving co-depositor after a party to a "non-survivorship" account has died.43

The foregoing excerpt is as probably as brief and as accurate a statement as one could make about the highlights of New Article 27. However, like all general statements, it is subject to qualification and exploration. As each of the areas mentioned are explored in a bit greater detail, it becomes apparent that the old saying about "a little learning is a dangerous thing" is probably accurate. The reader is encouraged to persevere in learning of some of the nuances of the Nebraska version of revised Article VI.

Eighteen statutory provisions, sections 30-2716 to 30-2733, make up part 2 of the new Article 27. These eighteen sections are, in turn, divided into three subparts:44

Subpart 1 — Definitions and General Provisions
(§§ 30-2716 to 30-2721)
Subpart 2 — Ownership as Between Parties and Others
(§§ 30-2722 to 30-2726)
Subpart 3 — Protection of Financial Institutions
(§§ 30-2727 to 30-2733)

The organizational structure of Part 2 is aided by the division into the three subparts. By comparison, Old Article 27 did not contain subparts. By a review of the various sections by subpart headings, one

can gain a better appreciation of the scope and coverage of the statutory rules. While the UPC drafters declared that the 1989 revision of Article VI was designed to simplify drafting and terminology, the fact is that the number of sections in part II increased by one-third, with a similar increase in the volume of text. When it comes to statutory revision, less is more.

B. SUBPART 1 — DEFINITIONS AND GENERAL PROVISIONS

(§§ 30-2716 to 30-2721)

Of the six sections comprising this subpart, four are entirely new. The two sections that are carried over from Old Article 27 are the “definitions” section and the “organizing” section. The definitions section contains substantial revisions. Thus, five of the six sections comprising this subpart are either new or substantially revised. As will be discussed in this Article, subparts 2 and 3 bear substantial similarity to the provisions of Old Article 27.

As was true under Old Article 27, the definitions section is the baseline from which the other UPC provisions flow. The legal distinctions set forth in section 30-2716 delineate the forms of account and as such limit the scope of this particular part. In short, the definitions section tells one what is being regulated by the statutes and what forms are permissible.

The general subject matter of part 2 is “multiple-person accounts.” Under subsection 5 of section 30-2716, the term “multiple-party account” is defined as “an account payable on request to one or more of two or more parties whether or not a right of survivorship is mentioned.” This definition is a major departure from the prior law, which generally defined the term as an account in one of the following forms: (1) joint account; (2) P.O.D. account; and (3) trust account. Old Article 27 proceeded to define each of these accounts in the definitions section. New section 30-2716 does not define “joint account”; it


combines the old "P.O.D. account" and "trust account" into one with the definition of "POD designation." 50

The new definition of "multiple-party account" contains three terms of art that are also defined in section 30-2716. The three terms of art are: "account," "party," and "request." 51 These terms are defined in the same manner as under prior law. It is critical to focus on the definition of "party," as this term is used extensively throughout part 2. "Party," according to the statutory definition, is "a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent." 52 Both "beneficiary" and "agent" are terms of art as well. "Beneficiary" is defined in a more expansive fashion than under prior law; it includes what used to be designated as a "POD payee" as well as the designated beneficiary in a trust account. 53 "Agent" is a new term under New Article 27; it is defined as "a person authorized to make account transactions for a party." 54 Recall again the controlling definitions of "multiple-party account": an account payable to "one or more of two or more parties." As we shall see later, the term "single party account" is also used in part 2, although there is no definition for that term. It is only by inference that one can deduce the definition for that term.

The terms "person" and "owner" are used in part 2 as well as the term "party." There is a definition of "person" in the general definitions section of the Nebraska Probate Code; the meaning of the term "owner" is explained in subpart 2 of part 2, which is labelled "Ownership as between parties and others." 55

Section 30-2717, entitled "Limitation on scope of sections," is a limitation on the very expansive definition of "account" contained in the prior section. 56 The effect of section 30-2717 is to exclude accounts that have a business purpose and those that are "true" fiduciary accounts. 57

The heading for Section 30-2718 is: "Types of accounts; existing accounts." According to subsection (a) of 30-2718, "[a]n account may be

57. See id.
for a single party or multiple parties." Thus, the most basic distinction to be drawn is that between a "single-party account" and a "multiple-party account." With regard to the latter, section 30-2718(a) states that it may be "with or without a right of survivorship between the parties." The term "right of survivorship" is not defined; however, the official comment to this section refers to a "tenancy in common account," which is, presumably, a multiple-party account that does not mention a right of survivorship. The final sentence of subsection (a) states that both single-party and multiple-party accounts may have POD or agency designations attached to them. The effects of these designations will be explored later.

Subsection (b) of section 30-2718 is the "retroactivity" provision — applying the new law to existing accounts. Whether retroactive application is permissible is a rather thorny issue and unlikely to arise in the normal course of events.

Section 30-2719 is the "forms" section, providing "short forms" for the various types of alternatives available under part 2. The suggested account form is a "fill in the blanks" and "make a checkmark" type of form. The form is designed to provide the options, spell out the consequences, and force persons to choose among alternatives. This is a commendable approach, although one might wonder whether the personnel who will be administering this form will be given sufficient instruction to enable them to do an adequate job of answering questions about the form.

Section 30-2720 is the new "agency" section, facilitating and authorizing a form of account that is long overdue. This section, according to the comment, enables "an account owner to add another person to the account as a convenience in making withdrawals without creating any ownership or survivorship interest in the person identified as an agent." The final section of subpart 1 is section 30-
NONPROBATE TRANSFERS

2721; it is the counterpart of old section 30-2702. This section explicitly states the scope of coverage of the rules in the succeeding subparts 2 and 3. There is no official comment to this section as there was to former section 30-2702. As the comment to section 30-2702 emphasized, the UPC rules are drafted in such manner as to emphasize the "separateness" of those rules of property pertaining to ownership as contrasted with those rules pertaining to financial institution liability.

C. SUBPART 2 — OWNERSHIP AS BETWEEN PARTIES AND OTHERS

(§§ 30-2722 to -2726)

The five sections comprising this subpart are structurally the same as those in Old Article 27. There are both cosmetic changes and substantive changes. As to cosmetic changes, two of the sections have different headings: The "right of survivorship" section has been renamed "Rights at death"; the "Effect of written notice to financial institution" section is now designated "Alteration of rights." The substantive changes are few, but significant. It is to that topic to which we now turn.

