A PRIMER ON THE MULTIPLE PART ACCOUNTS ACT ("MPAA")

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Introduction

The Multiple Party Accounts Act ("MPAA"), Chapter 63 of the Probate, Estates & Fiduciaries Code, 20 Pa. C.S.A. §§ 6301-6306, governs the ownership, during life and upon death, of assets within certain qualifying "multiple party accounts." Although a feature of Pennsylvania law for nearly fifty years, clients and practitioners alike are often unfamiliar with what the MPAA actually provides and how it is applied, and cases and controversies arising from its sometimes counterintuitive statutory commands continue to proliferate.

Before the MPAA

Before the introduction of the MPAA in 1976, Pennsylvania analyzed questions of ownership in joint accounts through "a conglomeration of contract, property and common law gift theory" that frequently engendered protracted litigation in ascertaining the intent of the depositor in opening the account, including whether the depositor intended to make a present gift of the assets in the account, to create a "convenience" account, or to make some kind of informal will.[1] Pre-MPAA cases often turned on the Court's construction of language contained in the signature card executed by the depositor in connection with the opening of the joint account to ascertain the depositor's intent. Where such technical language was found to be ambiguous (and it often was), parole evidence of persons with an interest in a particular construction was entertained, leading to unpredictable and inconsistent results. In an attempt to remedy these real and perceived ills, the General Assembly sought to override the common law approach, and through the MPAA mandated that qualifying "joint accounts enjoy the presumption of a right of survivorship, absent 'clear and convincing evidence' of a contrary intent."[2] In the words of a leading Orphans' Court Judge, however:

> Despite the thinking that the MPAA would reduce litigation over joint accounts, cases continue to be litigated over precisely the questions of who is the owner, whether there is clear and convincing evidence of a different intent than the right of survivorship, and whether transfers during lifetime are proper.

Pearlstein Estate, 12 Fiduc. Rep. 3d 273, 286 (O.C. Montg. 2022, Murphy, J.).

Qualifying MPAA Accounts

The MPAA covers "accounts"[3] and products offered by "financial institutions"[4] to consumers,

1 *See generally* Michael A. Genello, *The Right of Survivorship in Joint Bank Accounts and Safe Deposit Boxes - the Search for a Solution*, 88 DICK. L. REV. (1984)("In sum, the basic Pennsylvania approach was that execution of a signature card creating a joint account with a right of survivorship provided the requisite donative intent so that the survivorship terms of the writing would be enforced. The presumption of an inter vivos gift created by the card shifted the burden of negating the survivorship agreement to the opposing party. This approach left unanswered the question of what type of information the card should contain and the corresponding proof that would be allowed to clarify its terms.").

2 *In re Novosielski,* 605 Pa. 508, 537, 992 A.2d 89, 107 (2010).

3 20 Pa. C.S.A. §6301 ("'Account' means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account and other like arrangements.").

4 20 Pa. C.S.A. §6301 ("Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations and credit unions.").

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including checking accounts, savings accounts, certificates of deposit, share accounts, and "other like arrangements." "Other like arrangements" has been interpreted to include brokerage accounts and treasury direct accounts, but not safe deposit boxes, annuities, and partnership investment funds.[5]

"Accounts" fall into two broad categories under the MPAA, "joint accounts" and "trust accounts" each carrying different consequences:

1. A "joint account" is an account payable upon request to one or more of two parties whether or not mention is made of any right of survivorship.

2. A "trust account" is 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 sum on deposit in the account.

Not all facially qualifying "accounts" are necessarily subject to the MPAA. For the MPAA to apply, a "signature card" must be produced.[6] In the event the account in question is found not to have been legitimately created, for example in the case of a joint account created by an agent acting ultra vires, the MPAA and its presumptions will not apply.[7]

Ownership During Lifetime – 20 Pa. C.S.A. §6303

During lifetime, different rules and presumptions apply to a "joint account" and a "trust account." The key difference is that parties to a "joint account" own, during the lives of the parties to the account, the net sums they have contributed,[8] absent a contrary intent shown by clear and convincing evidence, whereas the depositor of funds into a "trust account" owns all funds on deposit and the beneficiary of the trust account owns none of the funds on deposit, unless a contrary intent can be shown by clear and convincing evidence.

a. Joint Accounts During Lifetime

With respect to "joint accounts" the express rationale behind the presumption of ownership of only net contributions during life is that "a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit."[9] Rather, the parties to a joint account are presumed, during their lives, to own only the net sums on deposit in proportion

5 *See Deutsch, Larrimore & Farnish, P.C. v. Johnson,* 577 Pa. 637, 649–50, 848 A.2d 137, 144–45 (2004).

