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TRUST AND ESTATES LAW SECTION

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The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

Dear Governor Hochul:

The New York State Bar Association (NYSBA) Trusts & Estates Law Section opposes A9230B(Wallace)/ S9383A(Sanders), (the "Bill"). We fear that in an effort to solve one set of problems, the Bill, as currently drafted, would create much more widespread and severe issues for a multitude of New Yorkers. In particular, we are concerned that reversing the age-old presumption that joint account owners intend to create survivorship accounts would create mass confusion among consumers, unintentionally frustrate the estate plans of countless New Yorkers, and worsen the already intolerable backlog and delays in the Surrogate's Courts of New York.

As the Court of Appeals stated in ***Kleinberg v Heller***, 38 N.Y.2d 836 (1976) in footnote 3, "These accounts are regarded by people in modest circumstances as a poor man's will." The average married couple opens a joint bank account believing that the account will pass automatically to the surviving spouse at the death of the first spouse. For many couples, the joint bank account is their sole cash account and, often, the couple's main asset. The account passing automatically to the surviving spouse essentially takes the place of a Will, or at least intends to provide the surviving spouse immediate access to cash while the Will is being probated.

Under the proposed legislation, bankers (who are generally not trust and estate law practitioners) would need to explain to customers the different options presented on the bank signature cards required of joint account holders. The Bill therefore effectively requires bankers to provide legal and estate planning advice to customers despite the Bill's explicit language indicating that bankers are not required to provide such advice. If bankers fail to correctly explain the estate law implications of each choice on the bank signature card, there could be scores of surviving spouses who unexpectedly find their joint bank accounts frozen upon the death of a spouse, leaving the surviving spouse with no access to cash during an already stressful mourning period and throughout the lengthy process of probating their spouse's Will.

Not only is this a problem for married couples but complicates the use of jointly held accounts by an aging parent and child. All account owners must agree in writing to any change in the terms of the account relating to ownership, survivorship rights and authorized signers' designations using the signature card. What happens if an aging parent and adult child create an account with survivor rights fully funded by parent and then they have a falling out and child will not consent to change the account? What about when the named authorized user is different from an agent on a power of attorney? Which designation controls?

Furthermore, the New York Surrogate's Courts are already tremendously understaffed and incredibly backlogged. It is currently taking anywhere from four to six months to probate a Will in New York City—even in the most straight-forward situations. Were joint accounts now deemed to be probate assets by default, imagine the repercussions of thousands of new probate proceedings being introduced into the Surrogate's Courts. This result would only paralyze the already debilitated Surrogate's Court system.

Further still, unless account holders indicate differently on the bank signature card, each joint owner's share of the account would be included in each owner's estate at death, based upon the decedent's contributions to and withdrawals from the account. The Bill therefore essentially requires a married couple to keep track of their contributions to and withdrawals from a joint account over the course of a lifetime, and creates the need for an accounting, allowing for potential disputes where previously there did not exist family discord. If client records are unclear (or in fact, were never kept) and the banks are to be exempt from involvement in these disputes, this would only further add to the chaotic caseload of the Surrogate's Courts.

Situations other than death can also create problems in determining an owner's share value such as divorce, split of cohabitation, application for Medicaid benefits and an Article 81 guardianship of one owner just to name a few. As estate planners we know that the vast majority of our clients do not keep good records and anyone who wanted or needed to challenge the presumption of equal ownership will be faced with a difficult and costly task.

As the Court of Appeals noted "[l]iterally tens of thousands of our citizens are parties to joint savings accounts**."** ***Kleinberg v Heller, supra at 838.*** Most troublingly, it is not clear whether preexisting joint accounts would be exempted from the requirements of this Bill. The regulation provides that banks should notify customers of the need to fill out new signature cards. If customers fail to do so, would their existing joint accounts be presumed to be probate assets? Customers who do not receive, open or understand these bank notices would surely not comply, and as a result, might need to go through the probate process upon the death of the first spouse, despite any careful planning during life to avoid this exact result.

For the reasons set forth above, we strongly urge the Governor to veto the Bill and engage in further discussions with stakeholders, including the New York State Bar Association Trusts and Estates Law Section and New York State Surrogate's Courts, to develop a more balanced and effective approach. We welcome the opportunity to meet with the Chamber to discuss A9230B/ S9383A and address any questions your office may have. Please do not hesitate to contact NYSBA's General Counsel, David Miranda, who can be reached at dmiranda@nysba.org, 518-487-5524.

Respectfully Submitted,

The New York State Bar Association's Trust and Estates Law Section