Section 30-2722 is one of the most important of the New Article 27 provisions. This section, according to the Official Comment, "is limited to ownership of an account while the parties are alive." Note again that the term "parties" is a term of art under the UPC. Section 30-2722 utilizes the "net contribution" rule as was true under prior law. The term "net contribution" is defined as a term of art under subsection (a) of section 30-2722. Ownership by a party is determined in accord with the "net contribution" rule as set forth in subsections (a) and (b) of section 30-2722. A very significant change to the net contribution rule is contained in subsection (b), relating to spouses: The presumption is that each contributed equally. This ev-

70. Neb. Rev. Stat. § 30-2722(b) (Cum. Supp. 1993) (stating that "[a]s between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.") There is no presumption as between parties not married to each other. See id. According to the code drafters, this omission was deliberate. Uniform Probate Code § 6-211 (West 1993).
identiary rule is but another example of what has been described as “creeping community property” in other contexts.\textsuperscript{71} Subsections (c) and (d) of section 30-2722 deal with beneficiary and agent status. Although the statute suggests that persons having status as beneficiaries or agents have no current beneficial interests in the accounts, the Official Comment points out that the statutory rules are but presumptions, which may be overcome by proof of contrary intent.\textsuperscript{72}

Section 30-2723, “Rights at Death,” is one of the most important provisions of part 2. Contained within the subsections of section 30-2723 are two quite significant changes from Old Article 27. Subsection (a), although it does not employ the term “joint accounts,” fashions a new rule pertaining to spouses who are surviving parties to a joint account. If the surviving spouse is the sole surviving party, then the spouse takes all, as was true under prior law. If the surviving spouse is one of the surviving parties, then the surviving spouse takes the “net contribution” amount of the decedent spouse.\textsuperscript{73} This is a significant change because spouses and children often are named as parties on a joint account. As another author has commented, this change is based on a dubious assumption and is curiously limited to joint accounts only.\textsuperscript{74}

The other significant change is contained in subsection (d). The “Prefatory Note” to Article VI, in referring to this section, states that the change in subsection (d) provides for “recognition of checks issued by an account owner before death and presented for payment after death.”\textsuperscript{75} This rule is a clear departure from the common law rules pertaining to gift and agency law.\textsuperscript{76} The rationale for this change is unstated; the reason for limiting this change to multiple-party accounts is, according to another commentator, illogical.\textsuperscript{77}

The final topic of section 30-2723 is the most bedeviling and most problematic: the role of extrinsic evidence in determining the decedent's intent. The Old Article 27 counterpart to this section, section 30-2704, simply stated that as to a joint account, “[s]ums remaining on deposit at the death of a party . . . belong to the surviving party or parties . . . unless there is clear and convincing evidence of a different

\begin{itemize}
\item \textsuperscript{71} See Volkmer, 17 CREIGHTON L. REV. at 126-27.
\item \textsuperscript{72} UNIFORM PROBATE CODE § 6-211 cmt. (West 1991).
\item \textsuperscript{73} NEB. REV. STAT. § 30-2723(a) (Cum. Supp. 1993).
\item \textsuperscript{74} See William M. McGovern, Jr., Nonprobate Transfers Under The Revised Uniform Probate Code, 55 ALB. L. REV. 1329, 1331 (1992). Professor McGovern’s article is the most complete and thorough analysis of revised Article VI of the Uniform Probate Code; his perceptive insights will be referred to in the balance of this article.
\item \textsuperscript{75} UNIFORM PROBATE CODE, Article VI, Prefatory Note, (West 1991).
\item \textsuperscript{76} The standard view is contained in Mattson v. Bolton, 444 N.W.2d 482, 483-84 (Iowa 1989) (stating that drawee bank must honor check prior to “donor’s” death).
\item \textsuperscript{77} McGovern, 55 ALB. L. REV. at 1350.
\end{itemize}
intention at the time the account was created." The first sentence of 
section 30-2723(a) states that "[e]xcept as otherwise provided in 
sections 30-2716 to 30-2733, on death of a party sums on deposit in a 
multiple-party account belong to the surviving party or parties." It 
is only by reading the "except" proviso and the comments contained in 
the 1991 technical amendment to this section that one can discern the 
UPC drafters' true intent: At least under one defined circumstance, 
extrinsic evidence may be admitted to rebut the statutory rule. 
Professor McGovern has questioned whether elimination of all references 
to intent makes sense; he further finds the 1991 Comment on this 
point less than convincing.

Subsection (c) recognizes the existence of a "non-survivorship" or 
tenancy-in-common account if the multiple-party account is explicit in 
creating the nonsurvivorship form of account. Section 30-2719, the 
"forms" section, includes this option.

Section 30-2724, labelled "Alteration of Rights," refers back to the 
preceding section. This section is concerned with how the form of an 
account, once established, may be altered. This section is consistent 
with old section 30-2705 in that it requires a "written notice" given by 
a "party" to change the form of account.

The heading of section 30-2725 is "Accounts and transfers nontes-
tamentary." Section 30-2725 states that multiple-party forms of ac-
count are not subject to the statute of wills, but are subject to the 
elective share provisions of the Nebraska Probate Code and, under 
certain circumstances, creditors' claims.

Section 30-2726, the creditors' rights section, contains two 
changes from former section 30-2707: (1) the surviving spouse, credi-
tor, or one acting for a minor child must make a written demand upon 
the personal representative; and (2) the time limit for commencing an 
action to recover sums from third parties is reduced from two years to

78. NEB. REV. STAT. § 30-2704(a) (Reissue 1989), repealed by L.B. 250, § 34.
80. UNIFORM PROBATE CODE § 6-212 cmt. The Comment to section 6-212 indicates 
that a court would be justified in receiving extrinsic evidence "if it finds that the account 
was opened solely for the convenience of the party who supplied all funds reflected by 
the account and intended no present gift or death benefit for the other party." Id.
82. NEB. REV. STAT. § 30-2719(a) (Cum. Supp. 1993). The relevant option is labelled 
"Multiple-Party Account Without Right of Survivorship." Id.
83. NEB. REV. STAT. § 30-2724(a) (Supp. 1993) (providing that "[r]ights at death 
under section 30-2723 are determined by the type of account at the death of a party.").
§ 30-2705 (Reissue 1989), repealed by L.B. 250, § 34.
85. NEB. REV. STAT. § 30-2725 (Supp. 1993).
86. Id. This clears up a problem that existed under NEB. REV. STAT. § 30-2706 
(Reissue 1989), repealed by L.B. 250, § 34, pertaining to the elective-share provisions.
one year. 87 Section 30-2726 contains the technical amendment that was added to this section in 1991 by the National Conference of Commissioners on Uniform State Laws. 88

C. Subpart 3 — Protection of Financial Institutions

(§§ 30-2727 to -2733)

In Old Article 27, there were six sections dealing with financial institution protection. In New Article 27, there are seven sections on this topic. Most of the changes that have been made in these sections are not substantive. The bulk of the changes have been made to accommodate the new terminology pertaining to multiple-party accounts. One example is section 30-2730, which pertains to payment by a financial institution to a “designated agent.” 89 The truly major innovation in this subpart is contained in section 30-2731, which allows payment to a minor through utilization of the Uniform Transfers to Minors Act. 90

Section 30-2732, the “discharge” section, specifies the circumstances under which a financial institution would be held liable for improper payment. With regard to agency designated accounts, a financial institution would be liable only if it makes payment after having “received written notice from a party... that payments... should not be permitted.” 91 Professor McGovern labels this protection “extraordinary.” 92

The last section in this subpart, section 30-2733, deals with the topic of “setoff.” 93 This section is in fact more of a “creditors’ rights” section than a “financial protection” section. The key phrase is, “subject to any contractual provision.” There is case law in Nebraska interpreting that phrase, which is discussed elsewhere in this Article. 94 This legislative policy judgment, I believe, is wrong: Why should the bank as creditor possess greater rights against a noncontributing party than those possessed by any other creditor?

