

COMMITTEE ON ECONOMIC DEVELOPMENT,
AGRICULTURE AND PLANNING

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BILL NO. 31-0226

Thirty-first Legislature of the Virgin Islands

September 9, 2015

An Act amending title 9 Virgin Islands Code, chapter 11 adding subchapter II enacting “The Virgin Islands Uniform Multiple Person Accounts Act”

PROPOSED BY: Senators Janette Millin Young, Myron D. Jackson, Novelle E. Francis, Jr., Clifford F. Graham, Almando Liburd and Tregenza Roach

1 *Be it enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 9 Virgin Islands Code, chapter 11 is amended by designating the
3 existing provisions as subchapter I and adding subchapter II to read as follows:

4 “**SUBCHAPTER II MULTIPLE PERSON ACCOUNTS**”

5 **PART A DEFINITIONS AND GENERAL PROVISIONS**

6 **§132a. Definitions**

7 In this subchapter:

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

1 (2) "Agent" means a person authorized to make account transactions for a party.

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

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

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

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

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

15 (8) "POD designation" means the designation of:

16 (A) a beneficiary in an account payable on request to one party during the
17 party's lifetime and on the party's death to one or more beneficiaries, or to one or more
18 parties during their lifetimes and on death of all of them to one or more beneficiaries, or

19 (B) a beneficiary in an account in the name of one or more parties as trustee
20 for one or more beneficiaries if the relationship is established by the terms of the account
21 and there is no subject of the trust other than the sums on deposit in the account, whether
22 or not payment to the beneficiary is mentioned.

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

4 (10) "Request" means a request for payment complying with all terms of the account,
5 including special requirements concerning necessary signatures and regulations of the financial
6 institution; but, for purposes of this subchapter if terms of the account condition payment on
7 advance notice, a request for payment is treated as immediately effective and a notice of intent to
8 withdraw is treated as a request for payment.

9 (11) "Sums on deposit" means the balance payable on an account, including interest
10 and dividends earned, whether or not included in the current balance, and any deposit life
11 insurance proceeds added to the account by reason of death of a party.

12 (12) "Terms of the account" includes the deposit agreement and other terms and
13 conditions, including the form, of the contract of deposit.

14 **§132b Limitation on Scope of subchapter. This subchapter does not apply to:**

15 (A) an account established for a partnership, joint venture, or other organization for a
16 business purpose.

17 (B) an account controlled by one or more persons as an agent or trustee for a
18 corporation, unincorporated association, or charitable or civic organization, or

19 (C) a fiduciary or trust account in which the relationship is established other than by
20 the terms of the account.

21 **§132c. Types of Account; Existing Accounts.**

22 (a) An account may be for a single party or multiple parties. A multiple-party
23 account may be with or without a right of survivorship between the parties. Subject to section

1 132h (c), either a single-party account or a multiple-party account may have a POD designation,
 2 an agency designation, or both.

3 (b) An account established before, on, or after the effective date of this subchapter,
 4 whether in the form prescribed in section 132h or in any other form, is either a

5 (c) single-party account or a multiple-party account, with or without right of
 6 survivorship, and with or without a POD designation or an agency designation, within the
 7 meaning of this part, and is governed by this part. §132d

8 (d) A contract of deposit that contains provisions in substantially the following form
 9 establishes the type of account provided, and the account is governed by the provisions of this
 10 part applicable to an account of that type:

11 UNIFORM SINGLE OR MULTIPLE-PARTY ACCOUNT FORM PARTIES (Name one
 12 or more parties):

13 OWNERSHIP [Select one and initial]:

14 SINGLE-PARTY ACCOUNT

15 MULTIPLE-PARTY ACCOUNT

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

18 RIGHTS AT DEATH (Select one and initial): SINGLE-PARTY ACCOUNT

19 At death of party, ownership passes as part of party's estate.

20 SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

21 (Name One or More Beneficiaries):

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

23 MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

24 At death of party, ownership passes to surviving parties.

1 MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD
2 (PAY ON DEATH) DESIGNATION

3 (Name One or More Beneficiaries):

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

6 MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

7 At death of party, deceased party's ownership passes as part of deceased party's estate.

8 AGENCY (POWER OF ATTORNEY) DESIGNATION

9 Agents may make account transactions for parties but have no ownership or rights at
10 death unless named as POD beneficiaries.

