To: Members of the Commission
From: Gray Schafer, Senior Attorney
Steven J. Zuilkowski, Attorney
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Re: Signatory Privileges and Joint Ownership

This memo addresses how bank accounts should be considered and reported on financial disclosure forms. Provided the requisite reporting thresholds are met, the CE Form 6 requires filers to disclose personal interests in bank accounts as "Assets" on Part B of the Form, while the CE Form 1 requires filers to disclose personal interests in bank accounts as "Intangible Personal Property" on Part D of the Form. However, both forms require the filer to have an actual interest in the bank account for a reporting obligation to be triggered.

First, the memo discusses various forms of joint ownership of property, generally, and the legal landscape for joint ownership of bank accounts. The forms of joint ownership all vest some proportion of ownership in the principals and have various methods for disposing of a principal's interest at death. The memo discusses the Commission's formal opinions and rulemaking on joint ownership.

Second, the memo discusses convenience accounts, which give an individual signatory privileges to another's bank account without a grant of ownership, and whether an individual with signatory privileges must disclose the account on a financial disclosure form. The memo describes the signatory as an "agent" for another's account, meaning that he or she has certain privileges, but no ownership interest, over the account.

Third, the memo briefly addresses accounts held in the name of a minor child.

**Joint Ownership**

Joint ownership over property can take many forms, such as tenancy in common, joint tenancy with a right of survivorship, or tenancy by the entirety. Depending on the form of joint ownership, the proportion of the property owned by a joint owner and the disposition of a joint owner's share after death can differ. Common among these forms of joint ownership, however, is the presence of an ownership right in the property vested in the individual joint owners.

Property held by tenancy in common allows joint owners to own equal or differing proportions of property, and an owner's interest passes to his or her estate upon death, rather than passing to the other joint owners. The Commission has
addressed the disclosure of property held by tenancy in common. In CEO 82-30, the Commission opined that property jointly owned by tenants in common should be disclosed on financial disclosure forms at the value of a public official's proportion of ownership in the property. Through rulemaking, the Commission instructs filers of the 2019 CE Form 6, "[i]f you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property."¹

Property held by joint tenancy with a right of survivorship allows joint owners to own equal proportions of a property, with each owner's interest passing to the remaining joint owners upon death, rather than to the decedent's estate. Similar to this, each owner of property held by tenancy by the entirety—necessarily a married couple—owns 100 percent of the property and retains that total ownership after the death of the co-owning spouse. With regard to these similar forms of ownership, the Commission opined in CEO 76-129, "[i]n our view, you own the entire savings account for purposes of the Code of Ethics when you own it jointly with your wife, have control over the entire amount, and have the right of survivorship." Later, the Commission opined in CEO 82-30, "[when] a savings account is jointly owned by both spouses and each is authorized to withdraw all or any portion on the account without the other's consent . . . the account should be valued at its full value rather than proportionately." This view has permeated the Commission's rulemaking. For example, the instructions for the 2019 CE Form 1 specify, "[p]roperty owned as tenants by the entirety or as joint tenants with right of survivorship should be valued at 100%."² Similar language appears in the instructions for the 2019 CE Form 6.

Section 655.79, Florida Statutes, creates a rebuttable presumption that, in the absence of specifications to the contrary in a contract, signature card, or other banking documents, a deposit account in the name of two or more people will have a right of survivorship among the named account owners. Section 655.79 also states that an account in the name of two people who are "husband and wife" is presumed to be a tenancy by the entirety. In other words, unless otherwise specified, an account in the name of multiple people is, by default, an account owned by joint tenancy with a right of survivorship or, in the case of a married husband and wife, a tenancy by the entirety. In either event, the presumption grants the accountholders some proportion of ownership and the right to the interests of any joint accountholder upon their death. A specification in the contract, signature card, or other banking documents that the account is a convenience account, as discussed

² 2019 CE Form 1, Statement of Financial Interests, pp. 4 and 6, Instructions for Part D – Intangible Personal Property.
below, or a tenancy in common, would vitiate the presumption that the decedent's co-owner or agent/signatory has a right of survivorship in the account.

**Signatory Privileges (agency)**

One way a named principal on a bank account could allow another person access to his or her bank account while rebutting the statutory presumption of joint ownership is to create a convenience account. Section 655.80(1), Florida Statutes, defines a "convenience account" as a deposit account "in the name of one individual (principal), in which one or more other individuals have been designated as agents with the right to make deposits to and to withdraw funds from or draw checks on such account." The statute further states:

> All rights, interests, and claims in, to, and in respect of, such deposits and convenience account and the additions thereto **shall be those of the principal only.**

Section 655.80(2), Florida Statutes (emphasis added).

The purpose of a convenience account is to provide the signatory mere access to an account without creating ownership rights for the noncontributing agent/signatory. Because of the agent's/signatory's lack of an ownership right in the assets of a convenience account, a principal enjoys certain legal protections from the agent's/signatory's unauthorized disposition of those assets. For example, Section 825.103(1)(d), Florida Statutes, makes it a crime to misappropriate, misuse, or make unauthorized transfers of funds contributed and owned by an elderly principal in a convenience account.

On death, the balance in the convenience account passes as a probate asset, as any bank account with a single principal would. This process is described in Section 655.80(3), Florida Statutes. The provision states that, in general, the balance will pass to the personal representative of the deceased principal's estate or, in instances where a minor is the principal, the balance will pass to the legal guardian of the minor's property. Importantly, Section 655.80(3) does not provide for the balance to pass to the agent possessing signatory privileges over the account.

Overall, it appears that if one is serving as an agent with only signatory privileges over another's account, he or she does not have a proprietary or cognizable interest in the account. For this reason, it appears he or she would not have to report

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3 See Jeffrey A. Baskies, Thomas O. Katz, and Justin M. Savioli, Basic Estate Planning in Florida §7.4(c) (2018).
the account on a financial disclosure form. It is recommended that the instructions for future financial disclosure forms be amended to clarify that only having signatory privileges does not create a discloseable interest.

**Accounts in the Name of Minors**

The statutory scheme does not create any distinctions when the principal of a bank account is a minor. A separate statutory provision—Section 655.77, Florida Statutes—states a minor is free to withdraw any deposits made in his or her account. The only exception to the minor's access occurs when the banking institution and the depositor execute an agreement—at the time the minor's account is opened—restricting the minor's access and designating another party to make withdrawals. However, even if such an agreement is made, the statute does not grant the withdrawing party any ownership interest in the account.