91. Id. § 30-2730(b) (Cum. Supp. 1993).
94. See infra notes 174-84 and accompanying text.
VI. UNIFORM TOD SECURITY REGISTRATION ACT
(§§ 30-2734 to -45)

A. GENERAL COMMENTARY

With the passage of Legislative Bill 250 ("L.B. 250"), Nebraska becomes the seventh state to adopt the Uniform TOD Security Registration Act. Although this uniform act was approved in 1989 by the National Conference of Commissioners on Uniform State Laws, the concept of a TOD security registration goes back to the early 1980s. The leading law review article discussing the issues pertaining to TOD securities registration was published in 1987.

Part 3 of New Article 27 contains eleven sections, ten of which are Uniform TOD Security Registration Act provisions. One section is a Nebraska addition to the uniform act. This Article will not go into detail with regard to these eleven sections. The present review will provide a general overview of the act. The next portion of this Article will raise some particular questions arising under the Uniform TOD Security Registration Act. The final section will focus on the Nebraska addition to the act.

A general overview of the act is provided by the "Prefatory Note" which accompanied revised Article six of the Uniform Probate Code ("UPC"). The following quotation is from the section entitled "Uniform TOD Security Registration Act" of the Prefatory Note:

"The purpose of Part 3 . . . is to allow the owner of securities to register the title in transfer-on-death (TOD) form. Mutual fund shares and accounts maintained by brokers and others to reflect a customer's holding of securities (so-called "street accounts") are also covered. The legislation enables an issuer, transfer agent, broker, or other such intermediary to transfer the securities directly to the designated transferee on the owner's death. Thus, TOD registration achieves for securities a certain parity with existing TOD and pay-on-death (POD) facilities for bank deposits and other assets passing at death outside the probate process.

The TOD registration under this part is designed to give the owner of securities who wishes to arrange for a nonprobate transfer at death an alternative to the frequently troublesome joint tenancy form of title. Because joint tenancy registration of securities normally entails a sharing of life-

95. Uniform TOD Security Registration Act, 8A U.L.A. 436 (Supp. 1993). The six states that have enacted the Uniform TOD Security Registration Act are Colorado, Minnesota, New Mexico, North Dakota, Oregon, and Wisconsin. Id.
time entitlement and control, it works satisfactorily only so long as the co-owners cooperate. Difficulties arise when co-owners fall into disagreement, or when one becomes afflicted or insolvent.

Use of the TOD registration form encouraged by this legislation has no effect on the registered owner's control of the affected security during his or her lifetime. A TOD designation and any beneficiary interest arising under the designation ends whenever the registered asset is transferred, or whenever the owner otherwise complies with the issuer's conditions for changing the title form of the investment. The part recognizes . . . that co-owners with right of survivorship may be registered as owners together with a TOD beneficiary designated to take if the registration remains unchanged until the beneficiary survives the joint owners. In such a case, the survivor of the joint owners has full control of the asset and may change the registration form as he or she sees fit after the other's death.98

The Prefatory Note goes on to state that the provisions of part 3 are separate and apart from the part 2 provisions pertaining to multiple-person accounts. The UPC drafters explain that while the distinction between bank accounts and securities is deteriorating, there have been historical differences between the joint bank account, POD and Totten trust accounts and securities. The primary difference has been in the area of lifetime ownership rules, with securities law providing for unambiguous rules pertaining to lifetime ownership.99 The UPC drafters left those "unambiguous rules" intact; their sole purpose in drafting part 3 "is to facilitate a nonprobate TOD mechanism as an option."100 Note the word "option"; implementation of the act's provisions is strictly voluntary.

B. PARTICULAR CONCERNS

Professor William McGovern, in his 1992 Article on revised Article VI of the UPC, produced a number of comments and questions with regard to the Uniform TOD Security Registration Act. The following are some of the topics raised in Professor McGovern's article:

(1) Joint Tenancy — Professor McGovern noted that the TOD Security Registration Act "says nothing about joint tenancy."101 He believes that the act could have clarified certain issues pertaining to joint tenancy ownership of stock. The point is well taken if one be-
lieves that the act is akin to the multiple-person accounts part, providing for forms of ownership of securities. On the other hand, the UPC drafters did state clearly what their “sole purpose” was in drafting the act.\textsuperscript{102} By design the act was not constructed to do what Professor McGovern would like to have seen done in the act.

(2) \textit{Choice of law} — One of the more interesting provisions of the act is section 30-2736, relating to the extra-territorial effect of legislation authorizing the TOD registration form. As Professor McGovern notes, there may be a problem with an Iowa resident attempting to invoke Nebraska’s TOD Securities Registration Act based on the fact that the shares of stock are issued by a Nebraska corporation.\textsuperscript{103}

(3) \textit{Formal rules for transfer} — The fact that the TOD Securities Registration Act “prescribes no formal rules for transfers of securities” is of concern to Professor McGovern.\textsuperscript{104} This, he notes, is not the same treatment given to banks in part 2.\textsuperscript{105} One wonders whether “formal rules” are needed and if so, what shape these formal rules might take.

(4) \textit{Revocation by divorce} — Professor McGovern is heartened by the fact that the 1990 UPC contains a revised “revocation by divorce” statute that would include TOD registered securities.\textsuperscript{106} This would not be true in Nebraska as the Nebraska revocation by divorce statute only covers transfers “by the will.”\textsuperscript{107}

(5) \textit{Survivorship and Lapse} — The UPC drafters deliberately chose to leave intact in the TOD Securities Registration Act the common-law definition of “survive.”\textsuperscript{108} The “overlive” concept (survive decedent by 120 hours) is not, in the Nebraska Probate Code, extended to nonprobate transfers.\textsuperscript{109} The Nebraska anti-lapse statute is likewise inapplicable to nonprobate transfers.\textsuperscript{110} Section 30-2744, by providing a sample form with substitute beneficiaries, attempts to encourage owners who employ TOD securities registration to provide for substitute beneficiary designations.\textsuperscript{111}

\textsuperscript{102} See Uniform Probate Code, Article VI (Prefatory Note) (West 1991).
\textsuperscript{103} McGovern, 55 Alb. L. Rev. at 1333-34.
\textsuperscript{104} Id. at 1336.
\textsuperscript{105} Id.
\textsuperscript{106} Id. at 1339-40.
\textsuperscript{108} See Uniform Probate Code § 6-301 cmt. (stating that the term “survive” is not defined and that “survive” is used in its common-law sense).
\textsuperscript{109} See Neb. Rev. Stat. § 30-2339 (Reissue 1989) (providing that a devisee must outlive a testator for 120 hours in order to take from the will). The general definition statute with its definitions of “Devise” and “Devisee,” makes it clear that the “overlive” provision is limited to those taking under a will. See Neb. Rev. Stat. §§ 30-2209(7), (8) (Reissue 1989).
\textsuperscript{110} Neb. Rev. Stat. § 30-2343 (Reissue 1989) (providing that statute applies to predeceasing “devisees”).
(6) Elective Share — Professor McGovern correctly points out the discrepancy between parts 2 and 3 of Article VI as it relates to elective share.\footnote{112} Section 30-2725 is explicit in subjecting multiple-party accounts to the spouse’s elective share. Section 30-2742, relating to TOD securities registration, simply states that transfers pursuant to the act “are not testamentary.”\footnote{113} Along with Professor McGovern, I believe that TOD registered securities would be subject to the spouse’s elective share.\footnote{114}

(7) Creditors — Because of a section added by the Nebraska Unicameral to the uniform act, the topic of creditors’ rights deserves special treatment. It will be discussed elsewhere in this Article.

