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Wyoming's Law of Decedents' Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code - Part III

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This is the third article in a comprehensive four-part analysis comparing present Wyoming law with corresponding provisions of the Uniform Probate Code. In Part I of this series Professor Averill focused upon the differing treatment given testate and intestate succession under Wyoming law and under the Uniform Probate Code. Part II compared the procedures for administration of a decedent's estate. In this, Part III, Professor Averill contrasts the Uniform Probate Code's comprehensive treatment of ancillary administration, multiple-party accounts, and administration of trusts with the patch-work system presently existing in Wyoming. In these areas, once again, the Uniform Probate Code stands as the model for administrative ease and predictability.

WYOMING'S LAW OF DECEDENTS' ESTATES, GUARDIANSHIP AND TRUSTS: A COMPARISON WITH THE UNIFORM PROBATE CODE---PART III

*Lawrence H. Averill, Jr.**

INTRODUCTION TO PART III

PART III of this article will deal with three areas of law covered by the Code but which are generally, under the present law in most jurisdictions, dealt with only in a piecemeal fashion or even not at all. These three areas include ancillary administration, multiple-party accounts and administration of trusts. Since Wyoming law on these subjects is sparse or sometimes nonexistent, the emphasis in Part III is to outline and explain the Code's provisions.

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Significantly, further recent developments have occurred since the publication of Part II. Five more states† have enacted the Code substantially in its entirety: Arizona, Colorado, North Dakota, South Dakota and Montana. Seven states now have enacted the Code and many more are or will be giving it serious consideration.†† Passage in these states is reasonably possible within the next three years. Interestingly, most of these states are in the Great Plains or the Rocky Mountain areas.

This series of articles will conclude with Part IV which will deal with the Code's provisions on guardianship and with its general overall provisions.

XIII. ANCILLARY ADMINISTRATION

Presently, it is not an uncommon situation for an individual to own property in two or more states. When that person dies, however, the difficult task of obtaining settlement of his multi-state estate in the several jurisdictions arises. Although the principal administration will, of course, be in his state of domicile, additional or ancillary administrations may be necessary depending upon the law of the situs of the property of the non-domiciliary state. Because present law emphasizes the territorial concept of jurisdiction over decedents' estates, those estates which cross state lines are typically required to complete separate administrations in each jurisdiction.[790] Such ancillary administrations are often costly and complex.

A. Wyoming Law

Wyoming's law directly dealing with the matter of ancillary administration is sparce and fragmented. Except in limited situations, the Wyoming estate of a non-domiciliary must be administered as a domiciliary's estate would be and,

†ARIZ. REV. STAT. ANN. §§ 14-1101 to -7307 (Spec. Pamphlet 1973) (Effective January 1, 1974); COLO. REV. STAT. §§ 153-1-101 to -8-102 (Effective July 1, 1974); N.D. CENT. CODE §§ 30.1-01-01 to -35-01 (Effective July 1, 1975); ch. 196, [1974] So. Dak. Sess. (Effective July 1, 1975); ch. 365 [1974] Mont. Sess. (Effective Jan. 1, 1975).

††6 U.P.C. Notes 1, 2, 10 (October 1973).

790. SCOLES & HALBACH, PROBLEMS AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS 465-66 (2d ed. 1973).

unless one of the abbreviated procedures[791] is applicable, this requires that the estate be fully and formally administered.[792]

Wyoming does have, however, a few statutory provisions specifically related to ancillary administration which deserve explanation. First, under its Uniform Foreign Probate Act,[793] a will which has been admitted to probate in another state may be probated in Wyoming if it was executed according to the statutory requirements of either the place of making, or the testator's domicile at the time of execution or the law of Wyoming.[794] This Act gives Wyoming a liberal choice of law rule with respect to the probate of wills in this state when the will has been probated elsewhere.[795] It does not, however, affect the manner in which the estate must be administered after the will is probated. It is merely a procedure to permit probate of foreign executed wills.

A second related provision deals with payments to foreign personal representatives by local debtors.[796] It provides that a local debtor may voluntarily pay foreign personal representatives for secured debts owed the decedent and that the personal representative may execute full and valid releases for such debts. Since the statute expressly provides that it does not authorize foreign personal representatives to exercise any other powers within the state, only voluntary payments by debtors are covered by the statute. In addition, under present law a foreign personal representative may not bring suit in this state.[797] Consequently, if the debtor refused to pay, the personal representative has no other recourse than to seek an ancillary administration in order to be qualified to bring suit and to enforce the decedent's claim. Because the authority given by this statute is severely limited in application, it does not represent a viable abbreviated pro-

791. These procedures are discussed in Averill, *Wyoming's Law of Decedents' Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code—Part II*, 8 LAND & WATER L. REV. 187, 197-200 (1973).
792. *Id.* at 200-05.
793. WYO. STAT. §§ 2-67 to -71 (1957).
794. WYO. STAT. § 2-70 (1957).
795. *See generally* LEFLAR, AMERICAN CONFLICTS LAW § 196, at 480-81 (Rev. ed. 1968).
796. WYO. STAT. § 34-34 (1957).
797. Security-First Nat'l. Bank v. King, 46 Wyo. 59, 23 P.2d 851 (1933); In re Smith's Estate, 55 Wyo. 181, 97 P.2d 677 (1940).

cedure for administration of a non-domiciliary decedent's estate.