6 *Marchese Estate,* 2 Fiduc. Rep. 3d 239, 247 (O.C. Montg. 2012)("[A]ccounts in the names of two or more parties for which a duly executed signature card cannot be produced are not initially entitled to any survivorship presumptions under the MPAA. In the latter situation, the pre-MPAA common law requirements still govern.").

7 *In re Miller,* No. 312 MDA 2017, 2017 WL 5125953, at *6 (Pa. Super. Ct. Nov. 6, 2017)("Common sense dictates that ownership of a joint account is dependent on the legitimate creation of a joint account. Indeed, application of the MPAA presumes a legitimately created joint account."); *see also Marden Estate,* 8 Fiduc. Rep. 3d 319 (O.C. Montg. 2022)(account created through exercise of undue influence, MPAA does not apply); *In re Estate of Cella,* 12 A.3d 374 (Pa. Super. 2010)(account created through fraud, MPAA does not apply).

8 20 Pa. C.S.A. §6301 ("'Net Contribution' of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, 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. The term includes, in addition, any proceeds of life insurance added to the account by reason of the death of the party whose net contribution is in question.").

9 20 Pa. C.S.A §6303, Joint State Govt. Comm. Comment.

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to contributions and withdrawals. In the case of a party's withdrawal beyond that party's contributions, the other joint account owner has a presumptive claim against the over-withdrawing party. The presumption can be overridden by clear and convincing evidence that a gift from one party to another was intended.

A 2021 case, *McDaniels v. Rutter,* 2021 PA Super 187, 262 A.3d 600 (Pa. Super 2021) illustrates what can befall one guided by instinct, failing to recognize the import of the MPAA and its governing presumptions. In *McDaniels*, a man (Rutter) added his then-girlfriend (McDaniels) to an existing account and failed, following the couple's breakup several years later, to remove McDaniels from the account. Nearly a decade after adding McDaniels to the account, Rutter deposited over $700,000 into the "joint account," where it remained on deposit for two weeks before the funds were withdrawn. McDaniels became aware of the large deposit and filed suit seeking fifty percent (50%) of the $700,000, claiming that the mere fact that she had been added as a party to the account constituted sufficient evidence of her ownership of half of the deposit. None of the funds in the joint account were deposited by McDaniels. Rutter preliminarily objected on the basis that McDaniels had failed to plead facts sufficient to overcome the MPAA presumption that Rutter's deposit was not intended to be a gift to Rutter, and the trial court agreed. McDaniels appealed to the Superior Court in reliance on a pre-MPAA decision of the Pennsylvania Supreme Court. The Superior Court made short work of McDaniels' arguments and affirmed the trial court's dismissal, holding "[i]f we were to accept [McDaniels'] proposition, it would flip the language of the MPAA on its head." *McDaniels v. Rutter*, at 604. If there is a lesson to be derived from *McDaniels,* it is that a common assumption, that access to a joint account equals ownership of the funds in a joint account, is contrary to the MPAA's operative presumptions.

b. Trust Accounts during Lifetime

The MPAA's definition of "trust accounts" follows Pennsylvania's long recognition of so-called "Totten Trusts," also referred to as "tentative trusts" or the "poor man's will," which are "a judicial creation that, strictly speaking, is neither a will nor a trust but are fairly obviously testamentary transfers."[10] The MPAA's recognition of "trust accounts" respects the presumption that a depositor's designation of a beneficiary of an account is revocable at the will of the depositor, that the depositor retains complete control over and access to the funds on deposit during lifetime, with ownership vesting in the beneficiary only upon the depositor-trustee's death. This presumption may be overcome by clear and convincing evidence of a "contrary intent."

