C. Joint Ownership of Assets

There are two types of joint deposit accounts in North Carolina, statutory and common law accounts. N.C.G.S. § 41-2.1 governs most joint bank accounts in the state, and prescribes the requirements that must be met to have a joint account with right of survivorship. In addition to statutory accounts, the courts have recognized common law survivorship accounts, which are not subject to the provisions of N.C.G.S. § 41-2.1.

Since July 1, 1989, individuals have been permitted to open a new type of joint deposit account at banks, credit unions and savings and loan associations. The account owners can elect whether the account is to have a right of survivorship feature, and whether it is to be held pursuant to N.C.G.S. § 41-2.1. If the provisions of N.C.G.S. § 41-2.1 are to apply, the signature card or written contract establishing the account must set forth the fact. You may expect the clerk may require copies of signature cards or other evidence that the account is a joint account with right of survivorship.

N.C.G.S. § 41-2.1 provides that for a joint account with right of survivorship to be valid, all joint tenants must have signed a written agreement, either on the signature card or by separate instrument, expressly providing for the right of survivorship. If one or more of the joint tenants failed to sign the signature card, then the Clerk will rule whether the estate is entitled to all or any part of the funds in such account. Where there is no appropriate documentation to substantiate a joint tenancy with right of survivorship under N.C.G.S. § 41-2.1, then the parties may have created a tenancy in common, and the tenant making the deposit owns what he deposited. The clerks may require the inclusion of the entire date of death balance in the estate subject to administration if the signature card does not expressly create a joint tenancy with right of survivorship.

Upon the death of one joint tenant, the survivor(s) becomes the sole owner(s) of the balance in the account, subject to certain claims upon the pro rata share of the balance treated as belonging to the decedent. Such claims include the year's allowance for the surviving spouse, funeral expenses, costs of administration, claims of the decedent's creditors and governmental rights. N.C.G.S. § 41-2.1(b)(3)a. through e. This

requirement means that the decedent's pro rata share of the account must be reported on the 90-Day Inventory or on a subsequent accounting.

N.C.G.S. § 41-2.1(b)(4) provides that the pro rata portion treated as owned by the decedent is paid by the financial institution to the PR (or to the Clerk if the amount is less than $2,000), upon presenting the death certificate and the PR's Letters to the financial institution. After a pro rata portion is paid to the PR, the balance of the account is paid to the surviving joint tenant(s). N.C.G.S. § 41-2.1(b)(4). The PR holds the decedent's pro rata portion separate and apart from other assets of the estate. If the decedent's other personal assets are exhausted, then this portion of the account is used to pay the debts, claims and expenses described above. The funds may not, however, be used to satisfy any bequests. N.C.G.S. § 28A-15-10(a)(3). Any excess, together with the earnings thereon, is paid to the surviving joint tenant(s) upon settlement of the estate. N.C.G.S. § 41-2.1(b)(4).

The PR may choose to release the decedent's pro rata share of the account to the surviving joint tenant(s) rather than hold it separate and apart, if the PR is sure that the funds are not needed for estate expenses and claims, particularly when the surviving joint tenant is the decedent's spouse.

Some financial institutions will not release funds except at the direction of the PR. As a standard practice, letters requesting redemption of the decedent's accounts should be prepared for the PR's signature.

Note that some banks by contract have converted all of their N.C.G.S. § 41-2.1 accounts into complete survivorship accounts held pursuant to N.C.G.S. § 53-146.1. All accounts at these banks held pursuant to a signature card that cites N.C.G.S. § 41-2.1 will be treated as full survivorship accounts, with the balance released to the survivor. If you are dealing with such a bank, a bank representative should notify you of this upon your inquiry for a signature card.

Where the provisions of N.C.G.S. § 41-2.1 apply, the account proceeds will be treated as described above. If N.C.G.S. § 41-2.1 does not apply but a right of survivorship has been elected by the joint owners, the financial institution may pay the

account proceeds to the surviving joint owner(s) immediately. Financial institutions may require a certified copy of the decedent's death certificate before releasing funds. Before the financial institution pays the funds to the joint tenant, the PR has the power to collect the funds held in the joint account from the financial institution if the funds are needed to satisfy claims against the decedent's estate. Payment of funds to the joint tenant terminates the PR's authority to collect against the financial institution for the funds so paid, but the PR may collect such funds from the surviving joint tenant in order to pay claims.