(8) Intervivos Ownership of Securities — Professor McGovern finds that, as to the issue of ownership of securities, the rules under the uniform act “are unclear.”\footnote{115} In particular he questions the meaning of the terms “owners” in section 30-2739.\footnote{116} The UPC drafters would presumably respond with their notion, as expressed in the Prefatory Note, “we start with unambiguous lifetime ownership rules.”\footnote{117} What constitutes the “default” rules is clear to the UPC drafters, but unclear to Professor McGovern.

(9) LDPS Designation — Professor McGovern opines that the term “lineal descendants per stirpes,” authorized by section 30-2744, “is ambiguous.”\footnote{118} Ambiguous it may well be, but what of the governing law in this scenario? Section 30-2744, mirroring the uniform act, states that the governing law is “the law of the beneficiary’s domicile at the owner’s death.”\footnote{119} Suppose a Nebraska domiciliary dies owning stock in a corporation organized and operating in Nebraska with the primary beneficiary being an Iowa resident. If the LDPS designation is utilized and the Iowa beneficiary predeceases, Iowa law governs as to the LDPS designation. Should it?\footnote{120}

\footnote{112} McGovern, 55 ALB. L. REV at 1346.\footnote{113} Neb. REV. STAT. § 30-2742 (Cum. Supp. 1993).\footnote{114} See Neb. REV. STAT. § 30-2314(a)(1)(ii) (Reissue 1989) (indicating that property subject to elective share includes property that decedent “retained at death a power alone . . . to revoke such transfer”).\footnote{115} McGovern, 55 ALB. L. REV at 1349.\footnote{116} See id.\footnote{117} UNIFORM PROBATE CODE, Article VI, Prefatory Note, (West 1991).\footnote{118} McGovern, 55 ALB. L. REV at 1352 n.178.\footnote{119} Neb. REV. STAT. § 30-2744(a) (Cum. Supp. 1993).\footnote{120} This is an area fraught with problems. Suppose that the status of the Iowa domiciliary is challenged on the ground that the descendant has illegitimate status. Would the Nebraska Probate Code rules as to the status of parent and child apply? See Neb. REV. STAT. §§ 30-2309 and 30-2349 (Reissue 1989).
C. Creditors' Rights

The Uniform TOD Securities Registration Act contained a rather vaguely worded sentence pertaining to the rights of creditors. The pertinent section simply stated that the act's provisions "[do] not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this State."121 Professor McGovern noted the discrepancy between this provision and a comparable section in part 2 pertaining to multiple-person accounts, which allows access to the property by creditors under specified conditions.122 Section 30-2742(b) contains that vague language.123

Dissatisfied with the UPC approach, the Nebraska Unicameral, following the lead of the Minnesota Legislature, sought to end the discrepancy between securities in TOD form and multiple-party accounts in the area of creditors' rights.124 The goal was parity: Treat both forms of property ownership the same when it came to the rights of creditors.

In comparing section 30-2743 with section 30-2726, it is fairly obvious how this parity plan was implemented. Section 30-2726, the multiple-party account section, was simply "borrowed" and with appropriate changes became the creditors' rights provision of the TOD securities registration act.125 That approach, on first blush, seems logical and reasonable. But, as they say, read the fine print.

Subsection (a) of section 30-2743 provides:

If other assets of the estate are insufficient, a transfer resulting from a right of survivorship, POD designation or TOD designation under sections 30-2734 to 30-2745 is not effective against the estate of a deceased owner to the extent needed to pay claims against the estate, statutory allowances to the surviving spouse and children, taxes and expenses of administration.126

Sections 30-2734 to 30-2745 comprise the Uniform TOD Securities Registration Act.127 Recall the "sole purpose" of this act, as stated by its drafters, "to facilitate a nonprobate TOD mechanism."128 Recall Professor McGovern's comment that the act "says nothing about joint tenancy."129 There is no transfer "by right of survivorship" under the act,

121. Uniform Probate Code § 6-309(b) (West 1989).
122. McGovern, 55 Alb. L. Rev. at 1347.
129. McGovern, 55 Alb. L. Rev. at 1331.
strictly speaking. On the other hand, the act does implicitly recognize joint tenancy stock ownership. If the act is construed to allow creditors access to joint tenancy securities at death when there is no TOD beneficiary designation, section 30-2743 has gone far beyond what was presumably intended. Subsections (b) and (c) of section 30-2743 refer to “a surviving owner.” This could most plausibly be construed to refer to a surviving joint tenant of registered securities. Thus, the case is strengthened for the unintended result.

As to a so-called “POD designation” with regard to securities, the Uniform TOD Securities Registration Act is devoid of any reference to such designation. There is no POD designation “under sections 30-2734 to 30-2745.” Sloppy drafting in this instance may not have a cost, but it remains to be seen how the “right of survivorship” reference will be construed. Subsection (d) of section 30-2743 refers to an entity making “payment” of the security; the correct term should be “transfer,” but this is a minor point.

The Nebraska Unicameral would be well advised to reconsider the language of section 30-2743. It might look to the Minnesota statute as a model in drafting a statute that would carry out its intended objective.

VII. NEBRASKA CASE LAW

The Nebraska Supreme Court has had several opportunities to construe sections of Old Article 27 pertaining to multiple-party accounts. The cases have focused almost exclusively on the joint account. Because the bulk of these cases are of continuing vitality under New Article 27, they will be briefly reviewed. Three issues have emerged from the case law: ownership during lifetime, ownership at death, and liability of a financial institution for payment. These topics will taken up in that order.

A. Ownership During Lifetime

Prior to the adoption of the Nebraska Probate Code, the Nebraska Supreme Court resorted to the so-called “bank protection” statutes in an attempt to sort out the property rights of parties to a joint account while the parties were alive. The result was a confusing body of law resulting from the court’s efforts to apply gift law theory to joint

accounts and to reconcile joint bank accounts with the law pertaining to "true" joint tenancies. One of the truly significant effects of the passage of the UPC in Nebraska was clarification of the law of joint accounts as it pertained to ownership during lifetime. The "net contributions" rule of the Nebraska Probate Code provided clarity in an area badly in need of it.

The leading Nebraska case applying the "net contribution rule" of section 30-2703(a) is Peterson v. Redpath. In Redpath a mother and son were parties to a joint account established in Tennessee, the mother apparently being the source of the funds. During the mother's lifetime, without her apparent knowledge or consent, the son withdrew funds from the joint account and used these funds solely for his benefit or for his family. At the son's death, the mother's guardian filed a claim against the son's estate, alleging that the son had converted funds of the mother. The son's representative argued that, under Nebraska law, the effect of the mother's placing the funds in a joint account was to effectuate a gift to the son. That position, stated Chief Justice Krivosha, "ignores the provisions of the Nebraska Probate Code enacted in this jurisdiction in 1974." The Chief Justice then quoted the "net contribution rule" of section 30-2703(a) and the code comment to that section, which clearly rejects the "gift" theory. Section 30-2703(a) created a presumption that may be rebutted by clear and convincing evidence but in the Redpath case no such evidence appeared in the record. Redpath is the prototypical "overwithdrawal" case, illustrating the manner in which the "net contribution rule" allocates the burden of proof.