Ownership Upon Death – 20 Pa. C.S.A. §6304

Upon death, different rules and presumptions apply to "joint accounts" and "trust accounts." With respect to joint accounts, survivorship is presumed unless a different or contrary intent can be shown to have existed by clear and convincing evidence at the time of the creation of the joint account. With respect to trust accounts, the contrary intent need not be shown to exist at the time of the creation of the trust account.

a. Joint Accounts Upon Death

The requirement that an intent contrary to the MPAA's presumption of survivorship be shown to exist by clear and convincing evidence at the time of the creation of the joint account is strict. In *Estate of Heske,* 436 Pa. Super. 63, 647 A.2d 243 (Pa. Super 1994), a mother made four

10 *Rellick-Smith v. Rellick,* 299 A.3d 906 (Pa. Super. Ct. 2023), *appeal denied,* No. 219 WAL 2023, 2024 WL 443524 (Pa. Feb. 6, 2024). .

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accounts joint with her son, funded solely with mother's deposits. Two years after the creation of the joint accounts, mother executed a "Declaration of Intent" in which she stated that she added her son's name to "said accounts for convenience only and not as gifts inter vivos…" Following mother's death, her daughter brought an action to include the assets in the joint accounts in mother's estate, admitting the "Declaration of Intent" as evidence that the mother had an intent contrary to the MPAA's survivorship presumption. The Orphans' Court awarded the funds to son, and on appeal the Superior Court held that while the "Declaration of Intent" was "probative of [Mother's] intention at the time the accounts were created, it is hardly clear and convincing" that mother had not intended that son should take the funds remaining on deposit upon her death. *Heske*, at 244. The Superior Court reasoned that the "Declaration of Intent" could "support a finding that [Mother] had a change of heart just as easily as it could support a finding that she intended a convenience account from the start." *Id.*

b. Trust Accounts Upon Death

Unlike joint accounts, "a ["trust account"] can be revoked by the depositor at any time prior to death by any clear manifestation of an intention to do so." *In re Agostini's Est.,* 311 Pa. Super. 233, 257, 457 A.2d 861, 874 (1983).

Undue Influence and Confidential Relationship

Practitioners versed in the *Estate of Clark* three-prong burden-shifting regime applicable in will contests where indirect undue influence is alleged should well-remember that it simply does not apply in the context of undue influence claims with respect to MPAA accounts. Although early MPAA cases allowed proof of a confidential relationship to shift the burden of proof to the joint account holder to prove a gift to the survivor was intended,[11] in *Estate of Meyers*, 434 Pa. Super. 165, 642 A.2d 525 (1994), the Superior Court held that under the MPAA, proof of a confidential relationship alone is not sufficient to: (1) rebut the MPAA's presumption of a joint tenancy with right of survivorship; or (2) to shift the burden of proof. While proof of a confidential relationship may bear on intent and evidence thereof is admissible, "the effect of the statute is to remove the doctrine of confidential relationship as a means by which the burden is shifted to the survivor." *See King Estate,* 3 Fiduc. Rep. 2d 229, 232 (O.C. Lanc. 1983).

Conclusion

The MPAA is straightforward but contains traps for the unwary. Familiarity with its operative presumptions is required to avoid proceeding upon faulty instinct, which can find support in older precedent. Other issues beyond the scope of this brief primer, including the application of the Dead Man's Act, the rights of creditors, applicable statutes of limitation, interaction with "entireties" accounts, and inclusion within a spouse's elective share, among many others, are bound to arise and will merit careful consideration.

11 *See, e.g. Estate of Keiper,* 308 Pa. Super. 82, 88, 454 A.2d 31, 34 (1982); *Estate of Krempasky,* 348 Pa. Super. 128, 131, 501 A.2d 681, 682 (1985) (confidential relationship not established); *Downie Estate,* 5 Fiduc. Rep. 2d 61, 65 (O.C. Del. 1984).