The third and last statutory provision is more comprehensive and of greater application. This section provides that after one year from the death of the non-domiciliary and after the decedents' estate has been fully administered and settled in another state, upon a petition and after a hearing, the formal administration of the estate in Wyoming may be dispensed with.[798] Significantly, the value of the estate in Wyoming must not exceed $10,000 and any unpaid creditors may object and force the estate into formal administration. Despite these two limitations, this section does provide in some small estates a reasonably viable alternative to full formal administration. The most serious restrictions are that the abbreviated procedures may be used only after one year from the death of the decedent and only after the foreign administration has been fully settled. These restrictions can cause significant inconvenience to the successors who might wish to settle the Wyoming estate more rapidly than permitted. In fact, if settlement of the Wyoming estate is desired more quickly, formal administration would be the only recourse and, of course, using this procedure would not necessarily be quicker.

B. The Uniform Probate Code

Although recognizing the territorial concept of jurisdiction over decedent's estates in essential situations,[799] the Code's primary goal is a unified administration for a decedent who has a multi-state estate.[800] The Code, therefore,

798. WYO. STAT. § 2-329 (1957). Certified copies from the other state of the petition, the order of appointment of the personal representative, the inventory and the final distribution decree must accompany the petition in the Wyoming court. *Id.* In addition, notice of the hearing must be made by publication for three weeks and petitioners must make a "full showing" that all of the decedent's debts have been paid. *Id.*

799. The most obvious situation is with respect to a state's control over title to its real estate. The Code does not alter the law on this matter. *See* Wellman, *How the Uniform Probate Code Deals With Estates That Cross State Lines*, 5 REAL PROPERTY, PROBATE AND TRUST J. 159 (1970).

800. Wellman, *supra* note 799; Vestal, *Ancillary Administration,* UNIFORM PROBATE CODE PRACTICE MANUAL § 13.1, at 176 (Assoc. of Continuing Legal Education Administrators 1972).

The Codes' provisions, which are applicable to ancillary administration, control within the Code state regardless whether the domiciliary state has reciprocal laws. Wellman, *supra* note 799, at 165.

necessarily gives the law and actions of the state of domiciliary administration special significance in the states of ancillary administration. One technique by which this is accomplished is through the significant powers given to the domiciliary personal representative. In exercising these powers, the domiciliary personal representative is accorded several significant options.

Initially, with nothing more than his own affidavit, a foreign domiciliary personal representative, sixty days after the decedent's death, may solicit or receive, or both, payments of debts and deliveries of property held by persons in the Code jurisdiction.[801] This affidavit must recite the date of death, that no local administration is pending and that the domiciliary personal representative is entitled to the payment or delivery.[802] The debtors or possessors, who act in good faith, are released to the same extent as if their payments or deliveries had been made to a local personal representative.[803] Resident creditors[804] may prevent such payments or deliveries, however, by notifying the debtors or possessors that they should not be made.[805] Although this authority is similar to present Wyoming law, the Code includes additional procedures.

Concurrently and alternatively, upon the filing of authenticated copies of his domiciliary appointment and of his official bond,[806] if any, the foreign domiciliary personal representative is entitled to exercise all powers[807] which a local personal representative could exercise and to bring legal proceedings in courts of the ancillary jurisdiction which any non-resident would be able to bring.[808] This filing has the above effect only if no local administration is pending or functioning.[809]

801. UNIFORM PROBATE CODE: OFFICIAL TEXT WITH COMMENTS § 4-201 (West 1970) [hereinafter cited as U.P.C.].
802. U.P.C. § 4-201 (1) - (3).
803. U.P.C. § 4-202.
804. The term "resident creditor" is defined as "a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a non-resident decedent." U.P.C. § 4-101(3).
805. U.P.C. § 4-203.
806. U.P.C. § 4-204.
807. *See* U.P.C. §§ 3-711 to -715.
808. U.P.C. § 4-205. *See also* U.P.C. § 3-703(c).
809. U.P.C. § 4-204.

In a testate estate the foreign domiciliary personal representative would probably also exercise his authority to file for informal probate.[810] Since the Code requires devisees to probate a will in order to prove title,[811] informal probate would at least be necessary if the devolution of real estate is involved.[812]

In most situations, the above actions by the domiciliary personal representative would constitute all that are necessary in the ancillary jurisdiction because the remaining activity would take place in the domiciliary jurisdiction. This is feasible under the Code, because actions taken in the domiciliary jurisdiction are to be given recognition in the ancillary jurisdiction. After proper notice and an opportunity for contest by all interested persons, domiciliary adjudications concerned with testacy, will validity and its construction must be given res judicata in a Code, non-domiciliary jurisdiction.[813] Furthermore, adjudications for or against any personal representative in any jurisdiction, be it domiciliary or ancillary, are res judicata[814] and creditors' claims which are barred by the domiciliary non-claim statute, are barred in a Code, non-domiciliary jurisdiction.[815] In addition, if an interested person petitions for local appointment, the domiciliary personal representative is given priority of appointment in the ancillary state.[816] These res judicata and other rules should significantly reduce conflicting adjudications

810. U.P.C. § 3-308(b).

811. U.P.C. §§ 1-301, 3-102. For a discussion of this requirement and its exceptions see Averill, *supra* note 791, at 211-12.

812. Wellman, *supra* note 799, at 160.

813. U.P.C. § 3-408. A finding of domicile is required. *Id.* This finding, however, could be accomplished through a formal closing. U.P.C. §§ 3-1001 to -1002.

814. U.P.C. § 4-401. Adjudications obtained by fraud or collusion are impliedly excepted. Vestal, *supra* note 800, § 13.15, at 190.