In two cases before the Nebraska Supreme Court the "net contribution rule" was applied in the context of challenges to withdrawals of funds from joint accounts. In both of the cases, the party who had deposited the funds in the joint accounts subsequently executed a general power of attorney, designating a family member as attorney in fact. Thereafter, the family member, acting under the power of attorney, withdrew the funds from the joint account, thereby terminating the joint account. In both of the cases, the persons who were parties to the joint accounts and whose interests were terminated by the withdrawal of funds brought suit against the holder of the general power of

133. Id. See Volkmer, 9 Creighton L. Rev. at 522-23.
137. Id. at 846, 402 N.W.2d at 649.
138. Id. at 851, 402 N.W.2d at 652.
139. Id. at 851-52, 402 N.W.2d at 652-53.
attorney. In *Ruppert v. Breault*, the action brought was to impose a constructive trust. In *Peterson v. Peterson*, the action was based upon alleged undue influence. In neither case did the court grant the requested relief.

In *Ruppert*, Chief Justice Norman Krivosha stressed that the depositor of the funds in the joint account was the owner of the funds and that the other joint tenants had no present ownership interest in the joint accounts. The opinion did not use the term "net contribution rule" but did cite to the appropriate statute.

In the *Peterson*, Judge D. Nick Caporale quoted the statutory language of the "net contribution rule" and the code comment to section 30-2703. In so doing he noted that "[c]learly, the creation or termination of a joint account is neither a present transfer of property nor a testamentary device, but represents instead a hybrid transaction, sharing aspects of both gift and bequest." Toward the end of the opinion Judge Caporale further commented on the "hybrid" nature of joint accounts:

One who knowledgeably creates a joint account with another arguably does so with the present intent to employ the account's survivorship characteristic in substitution for a testamentary device. Like testamentary devices, under § 30-2703, creation of a joint account, without more, accomplishes no present transfer of title to property. If, as in this case, all sums deposited into the joint account are deposited by one person, the joint account contemplates transfer of title to those funds to the other person or persons named on the account upon the death of the depositor. Of course, others named as joint holders of the account have the power to withdraw funds from the account before the death of the depositor, but under § 30-2703, they arguably do not have the right to do so. . . .

Moreover, the creator of a joint account, like the maker of a will and unlike the giver of a gift, may change his or her mind during any lucid moment prior to death. These considerations suggest that joint accounts share more in the character of testamentary devices than they do in the character of present transfers of property, or gifts.

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140. 222 Neb. 432, 384 N.W.2d 284 (1986).
143. *Id.* at 438, 384 N.W.2d at 288. The "appropriate statute" is, of course, Neb. Rev. Stat. § 30-2703, which the court did cite. *Id.*
145. *Id.* at 487, 432 N.W.2d at 236.
146. *Id.* at 488, 432 N.W.2d at 237.
This explanation of the "hybrid" nature of joint accounts is accurate and concise; it brings out fundamental distinctions that every lawyer should understand.

In 1989, the United States Court of Appeals for the Eighth Circuit applied the Nebraska "net contributions rule" in Giove v. Stanko. Stanko was a garnishment proceeding involving the question of ownership of certificates of deposit in joint form, with the father, wife, and children named as parties on the account. The court concluded that the father-debtor was "the source of all of the funds held in the three certificates of deposit" and thus the certificates were owned by him and subject to garnishment.

In 1992, the Nebraska Court of Appeals decided Parker v. Parker. Parker involved a determination as to whether assets were "marital property" in the context of a marital dissolution proceeding. Among the assets in controversy were two multiple-party accounts. As to these accounts the court noted that "[t]he evidence does not prove the precise names in which these two accounts are maintained or titled." Two other accounts were titled in "trust account" form. As to the latter, the applicable legal rule, pertaining to ownership, would be section 30-2703(c). Applying this rule, the trustee would be deemed the beneficial owner unless contrary evidence were produced. The court held the trustee to be the owner of these accounts, but it did not mention the controlling statute, relying instead on a gift-law theory based on pre-Uniform Probate Code law. With regard to the ambiguous accounts, the court again referred to a gift-law theory in finding that the funds belonged to the party who deposited the funds, causing the funds to be classified as marital property. The results appear correct, but the rationale, or lack thereof, is seriously deficient.

B. OWNERSHIP AT DEATH

The Nebraska case law interpreting section 30-2704 has focused exclusively on the joint account. Prior to the adoption of the Nebraska Probate Code, the Nebraska Supreme Court had relied on the bank protection statute to determine rights of parties arising at the death of

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147. 882 F.2d 1316 (8th Cir. 1989).
151. NEB. REV. STAT. § 30-2703(c) (Reissue 1989), repealed by L.B. 250, § 34.
152. Parker, 1 N.C.A. at 658-59, 492 N.W.2d at 56.
153. Id. at 659-60, 492 N.W.2d at 56.
one of the parties to the account.154 The first case decided after the adoption of the UPC to mention section 30-2704 was Gasper v. Moss.155 In Gasper, Judge Hale McCown stated that the multiple-party accounts sections of the Nebraska Probate Code essentially codified "previous decisions of this court that evidence to establish an oral trust in a joint bank account or savings account must be clear, satisfactory, and convincing in character."156

The Nebraska Supreme Court next considered the "proof of the oral trust" in a joint bank account setting in the case of Miller v. Janecek,157 a case that was before the Nebraska Supreme Court twice.158 The first Miller opinion dealt with a jurisdictional issue — whether the dispute had to be presented to the county court, rather than to the district court. The court held the action lay in district court in the first instance.159 In the second Miller opinion, the court reversed a district court's order granting a motion for directed verdict at the close of plaintiff's evidence. The court held that a jury issue was presented from the evidence.160

The most thorough discussion of the application of section 30-2704(a) is contained in the 1986 case of Lienemann v. Lienemann.161 The case bears some similarity to the aforementioned Ruppert and Peterson cases in that the person whose acts were challenged was acting under a general power of attorney. One of the rulings of the court in Lienemann dealt with the question of whose intent is relevant under the statute. The court held that it is the depositor's intent that matters; the fact that the other joint tenant has no knowledge of the establishment of the account is not decisive as to the intent of the depositor.162 One of the joint accounts at issue in Lienemann presented a question regarding the establishment of the joint account. After a review of the evidence, the court concluded that the joint account form was the result of computer error and not the intent of the depositor.163

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159. Miller I, 210 Neb. at 320, 314 N.W.2d at 252. ("Further, since this is an equity action . . . it must be brought in the District Court.") Interestingly enough, the court's syllabus to the case refers to NEB. REV. STAT. § 30-2706 (Reissue 1979), and not to the jurisdictional issue.
160. Miller II, 215 Neb. at 184, 337 N.W.2d at 753.
161. 222 Neb. 169, 382 N.W.2d 595 (1986).
163. Id. at 180, 382 N.W.2d at 603.
The disputes over the existence of the oral trust are fact-sensitive, typically going to the question of a deceased person's intent at the time the account was established. Under the statute it is clear where the burden of proof lies. The uphill battle one confronts in rebutting that presumption is illustrated by two recent cases from the Nebraska Court of Appeals. In both of the cases, the court cited Lienemann and held that the statutory presumption had not been rebutted.\(^{164}\)

Under section 30-2703(a), the surviving party to the joint account takes the sums remaining on deposit "unless there is clear and convincing evidence of a different intention at the time the account is created."\(^{165}\) This statutory language, on its face, does not require acts of wrongdoing. Indeed, the approach of the statute is quite clear: The form of the account gives rise to the presumption that a "right of survivorship" was intended. If a person challenges this presumption, the statute and case law require "clear and convincing" evidence at time the account was created that the depositor did not intend to create a joint account (or perhaps more accurately, "a right of survivorship").

