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include the requirement to be “well capitalized” and “well managed”, but that requirement would apply to any financial holding company under proposed Title VI.

### Title III—National Bank Supervisor

Title III would replace the OCC and OTS with the new National Bank Supervisor (NBS). Title III would also end the federal savings bank charter so that all existing federal savings banks would have to convert into national banks, mutual national banks (as newly authorized by Title III) or state commercial or savings banks.

### Title IV—Registration of Private Investment Pool Advisors

Title IV would require that an adviser to any pool of capital currently exempt from the Investment Company Act under Section 3(c)(1) or 3(c)(7) register with the SEC under the Investment Advisers Act, so long as the investment adviser managed at least \$30 million. Unlike a similar 2004 SEC rule that was found to be unlawful, this legislative requirement would not only apply to hedge funds. The proposal would cover all private investment pools (including venture capital and private equity) and, with narrow exceptions, foreign investment pools if at least 10% of their securities are owned by US investors.

### Title V—Office of National Insurance

Title V would establish an Office of National Insurance that would monitor insurance companies and recommend to the Federal Reserve insurance companies to designate as Tier 1 FHCs. Although this would establish a new federal “monitoring” of insurance companies and of their regulation, insurance companies would continue to be regulated by states.

### Title VI—Bank Holding Company Act Improvements

Title VI would eliminate the “loophole” under which credit card banks, industrial loan companies, “non-bank banks” and others were not considered “banks” under the bank holding company act. Their owners would now be subject to Federal Reserve oversight as bank holding companies. Title VI would also expand the scope of Federal Reserve Act 23A to treat as “covered transactions” credit exposures under derivative and securities lending transactions and to treat more broadly as a covered affiliate any fund advised by an affiliate of the member bank.



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# Multi Party Accounts: Know the Rules

By Cynthia K. Crass

As bankers, you will be glad to know Utah law protects financial institutions from liability regarding payout of these accounts. Under Utah law, a financial institution can pay out a joint account on the signature of one party without having to inquire who put the money in or what the withdrawal is going to be used for. A financial institution can pay out a revocable trust account to any trustee. Unless changed by contract, a financial institution with a claim against any multi party account owner has the right of setoff. A financial institution may also freeze a multi party account when it receives a writ against the account which freeze can stay until the financial institution receives a court order clarifying who owes the debt. A financial institution paying out pursuant to court order is protected. These protections of financial institutions often come as a surprise to an account owner who has been cleaned out by a joint owner, a creditor of a joint owner, or a trustee.

At death, a financial institution is restricted to paying out to the surviving joint party or the designated beneficiary. This is not affected by a person's will. This often comes as a surprise to siblings who find out only one of them is on, or is the beneficiary of, a deceased parent's account.

However these financial institution protections do not govern rights in multi party accounts as between the joint owners themselves and proof of contrary intent can be beneficial.

So, as account owners, you should be careful about your own multi party accounts. Be aware a joint owner of your account, a creditor of a joint owner, or a trustee of your revocable trust account can clean you out, and your only claim is against that person, not the financial institution. Be aware that upon death, the account goes only to whoever else is on that account, and other claimants will have to prove contrary intent.

So if you, or your customers, still want the convenience of a joint account, try one of these...

POD account. A “payable on death” account can be very beneficial if probate avoidance is the goal. The account belongs to the original payee, or payees with a joint account, during lifetime, but at death is automatically payable to the named beneficiary(ies), be it a trust, individuals, or otherwise. This is a better way to insure that your account gets to where you want it to go upon your death, and keeps others out of your account while you are alive.

Agency account. This type of account is beneficial if having someone else on the account to pay bills is the goal. The designated agent has the right of withdrawal, but not an ownership interest that the agent, or a creditor of the agent, can get to. An agency account is essentially a power of attorney.



Cynthia K. Crass is an av-rated shareholder at Callister Nebeker & McCullough, nationally recognized for its financial and estate planning practices. She practices in the estate planning and business and real estate transaction areas and has unique expertise in fiduciary law gained in private practice as well as in house counsel for 1st Security Trust. Further information is available at [cnmlaw.com](http://cnmlaw.com).