815. U.P.C. § 3-803(a)(1). The non-claim period may be extended in the ancillary jurisdiction if the first publication for claims in that state occurs before the period has run in the domiciliary state. *Id.*

816. U.P.C. § 3-203(g). Unless the decedent's will appoints a different person to serve as personal representative in the ancillary jurisdiction, the domiciliary personal representative may obtain removal of anyone else appointed. U.P.C. § 3-611(b). The domiciliary personal representative is, also, the only person who may file for informal appointment in the non-domiciliary state when an appointment has previously been in the state of domicile. U.P.C. § 3-308(b). Since he can obtain the same authority and powers by filing his domiciliary letters, however, informal appointment would not ordinarily be necessary. U.P.C. §§ 4-204 to -206.

and further the Codes' purpose of unifying the administration.[817]

Locally interested persons are not without protection, however. Within the Code's rules on statute of limitations and res judicata, interested persons have all of the affirmative action protections accorded interested persons in the domiciliary jurisdiction.[818] These protections would include the possibility of petitioning for formal probate, appointment, or closing, for supervised administration, or for any other proceeding or order permissible under Article III.[819]

Significantly, the Code also includes comprehensive provisions dealing with jurisdiction over foreign personal representatives. Not only does the personal representative submit himself to personal jurisdiction when he accepts appointment in a Code jurisdiction but he also submits to such jurisdiction when he obtains his powers through a filing of authenticated copies of his domiciliary appointment or when he receives voluntary payments or deliveries,[820] or when he does any other act within the state which would permit that state to assume jurisdiction over him as an individual.[821] A foreign personal representative is also subject to the jurisdiction of any state in which his decedent would have been subject to jurisdiction prior to his death.[822] These provisions would appear to be constitutional and to provide local persons with significant protection.[823]

In total perspective, the Code offers a rational and feasible plan for dealing with multi-state decedent's estates. It would be a great improvement over the inadequate patchwork system presently existing in most jurisdictions including Wyoming.

817. *See* Vestal, *supra* note 800, § 13.10, at 184 and § 13.15, at 190. Two other sections also deserve mention. The first one subjects the decedent's assets, wherever their situs and administration may be, to the properly filed claims in any administration of which the personal representative is aware. U.P.C. § 3-815. The second section, with three specific exceptions, provides that the non-domiciliary personal representative shall distribute the assets in its possession to the domiciliary personal representative for distribution to the appropriate beneficiaries. U.P.C. § 3-816.
818. *See* U.P.C. § 4-207.
819. *See* Averill, *supra* note 791, at 214-18.
820. Jurisdiction is limited to the value of the property collected. U.P.C. § 4-301.
821. U.P.C. § 4-301.
822. U.P.C. § 4-302.
823. *See* Vestal, *supra* note 800, § 13.14, at 188-89.

XIV. MULTIPLE-PARTY ACCOUNTS

A very common and popular method of holding accounts and deposits with financial institutions is in some form of two or more names. These arrangements are called multiple-party accounts[824] and typically take one of the following forms: 1) joint accounts,[825] 2) trust accounts,[826] or 3) accounts payable on death (P.O.D.).[827] Unfortunately, an inordinate amount of litigation has resulted from various legal problems generated by these devices.[828] Much of the litigation has dealt with the determination of the legal foundations for the creation of multiple accounts. The pervasive issue is whether they are effective to pass property to the non-contributing party at the death of the donor or whether they are testamentary and therefore must satisfy the execution requirements of a Statute of Wills.[829] The judicial response to this issue has varied both as to results and as to the theories for the results.

The joint account has had a particularly diverse judicial history. Numerous rationales have been espoused by the courts for recognizing the validity of survivorship rights of a donee in a joint account. Most of these theories have attempted to equate joint accounts to other presently recognized devices frequently used as will substitutes.[830] As justification for validating joint accounts, courts have held that joint accounts are valid gifts, or trusts, or contracts or even joint tenancies.[831] Unfortunately, joint accounts do not totally satisfy the requirements of any one of these concepts.[832]

824. Effland, *Non-Probate Transfers*, UNIFORM PROBATE CODE PRACTICE MANUAL § 15.1, at 251 (Assoc. of Continuing Legal Education Administrators 1972).

825. *E.g.*, an account payable to "A or B."

826. *E.g.*, an account held as "A in trust for B."

827. *E.g.*, an account held as "A payable on death to B."

828. *See generally* Kepner, *The Joint and Survivorship Bank Account—A Concept Without a Name*, 41 CALIF. L. REV. 596 (1953); Kepner, *Five More Years of the Joint Bank Account Muddle*, 26 U. OF CHI. L. REV. 376 (1959); McGovern, *The Payable on Death Account and other Will Substitutes*, 67 NW.U.L.REV. 7 (1972); I SCOTT, TRUSTS §§ 58-58.6 (1967).

829. 1 BOWE & PARKER, PAGE ON WILLS § 6.18, at 270 (1960).

830. *See* Hines, *Personal Property Joint Tenancies: More Law, Fact and Fancy*, 54 MINN. L. REV. 509, 531 (1970).

831. Kepner, *The Joint and Survivorship Bank Account—A Concept Without a Name*, 41 CALIF. L. REV. 596, 598-604 (1953).

832. *See* ATKINSON, WILLS § 40, at 167-71 (2d ed. 1953); Hines, *supra* note 830, at 531-32.

Courts of several states have recogized this fact and have found that although joint accounts are peculiar, they are a valid form of ownership and a valid dispositive device.[833] In Wyoming, two supreme court decisions impliedly recognize the validity of joint accounts.[834] In both cases the surviving donees were held to be entitled to the remaining assets in the joint account to the disadvantage of the successors of the decedent's estate. Neither decision, however, analyzed the theoretical bases upon which validity was found.