On the other hand, a challenger to the statutory presumption can always fall back to the classic theory of constructive trust if there is some evidence of "wrongdoing." This wrongdoing can be phrased in terms of "undue influence," "fraud," or "abuse of confidential relationship." This was true prior to the passage of the Nebraska Probate Code, and it remained true after the passage of section 30-2703(a). In fact, to the extent that wrongdoing is alleged and proved, the statutory presumption provided by section 30-2703(a) evaporates. In an appropriate case, a "prima facie" case of fraud, undue influence, or abuse of confidential relationship, in conjunction with the creation of the joint account, might yield a presumption against the surviving joint tenant.

In Lienemann the court found no breach of fiduciary duty or abuse of confidential relationship, and thus the statutory presumption of section 30-2704(a) applied.\(^{166}\) However, in the recent case of Vejraska v. Pumphrey,\(^{167}\) the Nebraska Supreme Court found a prima facie case of fraud when the holder of a general power of attorney created a joint certificate of deposit and claimed the proceeds upon the death of the depositor joint tenant. The Court in Vejraska did not mention section 30-2704(a) or the statutory presumption. It treated the case as a gift case with the Court applying a rule derived from agency law.\(^{168}\)

\(^{165}\) Neb. Rev. Stat. § 30-2704(a) (Reissue 1989), repealed by L.B. 250, § 34.
\(^{166}\) Lienemann, 222 Neb. at 177-79, 382 N.W.2d at 601-02.
The problem with this reasoning is that, under section 30-2703(a), there is no “gift” when the account is established. Although there is a “hybrid” quality to the nature of a joint account, a dispute over a joint account, after the death of one of the parties, is ostensibly governed by section 30-2704(a).

Regardless of the Court’s rationale in Vejraska, the underlying message of the case seems clear enough; if there is wrongdoing involved in the establishment of the joint account, then the constructive trust remedy may be appropriately applied, without regard to the statutory language. Indeed, the facts might give rise to a presumption against the surviving joint tenant taking the sums remaining on deposit. The moral of this story is that there is more to this than simply reading and applying the statutes.

C. Payments by Financial Institutions

There are three Nebraska Supreme Court cases involving the liability of a financial institution for payments made by it. Ironically enough, the three cases are similar in that the payments challenged were payments made to a creditor, who by happenstance, turned out to be the defendant financial institution that made the payment.

In Eggers v. Tilden Bank, the dispute concerned three certificates of deposit issued by the defendant bank to a husband and wife in joint-account form. The couple’s son and daughter-in-law were farmers who were indebted to the defendant bank. The husband removed the certificates of deposit from a safety deposit box, endorsed the certificates, and instructed the bank to apply the proceeds of the three certificates of deposit to the debt of the son and daughter-in-law. The defendant bank did so, and some four years later the husband and wife brought suit against the bank on theory that the bank’s action was not authorized. During the pendency of the appeal to the Nebraska Supreme Court, the husband died. The first issue before the court was the status of the appeal in light of the husband’s death. The Nebraska Supreme Court cited section 30-2704(a) in holding that the wife succeeded to whatever rights the husband had in the certificates of deposit. As to the legality of the bank’s action in applying the proceeds of the certificates to the debt of the son and the daughter-in-law, the court simply treated the issue as solely factual. Did the husband orally instruct the bank to apply the proceeds to the indebted-

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172. Id. at 106-08, 474 N.W.2d at 474-75.
ness? The trial court so found and the Nebraska Supreme Court simply stated there was sufficient evidence to sustain the trial court's finding of fact.173

The *Eggers* opinion did not focus on any of the sections dealing with financial institution protection. One would think that sections 30-2708 and 30-2712 would be relevant.174 The key statutory provision would appear to be the second sentence of section 30-2708 which states that “[a]ny multiple-party account may be paid, on request, to any one or more of the parties.”175 Analysis under this section would further involve the statutory definitions of “party,” “payment,” and “request.” It well may be that the ultimate issue in *Eggers* was factual, but surely some reference to the financial institution protection statutes was appropriate.

The final Nebraska cases to be discussed are two opinions interpreting the “setoff” statute, section 30-2713. Both of the cases arose out of challenges to a bank's right to setoff under that statute.

In *Uttecht v. Norwest Bank of Norfolk*,176 the plaintiff Uttecht purchased five certificates of deposit from the defendant bank. In addition to the plaintiff, four other persons were named on the certificates, including the plaintiff's son Stanley. When Stanley subsequently became delinquent on loans to the defendant bank, the bank setoff the balances of the certificates against the amount Stanley owned. The plaintiff, who was the original depositor of the funds, sued the bank, alleging that the setoff was unauthorized under the relevant Nebraska statutes.177 The defendant bank relied upon the broadly worded language of the contract that plaintiff signed when he purchased the certificates. The language of the contract purported to give the bank a “virtually unlimited right of setoff” against the funds on deposit for debts owed by the plaintiff or any other party to the account.178 The plaintiff argued for the applicability of the “net contribution rule” of section 30-2713, pointing out that section 30-2713, the setoff statute, recognizes the net contribution rule.179

The Nebraska Supreme Court, in a unanimous opinion, upheld the bank's setoff right. In so doing the court interpreted the phrase “subject to any contractual provision” in the setoff statute as authority

173. Id. at 108-09, 474 N.W.2d at 475.
174. These two sections both deal with “financial institution protection.” The former focuses on “payment on signature of one party”; the second on “discharge.”
178. Id. at 225, 376 N.W.2d at 13.
179. Id. at 225-26, 376 N.W.2d at 13-14.
for the proposition that "a bank may define by contract with its depositor the extent of its power of setoff." 180 Thus, the court concluded that "absent allegations and proof of fraud, contractual arrangements between a bank and its depositors with respect to the bank's right of setoff may supersede statutory provisions." 181

The issue presented in the Uttech case was revisited by the Nebraska Supreme Court some two months later in the case of Craig v. Hastings State Bank. 182 Similar to the fact pattern in Uttech, the defendant bank in Craig purported to exercise its right of setoff against a noncontributing joint tenant to a money certificate. The defendant bank relied upon the prevailing theory in the Uttech case, namely, that the language of the standard form agreement, signed by the plaintiff, authorized the setoff. The language of the form stated that "[o]n certificates made in joint survivorship, the bank may deem either or any of said payees... as the absolute owner for purposes of payment, presentation and transfer of this certificate, payment of interest hereon, the giving or receiving of notice or any other action affecting this certificate." 183 The defendant bank argued that the phrase "or any other action" included its right of setoff. The Nebraska Supreme Court rejected that interpretation, defining the word "action" in the light of the ejusdem generis rule of construction. 184