If a joint account is created under the new or amended statutes and no right of survivorship is created, the decedent will be considered to own what he deposited. The decedent's share of the account will be paid to the PR upon presentation of the PR's Letters, and that amount will be an asset of the estate which must be reported on the 90-Day Inventory or a subsequent accounting. The balance of the account will be paid to the surviving joint owner. The clerk may require the inclusion of the entire date of death balance in the estate subject to administration if it cannot be determined with certainty what portion of the funds in the account is attributable to the decedent.

Common Law Survivorship Accounts. Some financial institutions such as savings and loans, offer joint accounts which are not subject to N.C.G.S. § 41-2.1. These accounts, which are created on signature cards that do not mention N.C.G.S. § 41-2.1, nevertheless have a survivorship feature. Upon the death of a joint owner, the survivor is entitled to the entire balance in the account. The financial institution may require a certified copy of the decedent's death certificate before releasing funds. No part of the account is paid to the PR or becomes subject to the claims of creditors except to the extent needed to satisfy claims against the estate, pursuant to N.C.G.S. § 28A-15-10 however, many institutions having such signature cards nevertheless require that the PR comply with the provisions of N.C.G.S. § 41-2.1 in order to collect the account proceeds.

State-Chartered Credit Unions. Some state-chartered credit unions have deposit accounts with signature cards that appear on their face to create common law survivorship accounts. Regulations governing state-chartered credit unions provide

however that, in the case of joint deposit accounts, the decedent's pro rata portion of the account must be held until the final settlement of the estate in order to pay the decedent's debts, claims, taxes and expenses. Although the contract seems to create a common law survivorship account, in actuality it is similar to a § 41-2.1 joint account. This distinction may be important in determining the rights of creditors to reach the credit union account which N.C.G.S. sec. 54-109.58 authorizes.

Tentative or "Totten" trusts are created when an individual establishes an account in his own name in trust for another person. Previous to 1989, these accounts were available only at savings and loans under N.C.G.S. § 54B-130. Individuals may now also establish these accounts at banks and credit unions. N.C.G.S. §§ 53-146.2, 54-109.57. Savings and loans, and now, banks and credit unions, are also permitted to offer "payment on death accounts," with features similar to a tentative trust. N.C.G.S. § 54B-130. Such accounts are revocable prior to death by the grantor/trustee or his attorney-in-fact under a general statutory power of attorney to the extent of any withdrawn funds. The grantor may change the beneficiary during his or her lifetime by a written direction to the financial institution. Upon the death of the grantor/trustee or of the holder of the payment on death account, the person designated as beneficiary will be the owner of the account, assuming that the beneficiary survives the grantor/trustee. The financial institution may pay the account proceeds to the surviving beneficiary upon proof of the death of the grantor/trustee. If the named beneficiary is not of legal age at the death of the Trustee, the financial institution shall transfer the funds to the guardian of the minor beneficiary and, failure guardian the financial institution is to hold the funds in an interest-bearing account in the name of the minor until the minor reaches the age of majority or until a appointed guardian withdraws the funds. Funds held in the trust account are subject to the PR's right of collection under N.C.G.S. § 28A-15-10. Payment by the financial institution to such individual will be a total discharge of the financial institution's obligation as to the account. Naturally, where the designated beneficiary predeceases the grantor/trustee, the account will be treated as an individual account owned by the grantor/trustee.

In a related provision of the statutes, it is provided that assets may be acquired by the PR from tentative trusts created by the decedent in savings account for other persons when needed to satisfy claims against the estate. Such assets are not available for distribution to heirs or devisees.

Since July 1, 1989, individuals have been permitted to create personal agency accounts at banks, credit unions and savings and loan associations. Such accounts may be established by only one person, who must name an agent who will essentially have a power of attorney over the account. The creator of the account (the principal) must sign a statement indicating his understanding that the named agent may sign checks drawn on the account and make deposits into the account. The agent has no ownership right or interest in the account or any right of survivorship. The principal may elect to extend the authority of the agent to survive the subsequent incapacity or mental incompetence of the principal. The agent's authority terminates on the death of the principal. The personal agency account is an individual account of the decedent and the funds remaining in the account will pass under the decedent's will or the intestacy laws. See N.C.G.S. §§ 53-146.3, 54-109.63, 54B-139.