Except as recognized and approved by statute,[835] payable-on-death accounts have generally been held invalid as testamentary dispositions.[836] The P.O.D. account is distinguished from the joint account on the tenuous ground that no present interest passes to the donee in the former whereas one does in the latter.[837] Notwithstanding, the P.O.D. form on United States Savings Bonds has consistently been held effective although this could be explained on the basis of federal law preemption.[838]

The body of law concerned with the validity of the trust account is more complex. When a person opens up an account in the name of "A in trust for B," the initial issue is to determine what is intended by the use of this form. Three conclusions have been reached: (1) it creates an irrevocable trust; (2) it creates no trust at all; or (3) it creates a "revocable trust."[839] The latter interpretation is the majority viewpoint.[840]

Assuming a revocable trust is created, the courts have disagreed on the question of its validity. Although there is a minority which have held these "revocable trusts" to be

833. *See, e.g.*, Jacques v. Jacques, 352 Mich. 127, 89 N.W.2d 451 (1958); Slocum v. Bohuslov, 164 Neb. 156, 82 N.W. 2d 39 (1957).

834. Leseberg v. Lane, 369 P.2d 533 (Wyo. 1962); In re Jansen's Estate, 284 P.2d 1086 (Wyo. 1955). But *cf.* Wambeke v. Hopkin, 372 P.2d 470, 476 (Wyo. 1962).

835. *See, e.g.*, IOWA CODE § 534.11(8) (1970).

836. I SCOTT, TRUSTS § 58.6, at 562 (1967); McGovern, *The Payable on Death Account and Other Will Substitutes*, 67 NW. U.L. REV. 7, 9 (1972).

837. McGovern, *supra* note 836, at 9-10.

838. I SCOTT, TRUSTS § 56.6A, at 470-73 (1967); ATKINSON, WILLS § 40, at 172 (2d 1953); McGovern, *supra* note 836, at 10.

839. I SCOTT, TRUSTS § 58.1, at 519 (1967).

840. *Id.* at 520.

testamentary, it would appear that a larger number of courts have upheld them.[841]

All three multiple-party accounts have generated litigation over other issues as well. These issues relate to problems arising before the donor dies, or after he dies or at either time.[842] Pre-death problems include the rights in the accounts between the donor and the donee and the rights of the donor's and donee's creditors in the account. Post-death problems include, in addition to the validity question, the rights of the decedent's creditors and the rights of the donor's surviving spouse or other persons protected from disinheritance. Other pervasive issues[843] include the manner and time of revocation, the sufficiency of evidence to rebut survivorship, and the relationship of the financial institution which holds the account to the depositor and his beneficiaries.[844]

Wyoming's only law on the above problems is with respect to the relationship of the financial institution to the parties. By statute, Wyoming banks[845] are discharged from liability when they make payments of deposits or income from such deposits or income or both to any person listed on a joint account either before or after the death of any of the joint depositors.[846] A similar provision discharges banks and trust companies from liability when they make payments to the person named as beneficiary after the death of the depositor in a trust account if they have no other written notice of an underlying effective trust.[847] These statutory provisions are intended merely for the protection of the financial institutions. It is doubtful that they are determinative or even should be determinative of the substantive issues raised by

841. *Id.* at 828-30. *See* RESTATEMENT (SECOND) OF TRUSTS § 58 (1959).
842. *See generally* Kepner, *supra* note 828, at 612-34 (1953); I SCOTT, TRUSTS §§ 58.4, 58.5 (1967); McGovern, *supra* note 836, at 18-38.
843. Taxation questions are also pervasive issues, but will not be considered in this article.
844. Nearly all of the states have enacted some type of legislation which protects financial institutions with respect to the payments made to persons named in the multiple-accounts. Kepner, *supra* note 828, at 604-07.
845. Defined in WYO. STAT. § 13-1 (1957) as "Any person, firm or corporation (except national banks) having a place of business within this state where credits are opened by the deposit or collection of money or currency or negotiable paper subject to be paid or remitted upon draft, receipt, check, or order, shall be regarded as a bank or banker, and as doing a banking business under the provisions of this act."
846. WYO. STAT. § 13-29.1 (Supp. 1973).
847. WYO. STAT. § 13-34 (1957).

these accounts between the parties of the accounts themselves or between these parties and other third persons.[848]

The Code deals both with the question of the validity of joint, P.O.D., and trust accounts as dispositive devices and with their other pre-and post-death problems including the protection of financial institutions.[849] Its provisions are divisible into three separate categories. The first category includes the general and clarifying definitions of terms.[850] The second deals with ownership as between the parties of the multiple-party accounts and other persons including creditors and successors.[851] The third governs the liability of financial institutions.[852] The latter two categories are intentionally separated so that differing intentions of the parties may affect arrangements in the second category without endangering the element of definiteness needed to induce financial institutions to offer such accounts to their customers.[853]

For purposes of clarity and brevity, the following chart illustrates the comprehensiveness and a comparison when appropriate of the Code's provisions dealing with the three multiple-party accounts:

848. ATKINSON, WILLS § 40, at 171 (2d ed. 1953). Some courts have been influenced by these protection statutes in upholding the donee's survivorship rights. *Id. See also* Kepner, *supra* note 842, at 606.
849. U.P.C. §§ 6-101 to -113. *See generally* Effland, *Non Probate Transfers*, UNIFORM PROBATE CODE PRACTICE MANUAL, Ch. 15 (Assoc. of Continuing Legal Education Administrators 1972).
850. U.P.C. § 6-101.
851. U.P.C. §§ 6-103 to -107.
852. U.P.C. §§ 6-108 to -113.
853. U.P.C. § 6-102, Comment at 248. *See also* Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453, 484 (1970).