Having lost on the contractual issue, the bank argued that the multiple-party provisions of the Nebraska Probate Code grant a right of setoff. Looking to the various provisions relating to multiple-party accounts, the bank contended that the net contributions rule, not specifically mentioned in the setoff statute, had no influence on the right of setoff. In making this argument, the bank urged that section 30-2702 applied. Under the bank's theory, the net contributions rule of section 30-2703 had no applicability to section 30-2713 because section 30-2702 limits the application of section 30-2703 to "controversies between the parties to the account." The court rejected this argument, noting that the "language of section 30-2702 hardly compels us to ignore the clear mandate of section 30-2713." 185 In conclusion the court spelled out the applicability of the net contributions rule to the setoff statute as follows:

We hold that, in the absence of an agreement otherwise providing, if a person has a present right to withdraw funds from

180. Id. at 226, 376 N.W.2d at 14.
181. Id. "Absent fraud?" The statutory rules presumably assume that fraud is not present. If fraud is present, the statutory rules begin to crumble.
182. 221 Neb. 746, 380 N.W.2d 618 (1986).
184. Id. at 751-52, 380 N.W.2d at 622.
185. Id. at 755, 380 N.W.2d at 624.
a joint account and is indebted to the financial institution where the account is maintained, the financial institution has a right to setoff against such indebtedness the debtor's beneficial interest in the account as determined by the net contributions rule of ownership in accordance with Neb. Rev. Stat. §§ 30-2703 and 30-2701(6).\footnote{186} Although the main holding in \textit{Craig} pertained to the contract interpretation issue, the court's discussion of the net contributions rule and its applicability to the right of setoff is helpful and instructive.\footnote{187}

\section*{VIII. CONCLUSION}

As noted previously, Article VI of the Uniform Probate Code ("UPC") has proved to be one of the more influential articles of the UPC since it was first promulgated. From 1977 to 1993, the Article 27 provisions of Chapter 30 of the Revised Nebraska Statutes have, on balance, proved far more beneficial to the citizenry of the State of Nebraska than harmful. The 1989 revision of Article VI is, I believe, on balance, an improvement in the law. Legislative Bill 250 ("L.B. 250") built on a solid foundation is redesigning the nonprobate transfers law of the State of Nebraska. The National Conference of Commissioners on Uniform State Law approved a revision of Article II of the UPC in 1990. Without going into the specifics of that reform,\footnote{188} I am far more comfortable with the Article VI revision of 1989 than the Article II revision of 1990.

My endorsement of L.B. 250 is not unqualified. The section of the Uniform TOD Security Registration Act relating to creditors' rights needs to be cleaned up. The intent was good but the execution was sloppy. I am still troubled by the right of setoff as it pertains to non-contributing parties.

Practitioners would do well to take note of the changes in the net contribution rule and rights-at-death section as it relates to spouses. In reviewing a client's existing estate plan, the attorney should take special note of these provisions. Attorneys representing financial institutions should call to their attention the new "agency" designation and the forms provided by the statute. These innovations may go further in avoiding future litigation than any other of the provisions of L.B. 250.

\footnote{186} Id. at 757, 380 N.W.2d at 625. 
\footnote{187} Section 30-2733 of the Nebraska Revised Statutes, the "new" setoff statute, contains the same fatal phrase, "subject to any contractual provision," as its predecessor. \textit{See Neb. Rev. Stat.} § 30-2733 (Cum. Supp. 1993). There are no substantive changes in the new statute.
\footnote{188} For some critiques of the revision of Article II, see the Symposium issue of the \textit{Albany Law Review}, Volume 56, No. 4.
The existing Nebraska case law remains quite relevant for many of the statutory provisions of New Article 27. Most of the Nebraska cases involve so-called “joint accounts.” The new multiple-party accounts law does not use the term “joint account” as a statutory term of art. However, the substantive concept of a “joint account” is still present; thus the existing case law is still relevant. The greatest promise embodied in L.B. 250 is an anticipated reduction of litigation over the most perennial of problems: ownership of a “joint account” at death. If depositors actually utilize the “agency” designation authorized by the statute, then there should be far fewer controversies as to whether the “joint account” was a “convenience” account. To the extent that the facts of a case present issues relating to alleged undue influence or other acts of wrongdoing, the constructive trust remedy is still alive and kicking, new code, old code, or no code.

The effect of the Uniform TOD Security Registration Act is hard to predict. Because implementation is entirely optional, its fate is in the hands of those who desire to implement it. One of the persons testifying in favor of L.B. 250 at the Judiciary Committee hearing represented a mutual fund company. This representative indicated interest in implementing the TOD security registration option.\footnote{189. Hearing on L.B. 250: Committee on Judiciary, Neb. Unicameral, 93d Leg., 1st Sess. 5-8 (March 10, 1993) (Testimony of Robert S. Woodruff).}

If one is inclined to believe that the world of nonprobate transfers is one whose time has come and needs to be expanded, then it is easy to support the conceptual basis of the Uniform TOD Security Registration Act. As Nebraska law continues its recognition of nonprobate transfers, are there any “hidden costs”?

I find it extremely interesting that during the floor debate on L.B. 250, questions were raised regarding the Nebraska inheritance tax.\footnote{190. FLOOR DEBATE ON L.B. 250, Neb. Unicameral, 93d Leg., 1st Sess., 2915, 2918 (April 8, 1993) (remarks of State Senators Hohenstein and Bromm).} The issues raised pertained to applicability of the inheritance tax provisions and the enforcement of the tax.\footnote{191. Id.} The Nebraska inheritance tax is so written as to include within its sweep transfers at death via the TOD Securities Registration Act, as well as the multiple-party accounts sections.\footnote{192. Neb. Rev. Stat. § 77-2002 (Reissue 1990).} The real sticking point, picked up by a couple of lawyer-legislators, is the lack of an enforcement mechanism.\footnote{193. FLOOR DEBATE ON L.B. 250, Neb. Unicameral, 93d Leg., 1st Sess., 3749 (April 8, 1993) (remarks of Senator Abboud).} One of the perceptions about nonprobate transfers generally is the notion that the inheritance tax may be “avoided.” “Avoided” may be too kind a word; “evaded” may be more correct.\footnote{194. This distinction brings to mind the old saw:}
enforcement of the inheritance tax law is, at least in theory, a separate issue but an important issue. Whatever one thinks of the Nebraska inheritance tax, its uniform application should be of concern to all those interested in fair and uniform application of the rules of taxation as applied to gratuitous wealth transfers at death. That problem, however, is an issue for another day.

Question: What is the difference between tax "evasion" and tax "avoidance"?
Answer: Ten years in jail.
PART I — PROVISIONS RELATING TO EFFECT OF DEATH

§ 30-2715. Nonprobate transfers on death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

PART II — MULTIPLE-PERSON ACCOUNTS

SUBPART 1 — DEFINITIONS AND GENERAL PROVISIONS

§ 30-2716. Definitions.