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

12 (Select One and Initial):

13 AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES
14 AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF
15 PARTIES

16 (b) A contract of deposit that does not contain provisions in substantially the form
17 provided in subsection (a) is governed by the provisions of this subchapter applicable to the type
18 of account that most nearly conforms to the depositor's intent.

19 **§132e. Designation of Agent**

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

22 (b) Unless the terms of an agency designation provide that the authority of the agent
23 terminates on disability or incapacity of a party, the agent's authority survives disability and

1 incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent
2 is terminated.

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

4

5 **§132f. Applicability of Subchapter**

6 The provisions of this subchapter concerning beneficial ownership as between parties or
7 as between parties and beneficiaries apply only to controversies between those persons and their
8 creditors and other successors, and do not apply to the right of those persons to payment as
9 determined by the terms of the account. Part C of this subchapter governs the liability and set-
10 off rights of financial institutions that make payments pursuant to it.

11 **Part B. Ownership as Between Parties and Others**

12 **§132g. Ownership during Lifetime**

13 (a) In this section, "net contribution" of a party means the sum of all deposits to an
14 account made by or for the party, less all payments from the account made to or for the party
15 which have not been paid to or applied to the use of another party and a proportionate share of
16 any charges deducted from the account, plus a proportionate share of any interest or dividends
17 earned, whether or not included in the current balance. The term includes deposit life insurance
18 proceeds added to the account by reason of death of the party whose net contribution is in
19 question.

20 (b) During the lifetime of all parties, an account belongs to the parties in proportion
21 to the net contribution of each to the sums on deposit, unless there is clear and convincing
22 evidence of a different intent. As between parties married to each other, in the absence of proof
23 otherwise, the net contribution of each is presumed to be an equal amount.

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

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

5

6 **§132h. Rights at death**

7 (a) Except as otherwise provided in this part, on death of a party sums on deposit in a
8 multiple-party account belong to the surviving party or parties. If two or more parties survive and
9 one is the surviving spouse of the decedent, the amount to which the decedent, immediately
10 before death, was beneficially entitled under section 132g belongs to the surviving spouse. If two
11 or more parties survive and none is the surviving spouse of the decedent, the amount to which the
12 decedent, immediately before death, was beneficially entitled under section 132g belongs to the
13 surviving parties in equal shares, and augments the proportion to which each survivor,
14 immediately before the decedent's death, was beneficially entitled under section 132g, and the
15 right of survivorship continues between the surviving parties.

16 (b) In an account with a POD designation:

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

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

1 (c) Sums on deposit in a single-party account without a POD designation, or in a
2 multiple-party account that, by the terms of the account, is without right of survivorship, are not
3 affected by death of a party, but the amount to which the decedent, immediately before death, was
4 beneficially entitled under section 132g is transferred as part of the decedent's estate. A POD
5 designation in a multiple-party account without right of survivorship is ineffective. For purposes
6 of this section, designation of an account as a tenancy in common establishes that the account is
7 without right of survivorship.

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

14 **§132i. Alteration of Rights**

15 (a) Rights at death of a party under section 132h are determined by the terms of the
16 account at the death of the party. A party may alter the terms of the account by a notice signed by
17 the party and given to the financial institution to change the terms of the account or to stop or vary
18 payment under the terms of the account. To be effective the notice must be received by the
19 financial institution during the party's lifetime.

20 (b) A right of survivorship arising from the express terms of the account, section
21 132h or a POD designation may not be altered by will.

22 **§132j. Accounts and Transfers Nontestamentary**

23 Except as provided in any law of the Virgin Islands governing augmented estates, or as a
24 consequence of, and to the extent directed by, section 132k, a transfer resulting from the

1 application of section 132h is effective by reason of the terms of the account involved and this
2 subchapter and is not testamentary or subject to the laws under this code governing estate
3 administration.

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6 **§132k Rights of Creditors and Others**

7 (a) For the purpose of this section, a nonprobate transfer occurs if the last domicile of
8 a depositor whose interest is transferred under section 132j was in the Virgin Islands.

9 (b) A transferee of a nonprobate transfer is subject to liability to any probate estate of
10 the decedent for allowed claims against that estate and statutory allowances to the decedent's
11 spouse and children to the extent the estate is insufficient to satisfy those claims and allowances.

12 The liability of a nonprobate transferee may not exceed the value of nonprobate transfers
13 received by that transferee.