[Chart No. 10]

Multiple-Party Accounts Under the Code

Joint Accounts[854]	P.O.D. Accounts[855]	Trust Accounts[856]
Ownership during lifetime[857]		
Parties[858] named on the account	Payee[859] who makes deposits	Trustee[860] who makes deposit
In proportion to net contributions[861]	If more than one depositor, in proportion to net contributions[862]	If more than one trustee, in proportion to net contributions[863]
Rebuttable by clear and convincing evidence of contrary intent[864]	[Same]	[Same][865]
		or
[No similar provision]	[No similar provision]	Rebuttable by manifested terms of the account

854. Defined in U.P.C. § 6-101(4) as "an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship."

855. Defined in U.P.C. § 6-101(10) as "an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees."

856. Defined in U.P.C. § 6-1-1 (14) as "an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. . . ." It does not include a trust account under any trust agreement or a fiduciary account arising from fiduciary relationships. *Id.*

857. U.P.C. § 6-103.

858. Defined in U.P.C. § 6-101(7) as "a person who by the terms of the account has a present right, subject to request, to payment from a multiple-party account."

859. *Id.*

860. *Id.*

861. Defined in U.P.C. § 6-101(6) as, at any given time, "the sum of all deposits thereto made by or for [a party], less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance." There is no provision for the situation where the parties fail to prove net contributions. Presumably the account would be divided equally if proof was inadequate. *See* U.P.C. § 6-103, Comment at 249-50.

862. *Id.*

863. *Id.*

864. Such as an intent to make a gift to another party. *See* U.P.C. § 6-103, Comment at 249.

865. Such as an intent to create an irrevocable trust. U.P.C. § 6-103(c).

Right of Survivorship[866]

In the party or parties surviving	In the surviving original payee or payees[867]	In the surviving trustee or trustees[868]
In proportion to their previous ownership	[No similar provision but the same ruling should be implied]	[No similar provision but the same rule should be implied]
[Not applicable]	Upon their death in the POD payee or payees	Upon their death in the beneficiary or beneficiaries
Survivorship rights continue between surviving parties	No right of survivorship between surviving P.O.D. payees[869]	No right of survivorship between surviving beneficiaries[870]
Rebuttable by clear and convincing evidence of contrary intent at time of creation	[No similar provision—presumably not rebuttable][871]	Rebuttable by clear and convincing evidence of contrary intent
Nontestamentary[872]	[Same]	[Same]

866. U.P.C. § 6-104. If a multiple account is not characterized as one of the three types specifically created by the Code, there is no right of survivorship and consequently the deceased party's interest will pass as part of his estate. U.P.C. § 6-104(d). Multiple-accounts are defined in terms of the three specifically named accounts and other arrangements are, in turn, specifically excluded. U.P.C. § 6-101(5).

867. *See* discussion note 869, *infra.*

868. *See* discussion note 870, *infra.*

869. The meaning of this statement when read in conjunction with the statement accompanying note 867, *supra,* is that there is a right of survivorship among the original payees so long as one or more of them are alive, but that there is no right of survivorship among the surviving P.O.D. payees after the death of the last original payee. U.P.C. § 6-104(b). *See* Johnson, *Joint, Totten Trust, and P.O.D. Bank Accounts: Virginia Law Compared to the Uniform Probate Code,* 8 U. OF RICHMOND L. REV. 41, 52 (1973).

870. The meaning of this statement when read in conjunction with the statement accompanying note 868, *supra,* is that there is a right of survivorship among the trustees so long as one or more of them are alive, but that there is no right of survivorship among the surviving beneficiaries after the death of the last trustee. U.P.C. § 6-104(c). *See* Johnson, *supra* note 869, at 52-53.

871. The absence of a potential of rebuttal of survivorship in P.O.D. accounts has been criticized. McGovern, *The Payable on Death Account and Other Will Substitutes,* 67 NW. U.L. REV. 7, 16 (1972).

872. U.P.C. § 6-106. This provision means that for purposes of passing an interest to survivors at death, the accounts need not satisfy the execution requirements for wills and are not subject to the administration procedures required for assets passing through the decedent's estate. *See* U.P.C. § 6-106, Comment at 252. *But cf.* note 878, *infra,* and accompanying text.

In a broadly phrased section separated from the provisions concerning multiple accounts, the Code gives the same non testamentary status to various provisions sometimes found in inter vivos transactions which have been in the past held by the courts to be invalid because they were characterized as testamentary. U.P.C. § 6-201. The provisions recognized are (1) pay at death clauses, (2) waiver of debt clauses, and (3) power to designate a beneficiary clauses. These provisions may be included within the instrument of creation of the transaction or in a separate writing exe-

Revocation and Alteration		
By a signed written order of a party received by the financial institution[873] during the party's lifetime[874]	[Same]	[Same]
Cannot be changed by will[875]	[Same]	[Same]
Rights of Creditors[876]		
Accounts are not liable to creditors unless the estate is insufficient.	[Same]	[Same]
Up to insufficiency, accounts are liable for debts, taxes, expenses of administration and statutory allowances.	[Same]	[Same]
Accounts are liable only up to the amount decedent owned beneficially immediately before death.	[Same]	[Same]
Before commencing proceedings creditors must make a written notice to the personal representative.	[Same]	[Same]

cuted at the same time or subsequently. This section should establish the validity for many common provisions found in insurance policies, pension funds, annuity contracts and other family arrangements. U.P.C. § 6-201, Comment at 256-57. *See* Wellman, *supra* note 853, at 484-85.

873. Defined in U.P.C. § 6-101(3) as "any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions."

874. U.P.C. § 6-105. The requirement of a writing in order to alter or revoke has been criticized. McGovern, *supra* note 871, at 21.