In sections 30-2716 to 30-2733:

(1) Account means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(2) Agent means a person authorized to make account transactions for a party.
(3) Beneficiary means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) Financial institution means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) Multiple-party account means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) Party means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

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

(8) POD designation means the designation of (i) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) Receive, as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(10) Request means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of sections 30-2716 to 30-2733, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) Sums on deposit means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.
(12) Terms of the account include the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

§ 30-2717. Limitation on scope of sections.

Sections 30-2716 to 30-2733 do not apply to (i) an account established for a partnership, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

§ 30-2718. Types of account; existing accounts.

(a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to subsection (c) of section 30-2723, either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established before, on, or after September 9, 1993, whether in the form prescribed in section 30-2719 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of sections 30-2716 to 30-2733, and is governed by such sections.

§ 30-2719. Forms.

(a) A contract of deposit that contains provisions in substantially the form provided in this subsection establishes the type of account provided, and the account is governed by the provisions of sections 30-2716 to 30-2733 applicable to an account of that type.

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES (Name One Or More Parties):

OWNERSHIP (Select One And Initial):

SINGLE-PARTY ACCOUNT

PARTIES own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH (Select One And Initial):

SINGLE-PARTY ACCOUNT
At death of party, ownership passes as part of party's estate.

SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION
(Name One Or More Beneficiaries):

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
At death of party, ownership passes to surviving parties.

MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION
(Name One Or More Beneficiaries):

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP
At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION (Optional)
Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

(To Add Agency Designation To Account, Name One or More Agents):

(Select One And Initial):

AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES
AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) of this section is governed by the provisions of sections 30-2716 to 30-2733 applicable to the type of account that most nearly conforms to the depositor's intent.

§ 30-2720. Designation of agent.

(a) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent
may act for a disabled or incapacitated party until the authority of the agent is terminated.

(c) Death of the sole party or last surviving party terminates the authority of an agent.

§ 30-2721. Applicability of sections.

The provisions of sections 30-2722 to 30-2726 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the rights of those persons to payment as determined by the terms of the account. Sections 30-2727 to 30-2733 govern the liability and setoff rights of financial institutions that make payments pursuant to such sections.

SUBPART 2 — OWNERSHIP AS BETWEEN PARTIES

§ 30-2722. Ownership during lifetime.

(a) In this section, net contribution of a party means 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 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.

(b) 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.

(c) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.

§ 30-2723. Rights at death.

(a) Except as otherwise provided in sections 30-2716 to 30-2733, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under
section 30-2722 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section 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 30-2722, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

§ 30-2724. Alteration of rights.

(a) Rights at death under section 30-2723 are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.
(b) A right of survivorship arising from the express terms of the account, section 30-2723 of this act, or a POD designation, may not be altered by will.

§ 30-2725. Accounts and transfers nontestamentary.

Except as provided in sections 30-2313 to 30-2319 (elective share of surviving spouse) or as a consequence of, and to the extent directed by, section 30-2726, a transfer resulting from the application of section 30-2723 is effective by reason of the terms of the account involved and sections 30-2716 to 30-2733 and is not testamentary or subject to sections 30-2201 to 30-2512 (estate administration).

§ 30-2726. Rights of creditors and others.

(a) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under sections 30-2716 to 30-2733 is not effective against the estate of a deceased party to the extent needed to pay claims against the estate, statutory allowances to the surviving spouse and children, taxes, and expenses of administration.

(b) A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under section 30-2722, to the extent necessary to discharge the amounts described in subsection (a) of this section remaining unpaid after application of the decedent's estate. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.

(c) A surviving party or beneficiary under sections 30-2716 to 30-2733 against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent or a surviving owner or beneficiary under sections 30-2734 to 30-2745 of any securities or securities account of the decedent or proceeds thereof.

(d) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in section 30-2732 for a financial institution that makes payment in accordance with the terms of the account.
§ 30-2727. Authority of financial institution.

A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

§ 30-2728. Payment on multiple-party account.

A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party in accordance with sections 30-24,125 and 30-24,126 if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under section 30-2723.

§ 30-2729. Payment on POD designation.

A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.
§ 30-2730. Payment to designated agent.

Subject to the provisions of section 30-2732, a financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

§ 30-2731. Payment to minor.

If a financial institution is required or permitted to make payment pursuant to sections 30-2716 to 30-2733 to a minor designated as a beneficiary, payment may be made pursuant to the Nebraska Uniform Transfers to Minors Act or pursuant to any other laws of this state.

§ 30-2732. Discharge.

(a) Payment made pursuant to sections 30-2716 to 30-2733 in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their
successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

§ 30-2733. Setoff.

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled under section 30-2722 or, in the absence of proof of that proportion, an equal share with all parties.

PART III — UNIFORM TOD SECURITY REGISTRATION ACT

§ 30-2734. Definitions.

In sections 30-2734 to 30-2745:

1. Beneficiary form means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

2. Register, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

3. Registering entity means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

4. Security means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

5. Security account means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

6. The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without regard
for whether the subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

§ 30-2735. Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

§ 30-2736. Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by sections 30-2734 to 30-2745 or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by sections 30-2734 to 30-2745 or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which sections 30-2735 to 30-2745 or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

§ 30-2737. Registration in beneficiary form; when.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

§ 30-2738. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words transfer on death or the abbreviation TOD, or by the words pay on death or the abbreviation POD, after the name of the registered owner and before the name of a beneficiary.

§ 30-2739. Effect of registration in beneficiary form.

The designation of a TOD or POD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A
registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

§ 30-2740. Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be re-registered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§ 30-2741. Protection of registering entity.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by sections 30-2734 to 30-2745.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in sections 30-2734 to 30-2745.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section 30-2740 and does so in good faith reliance (i) on the registration, (ii) on sections 30-2734 to 30-2745, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of sections 30-2734 to 30-2745 do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under sections 30-2734 to 30-2745.

(d) The protection provided by sections 30-2734 to 30-2745 to the registering entity of a security does not affect the rights of benefi-
ciaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

§ 30-2742. Nontestamentary transfer on death.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and sections 30-2734 to 30-2745 and is not testamentary.

(b) Sections 30-2734 to 30-2745 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

§ 30-2743. Transfer; when not effective.

(a) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship, POD designation or TOD registration under 30-2734 to 30-2745 is not effective against the estate of a deceased owner to the extent needed to pay claims against the estate, statutory allowances to the surviving spouse and children, taxes, and expenses of administration.

(b) A surviving owner or beneficiary who receives registered or reregistered securities or securities accounts or proceeds thereof after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled, to the extent necessary to discharge the amounts described in subsection (a) of this section remaining unpaid after application of the decedent's estate. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after the death of the decedent.

(c) A surviving owner or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving owner or beneficiary under sections 30-2734 to 30-2745 of any other security or securities account of the decedent or proceeds thereof or a surviving party or beneficiary of any account under sections 30-2716 to 30-2733.

(d) Sums recovered by the personal representative must be administered as a part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased owner provided in section 30-2741 for an issuer or
registering entity that makes payment in accordance with the terms of the security registration.

§ 30-2744. Terms, conditions, and forms for registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for lineal descendants per stirpes. This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:


§ 30-2745. Application of sections.

Sections 30-2734 to 30-2745 apply to registrations of securities in beneficiary form made before, on, or after September 9, 1993, by decedents dying on or after such date.
§ 30-2746. Sections, how construed.

Sections 30-2715 to 30-2746 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact them.