14 (c) Nonprobate transferees are liable for the insufficiency described in subsection
15 (b) in the following order of priority:

16 (1) a transferee designated in the decedent's will or any other governing
17 Instrument, as provided in the instrument;

18 (2) the trustee of a trust serving as the principal nonprobate instrument in the
19 decedent's estate plan as shown by its designation as devisee of the decedent's residuary
20 estate or by other facts or circumstances, to the extent of the value of the nonprobate
21 transfer received;

22 (3) other nonprobate transferees, in proportion to the values received.

1 (d) A provision made in one instrument may direct the apportionment of the liability
2 among the nonprobate transferees taking under that or any other governing instrument. If a
3 provision in one instrument conflicts with a provision in another, the later one prevails.

4 (e) Upon due notice to a nonprobate transferee, the liability imposed by this section is
5 enforceable in proceedings in the Virgin islands , whether or not the transferee is located in the
6 Virgin Islands.

7 (f) A proceeding under this section may not be commenced unless the personal
8 representative of the decedent's estate has received a written demand for the proceeding from the
9 surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If
10 the personal representative declines or fails to commence a proceeding after demand, a person
11 making demand may commence the proceeding in the name of the decedent's estate, at the
12 expense of the person making the demand and not of the estate. A personal representative who
13 declines in good faith to commence a requested proceeding incurs no personal liability for
14 declining.

15 (g) A proceeding under this section must be commenced within one year after the
16 decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after
17 proceedings challenging disallowance of the claim may be commenced within 60 days after final
18 allowance of the claim.

19 (h) Unless a written notice asserting that a decedent's estate is insufficient to pay
20 allowed claims and statutory allowances has been received from the decedent's personal
21 representative, a trustee receiving a nonprobate transfer is released from liability under this
22 section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the
23 extent of the distribution received becomes liable for the amount of the trustee's liability
24 attributable to assets received by the beneficiary.

1 (i) In this section:

2 (1) "Child" includes any individual entitled to take as a child by intestate
3 succession from the parent whose relationship is involved and excludes any person who
4 is only a stepchild, a foster child, a grandchild, or any more remote descendant.

5 (2) "Claims" in respect to the estate of a decedent, includes liabilities of the
6 decedent whether arising in contract, tort or otherwise, and liabilities of the estate which
7 arise at or after the death of the decedent, including funeral expenses and expenses of
8 administration. The term does not include estate or inheritance taxes, or demands or
9 disputes regarding title of a decedent to specific assets alleged to be included in the
10 estate.

11 **§132l. Community Property and Tenancy by the Entireties**

12 (a) A deposit of community property in an account does not alter the community
13 character of the property or community rights in the property, but a right of survivorship between
14 parties married to each other arising from the express terms of the account or section 132h may
15 not be altered by will.

16 (b) This part does not affect the law governing tenancy by the entireties.

17 **PART C. Protection of Financial Institutions**

18 **§132m. Authority of Financial Institution**

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

24 **§132n. Payment on Multiple-Party Account**

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

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

6 (2) the personal representative, if any, or, if there is none, the heirs or devisees of a
7 deceased party if proof of death is presented to the financial institution showing that the deceased
8 party was the survivor of all other persons named on the account either as a party or beneficiary,
9 unless the account is without right of survivorship under section 132h.

10 **§132o. Payment on POD Designation**

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

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

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

17 (3) the personal representative, if any, or, if there is none, the heirs or devisees of a
18 deceased party, if proof of death is presented to the financial institution showing that the
19 deceased party was the survivor of all other persons named on the account either as a party or
20 beneficiary.

21 **§132p. Payment to Designated Agent**

22 A financial institution, on request of an agent under an agency designation for an
23 account, may pay to the agent sums on deposit in the account, whether or not a party is disabled,

1 incapacitated, or deceased when the request is made or received, and whether or not the authority
2 of the agent terminates on the disability or incapacity of a party.

3 **§132q. Payment to Minor**

4 If a financial institution is required or permitted to make payment pursuant to this part to
5 a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to
6 Minors Act.

7 **§132r. Discharge**

8 (a) Payment made pursuant to this part in accordance with the terms of the account
9 discharges the financial institution from all claims for amounts so paid, whether or not the
10 payment is consistent with the beneficial ownership of the account as between parties,
11 beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or
12 agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

13 (b) Protection under this section does not extend to payments made after a financial
14 institution has received written notice from a party, or from the personal representative, surviving
15 spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the
16 terms of the account, including one having an agency designation, should not be permitted, and
17 the financial institution has had a reasonable opportunity to act on it when the payment is made.
18 Unless the notice is withdrawn by the person giving it, the successor of any deceased party must
19 concur in a request for payment if the financial institution is to be protected under this section.