875. U.P.C. § 6-104(c). The merits of this rule lie more with its clarity and definiteness rather than with its logical foundation. *See*, McGovern, *supra* note 871, at 22-23; Wellman, *The Joint and Survivor Account in Michigan—Progress Through Confusion*, 63 MICH. L. REV. 629, 659 (1965).

876. U.P.C. § 6-107.

Proceedings must be commenced no later than two years from date of death.	[Same]	[Same]
The personal representative brings the proceedings.	[Same]	[Same]
Sums recovered by the personal representative become part of the decedent's estate.[877]	[Same]	[Same]
Financial institutions are discharged for payments made according to the terms of the account and made before served with process in a proceeding by the personal representative.	[Same]	[Same]

Rights of Surviving Spouse

Determined by sections on elective share[878]	[Same]	[Same]

Financial Institution[879] *Protection*[880]

Payment may be made to any one or more of the parties.	Payment may be made to any original payee or to his personal representative or heirs upon proof that he survived all parties and P.O.D. payees.	Payment may be made to any trustee or to his personal representative or heirs upon proof that he survived all other trustees and beneficiaries.[881]

877. This provision means that the initiating creditor or creditors do not obtain a priority for payment of debts. *See* Johnson, *supra* note 869, at 54.

878. U.P.C. § 6-107, Comment at 253. *See* U.P.C. §§ 2-201 to -207; Averill, *Wyoming's Law of Decedents' Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code—Part I*, 7 LAND & WATER L. REV. 169, 197-200 (1972).

The surviving spouse, minor children and dependent children are automatically protected against multiple-party accounts up to their statutory allowances. U.P.C. § 6-107, Comment at 253. *See* U.P.C. §§ 2-401 to -403.

879. *See* note 873, *supra*.

880. U.P.C. §§ 6-108 to -113.

881. This rule does not apply if the beneficiary has a vested interest not dependent upon surviving the trustee. U.P.C. § 6-111. Notice of such a vested interest must have been received in writing by the financial institution. *Id.*

Payment may not be made to the personal representative or heirs of a deceased party unless proof of death[882] shows the decedent to be the last survivor or that there is no right of survivorship.[883]	Payment may be made to the P.O.D. payee or payees upon proof of surviving all original payees.[884]	Payment may be made to the beneficiary or beneficiaries upon proof of surviving all trustees.[885]
No inquiry into source or application of funds withdrawn need be made.[886]	[Same]	[Same]
Payments discharge institution if made according to the Code's provisions.[887]	[Same]	[Same]
Parties are the only ones who can alter the above rules and only by written notice to the institution.[888]	[Same]	[Same]
Rights between parties or successors are not affected by these discharge rules.[889]	[Same]	[Same]
Institutions may set off against accounts money owed to them by parties having a right of withdrawal up to their beneficial interest immediately before death.[890]	[Same]	[Same]

It is readily apparent from the above chart that the Code attempts to deal with the major problems which have plagued multiple-party accounts in the past. Because of the

882. "Proof of death" is defined in U.P.C. § 6-101(9). *See also* U.P.C. § 1-107.
883. U.P.C. § 6-109.
884. U.P.C. § 6-110.
885. U.P.C. § 6-111.
886. U.P.C. § 6-108.
887. U.P.C. § 6-112.
888. *Id. See also* U.P.C. § 6-105.
889. U.P.C. § 6-112.
890. U.P.C. § 6-113. An equal share may be set off if net contributions are not provable. *Id.*

past judicial confusion and piecemeal legislative endeavors, legal writers in this area have argued for a legislative solution. Although some have quibbled over minor points in the Code, the general reaction is favorable and enthusiastic. Wyoming should definitely give serious consideration to these multiple-party account provisions.

One point of caution, however, which deserves mention is that if these provisions become law, the financial institutions which will be dealing with these accounts on a day-to-day basis must make conscientious efforts to explain their consequences to depositors. Since it is very doubtful that attorneys will be consulted by depositors about them, the financial institutions' personnel will become the depositors' counselors.[891] It becomes imperative, therefore, that educational programs about the consequences of multiple-party accounts be instituted for these personnel.

XV. TRUST ADMINISTRATION

Many of the problems raised by decedent's estates which cross state lines are also present when dealing with both inter vivos and testamentary trusts. In fact, problems may even be increased by the future mobility of a trust's beneficiaries. Consequently, litigation over questions of jurisdiction, validity, administration and interpretation has frequently occurred.[892] Since the laws of the various states may differ on these issues, predictability and efficiency may be diminished. An additional problem exists because many states do not have comprehensive statutory provisions or a body of law developed on these matters thereby leaving many areas in doubt. Wyoming is one of those jurisdictions with neither comprehensive statutory provisions[893] nor judicial opinion on most of these matters.

891. *See* McGovern, *supra* note 871, at 18.

892. *See generally* LEFLAR, AMERICAN CONFLICTS LAW §§ 187-93, at 459-74 (Rev. ed. 1968).

893. One exception where Wyoming does have significant and comprehensive legislation is in the area of trust management. Wyoming has enacted the Uniform Trustees' Powers Act, [WYO. STAT. §§ 4-36 to -46 (Supp. 1973)], the Revised Uniform Principal and Income Act [WYO. STAT. §§ 34-374 to -389 (Supp. 1973)], the Uniform Simplification of Fiduciary Security Transfer Act, [WYO. STAT. §§ 4-15.1 to -15.11 (Supp. 1973)], and the Uniform "Prudent Man" Investment of Funds Act [WYO. STAT. §§ 4-19.1 to

The Code includes an affirmative, innovative and comprehensive package designed to bring unity and predictability to trust administration.[894] The Code's provisions on trust administration are divided into three subdivisions: 1) Trust Registration,[895] 2) Jurisdiction of Court Concerning Trusts,[896] and 3) Duties and Liabilities of Trustees.[897] Trust registration is a new concept and has become one of the Code's most controversial issues. Much of the controversy derives its existence, however, from misunderstandings about the consequences of registration and about the relationship of registration to the other provisions concerning jurisdiction. This misunderstanding can, hopefully, be corrected by outlining what registration and the other related jurisdictional provisions do and what they do not do.

For emphasis and clarification it is better to begin with the negative. Registration does not include a filing of the trust instrument; therefore the terms of the trust, including its assets and beneficiaries, may remain secret.[898] It does not mean that the registration court is to maintain continuing supervision over the trust or to require periodic accountings from the trustee since the court's assumption of jurisdiction is initiated only by a proceeding brought at the option of interested persons.[899] Furthermore, registration is not required when a person such as the settlor retains a presently exercisable general power of appointment over the trust and

-19.5 (Supp. 1973)]. These acts are extremely meritorious and would be retained even when the Code is enacted. *See* U.P.C., pt. 4, Powers of Trustees, at 276.

894. *See generally*, Scoles, *Administration of Trusts*, UNIFORM PROBATE CODE PRACTICE MANUAL, Ch. 16 (Assoc. of Continuing Legal Education Administrators 1972).

895. U.P.C. §§ 7-101 to -105.

896. U.P.C. §§ 7-201 to -206.

897. U.P.C. §§ 7-301 to -307.

898. U.P.C. § 7-102. Registration is accomplished by filing with the court a statement which includes the following information: (1) the name and address of the trustee; (2) an acknowledgement of trusteeship by the trustee; (3) a statement whether the trust has been registered elsewhere; and (4) a brief identification of the trust. *Id.* Identification differs depending upon whether the trust is inter vivos or testamentary, but in neither situation does it require revelation of the beneficiaries or of the terms of the trust. *Id.* One minor exception, which is meritorious because it will aid in establishing the rights of the parties, is that the registration of oral trusts requires this information. *Id.*

899. U.P.C. § 7-201(b).

when he directs or agrees with the trustee to refrain from registration.[900]

On the affirmative side, by determining the principal place of administration, registration establishes a single jurisdictional location for determining trust litigation issues.[901] The principal place of administration is clearly set out as the jurisdiction which is designated in the trust instrument or which, if not designated, is the trustee's usual place of business where the trust records are kept.[902] Significantly, appropriate proceedings may be initiated to change the place of principal administration if it would further efficient administration and the interests of the beneficiaries.[903] The primary effect of registration is to establish a court where the trustee[904] and the beneficiaries[905] are subject to the jurisdiction of the court with respect to their affairs and interests in the trust.[906] In addition, unity of administration and litigation is greatly enhanced by giving the state of registration exclusive jurisdiction over the internal affairs of the trust[907] and by discouraging the court's exercise of jurisdiction over trusts having their principal place of admnistration in other states.[908] Furthermore, foreign trustees are given broader powers than generally recognized to deal with trust matters

900. U.P.C. § 1-108. *See also* U.P.C. § 7-104, Comment, at 266 and U.P.C. § 1-403(2)(i). In all other situations, any attempt by the settlor to waive registration is void. U.P.C. § 7-104.
901. *See* Scoles, *supra* note 894, §§ 16.6.-7, at 265-66.
902. U.P.C. § 7-101.
903. U.P.C. § 7-305.
904. U.P.C. § 7-103(a). A special manner of notice to the trustee is established. Id. Even if a trustee fails to register a trust, jurisdiction over it can still be obtained by a beneficiary in any court in which the trust could have been registered. U.P.C. § 7-104.
905. U.P.C. § 7-103(b). Notice to the beneficiaries must be given pursuant to U.P.C. § 1-401. Although this provision may extend traditional concepts of in personam or quasi in rem jurisdiction, the draftsmen assert that it affords due process to the beneficiaries. U.P.C. § 7-193, Comment, at 265-66.
906. *See* U.P.C. § 7-201.
907. U.P.C. § 7-201(a). Issues concerning the internal affairs of a trust include issues dealing with the administration and distribution of the trust and with the rights and responsibilities between the trustees and the trust beneficiaries. *Id.; see also* U.P.C. § 7-205. Interested parties must be given appropriate notice. U.P.C. § 7-206.
Concurrent jurisdiction with other courts in the state is given to the registration court concerning litigation between third parties and the trust. U.P.C. § 7-204.
908. U.P.C. § 7-203. A non registration court may entertain proceedings but should not do so unless a substantial injustice would result. U.P.C. § 7-203, Comment, at 269. This section is a statutory forum non conveniens rule. *Id.* Its liberal use is encouraged by the power of the court to make conditional dismissals. U.P.C. § 7-203.

in the Code state.[909] These powers apply to both individual and corporate trustees and include the authority to receive distributions from a local estate, to own property in the state and to maintain litigation without the requirement of local qualification unless otherwise required by law.[910]

The Code's unity of administration approach is truly meritorious. Notwithstanding, there has been objection to the registration requirement because of fear that the privacy of inter vivos trusts would be lost.[911] The Arizona version of the Code accepts this objection and omits the registration requirement.[912] The jurisdictional and responsibility concepts, however, were retained by attaching the same significance to the place of acceptance of a trust or the principal place of administration.[913] Although removal of the registration requirement does not entirely negate the advantages of the Code's provisions on trust administration, it does have the effect of significantly endangering the unity concept if the provision dealing with foreign trustees is also omitted. Without this provision, unity of administration of a multistate trust in one jurisdiction is not realistically feasible.[914] The registration requirement is a small price to pay for the long term beneficial effect which will be derived from unification of trust administration. This is particularly true since the argument against it, i.e., loss of secrecy, is not justified because registration does not cause a revelation of the substantive content of the trust.[915]