20 Unless a financial institution has been served with process in an action or proceeding, no other
21 notice or other information shown to have been available to the financial institution affects its
22 right to protection under this section.

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

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

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9 **§132s. Set-off**

10 Without qualifying any other statutory right to set off or lien and subject to any
 11 contractual provision, if a party is indebted to a financial institution, the financial institution has
 12 a right to set-off against the account. The amount of the account subject to set-off is the
 13 proportion to which the party is, or immediately before death was, beneficially entitled under
 14 section 132g or, in the absence of proof.

15 **SECTION 2.** This Act takes effect January 1, 2016.

16

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BILL SUMMARY

18 This bill would enact the Uniform Multiple Person Accounts Act. This Act
 19 comprehensively covers the problems of the financial institution accounts in which one or more
 20 persons have an interest.

21

22 The Uniform Multiple Person Account Act addresses the variety of state statutes that
 23 protect financial institutions in their dealings with joint and survivorship accounts, and resolves
 24 the doctrinal confusion in judicial decisions that uphold so-called Totten Trust accounts (which
 25 provide probate avoiding death benefits), yet invalidate functionally indistinguishable POD
 26 accounts."POD means payable on death".

27

28 The Act addresses separately (i) ownership of accounts as between multiple owners,
 29 and the existence, validity, and revocability of survivors' benefits; and (ii) financial institution

1 protection. As explained by the Uniform Law Commission in its summary of the Act, the Act
2 recognizes that a depositor may add another person to an account for various reasons. The
3 depositor may intend to reflect lifetime ownership of the account by more than one person, or to
4 pass sums on deposit at death to another person, or simply to enable account transactions by a
5 third person as a convenience without creating any ownership or survivorship rights in the third
6 person. The traditional "joint account" does not adequately allow the depositor to distinguish
7 among the different functions of the multiple-person account and the depositor's use of a joint
8 account for one purpose may yield unwanted consequences for other purposes. The Act clarifies
9 the relationships among the various persons involved with an account. The account may be
10 owned by a single party or by multiple parties. Either a single-party account or a multiple-party
11 account may include a POD beneficiary designation or an agency (power of attorney)
12 designation or both. The Act includes sample statutory forms that provide clear and simple
13 instructions to both the financial institution and depositor in setting up multiple-person accounts.
14

15 Under the Act, an account is owned by the parties during their lifetimes in accordance with
16 each party's net contribution to the account. One party owns all if that party is the sole
17 contributor to the account. Evidence of intention by a party to make a gift to another party might
18 change the result, but no intention to make a present gift is imputed from opening an account in
19 two names or from making an additional deposit to an account. Rights at death, on the other
20 hand, are governed by the principle that a depositor intends account balances to pass at death to
21 the account survivors.

22 The Act establishes a preference for survivorship between the parties whether or not
23 specified in the account contract. But if the account contract expressly negates survivorship
24 rights or if the account is designated as a tenancy in common, the surviving parties to the account
25 do not take by right of survivorship.
26

27 The Act treats accounts in Totten Trust form as POD accounts. Survivorship benefits
28 under multiple-party or POD accounts arise at death, and benefits are conferred by force of
29 contract law and the statute. Survivorship rights cannot be changed except by notice to the
30 financial institution or a change in account form. Survivorship benefits, though revocable and
31 effective on death for practical purposes, cannot be changed by will.
32

33 The Act also protects creditors of deceased parties. Under the Act a creditor may, through
34 the personal representative of the depositor's estate, claim account balances needed to pay a debt
35 or family allowance. The claim procedure may be initiated only on demand of the creditor and is
36 subject to a relatively short limitation period.
37

38 The Act establishes that financial institutions may pay out on multiple-person accounts
39 and be protected if the payment is made in accordance with contract terms. The Act covers
40 banks, savings and loan associations, and credit unions; this feature is designed to correct
41 existing state laws that provide variant account incidents and protections for the three types of
42 financial institutions.
43

44 Financial institution protection is provided even though the person receiving a payment in
45 accordance with the account contract is not the owner of the amounts received as against another
46 party to the account or as against the estate of a deceased depositor. Ownership as between

1 parties to accounts and financial institution protection are treated as separable and different
2 matters.

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4 **BR15-0022-3/June 30, 2015/YLT**

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