As previously mentioned, the Code also covers the areas of the trustees' duties and liabilities. It codifies the trustees' standard of care and performance,[916] his duty to keep the

909. Scoles, *supra* note 894, § 16.11, at 267.
910. U.P.C. § 7-105.
911. Effland, *The Arizona Code: Variations on the U.P.C. Scheme*, 6 U.P.C. NOTES 4, 6 (October 1973).
912. *Id.*
913. ARIZ. REV. STAT. ANN. § 14-7202 (Spec. Pamphlet 1973).
914. *See* Zartman, *An Illinois Critique of the Uniform Probate Code*, 1970 ILL. L. FORUM 413, 534.
915. Five of the states which have enacted the Code have not rejected the registration concept. ALASKA STAT. §§ 13.36.005-.025. (1972); COLO. REV. STAT. §§ 153-7-101 to -105 (Supp. 1974); IDAHO CODE §§ 15-7-101 to -105 (Supp. 1973); N.D. CENT. CODE §§ 30.1-32-01 to -32-05 (Supp. 1974); ch. 196, §§ 7-101 to -105 [1974] So. Dak. Sess.
916. U.P.C. § 7-302. The Code adopts a standard which relates to "a prudent man dealing with the property of another," rather than the Restatement (Second) of Trusts' standard which relates to "a man of ordinary prudence

beneficiaries informed,[917] to account,[918] and to continually administer the trust efficiently and soundly in the most appropriate location.[919] The Code specifically states that these duties are not exclusive and that the trustee still has the general duty to administer the trust expeditiously for the beneficiaries.[920] With respect to bonding, the Code provides that it is not required unless the trust instrument requires it, or a beneficiary reasonably requests it, or the court finds that a bond is necessary to protect the interests of incapacitated or unrepresented beneficiaries.[921]

The Code also deals with the thorny and sometimes expensive problem of the trustee's liability to third persons.[922] Individual or personal liability for a trustee on contracts properly made in the course of the trust's administration occurs only when expressly provided in the contract or when the representative capacity of the trustee is not revealed in the contract.[923] Personal liability for torts or for property control or ownership occurs only if the trustee is personally at fault.[924] Third persons may sue the trust estate for such claims in the name of the trustee in its representative capa-

... dealing with his own property." U.P.C. § 7-302; RESTATEMENT (SECOND) OF TRUSTS § 174 (1959). Since the word "prudence" in the Restatement has frequently been interpreted to be the prudence one would use in dealing with the property of another, the Code actually does not bring a change in the law but merely a clarification. *See* SCOLES & HALBACH, PROBLEMS AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS 515 (2d ed. 1973); U.P.C. § 7-302, Comment at 271.

Compare U.P.C. § 7-302 *with* WYO. STAT. § 4-19.1 (Supp. 1973) and WYO. STAT. § 4-36(3) (Supp. 1973). If U.P.C. § 7-302 is enacted in Wyoming, it would be worthwhile to make all three provisions dealing with a fiduciary's standard of care consistent.

917. U.P.C. § 7-303(a), (b). This requirement includes (1) notifying in writing the current and prospective beneficiaries of the court in which the trust is registered and of the trustee's name and address within thirty days after acceptance and (2) upon a beneficiary's reasonable request, providing him with a copy of the trust and with information about any other trust matters concerned with its administration. *Id.*

918. U.P.C. § 7-303(c). Upon a beneficiary's reasonable request, he is entitled to an accounting annually, at termination or upon a change in the trustee. *Id.* These accountings need not be filed with the court. U.P.C. § 7-303, Comment at 272.

919. U.P.C. § 7-305. This is apparently an affirmative duty placed on a trustee, and he, therefore, must request a change in the place of administration within the standard given in the section.

920. U.P.C. § 7-301.

921. U.P.C. § 7-304. The amounts and other requirements are the same as those for personal representatives. *Id. See* U.P.C. §§ 3-604 to -606.

922. U.P.C. § 7-306.

923. U.P.C. § 7-306(a).

924. U.P.C. § 7-306(b).

city regardless of the trustee's own personal liability.[925] The trustee's liability to the trust may be litigated in the third person's action or in any other appropriate proceeding,[926] *e.g.*, a proceeding for an accounting.[927]

The trustee is protected further by a six-month statute of limitations from claims by beneficiaries of breach of trust if the beneficiary has received a final account.[928] This final statement must make a full disclosure of the administration and must state that the trust relationship has ceased between the trustee and the beneficiary.[929] There is no similar limitation period for interim accounts, however, and these may be barred only by adjudication or consent.[930] An alternative three-year limitation period bars beneficiaries' claims even without full disclosure so long as the beneficiary has received from the trustee a final account and has been informed of the location and availability of the trustee's records.[931] These periods of limitation, however, would not bar actions based upon the trustee's fraud or evasion, because an overriding provision covers such events.[932]

These Code provisions with respect to duties and liabilities of the trustee are also meritorious. They protect both the trustee and the beneficiaries and they clarify and improve predictability in many areas of trust law which have not been adequately determined. Trust legislation in these areas has been long over due.

925. U.P.C. § 7-306(c).
926. U.P.C. § 7-306(d).
927. Scoles, *supra* note 894, § 16.30, at 272.
928. U.P.C. § 7-307.
929. *Id.*
930. Scoles, *supra* note 894, § 16.31, at 273.
931. U.P.C. § 7-307.
932. Scoles, *supra* note 894, § 16.31, at 274. *See* U.P.C. § 1-106.