



ACT No. 167

Effective date: August 1, 2018

This Act will allow a surviving spouse to withdraw up to 50% of account funds from a joint securities or brokerage account after the death of a spouse.

A "Security" is defined as an obligation which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer and is dealt in or traded on securities exchanges or securities markets; or is a medium for investment and by its terms expressly provides that it is a security.

"Joint securities or brokerage account" means an account which is titled in the name of a husband and wife, which is registered as a community property account, and which requires the endorsement of both husband and wife in order to assign, transfer, or redeem a security, or to grant the power to assign, transfer, or redeem a security.

Credit unions are not authorized to provide securities brokerage services for a member, but a CUSO is explicitly authorized to do so. Thus, this Act could impact a CUSO but will not impact credit unions directly.

The surviving spouse's rights under this Act terminate when a financial institution receives written notice of the appointment of an executor or administrator of the Estate. This Act does not prevent the surviving spouse, heir, legatee, or other party from making a claim against the funds. If funds are collateral for a loan or there is another claim against the funds, the financial institution is not required to disburse funds to the surviving spouse.

This Act provides protection from liability for the payment of funds to a surviving spouse as the delivery of funds is a "full and complete" discharge of the financial institution's liability.

ACT 452 – CANCELLATION OF INFERIOR MORTGAGES AFTER JUDICIAL SALE

Effective Date: August 1, 2018

This Act provides that a seizing creditor may record an "Affidavit to Cancel an Inferior Encumbrance" after a judicial sale by the sheriff. The Act provides certain form requirements for the Affidavit. This Act will primarily benefit the real estate title insurance industry by permitting the seizing creditor to effectuate the release of inferior liens and mortgages that were terminated by the judicial sale.



ACT 434 - PROTECTION OF ELIGIBLE ADULTS FROM FINANCIAL EXPLOITATION

Effective Date: October 1, 2018

This Act will allow, but not require, credit unions to delay transactions when “financial exploitation” of an “eligible adult” is suspected. It attempts to provide more clear authority to report suspected exploitation to law enforcement and other third parties, including family members of the victim.

“Eligible adults” are defined to include any person sixty years of age or older, and any individual eighteen years of age or older, or an emancipated minor who, due to a physical, mental, or developmental disability or the infirmities of aging, is unable to manage his own resources, carry out the activities of daily living, or protect himself from abuse, neglect, or exploitation.

“Financial exploitation” means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, beneficial ownership interest, or property of an eligible adult. It also includes any act or omission committed by a person in a representative capacity through trust, power of attorney, act of procuracy, contract of mandate, or letters of curatorship of an eligible adult, or by any other means, for any of the following purposes: obtaining control over, or depriving an eligible adult of ownership, use, benefit, or possession of his money, assets, or property by deception, intimidation, or undue influence; or converting money, assets, or property of an eligible adult.

Notification to Employees

Unfortunately, the Act requires a credit union notify, at least annually, its employees of their ability to report potential financial exploitation of an eligible adult.

Notification

The Act provides that a credit union may, but is not required to, notify (1) a “covered agency” or (2) certain other third-parties, if it believes that any financial exploitation of an eligible adult is occurring, has occurred, or is being attempted.

A “covered agency” means any federal, state or local law enforcements or an adult protection agency.

Allowed third-parties includes, but is not limited to, the following: (1) A parent, spouse, adult child, sibling, or other known family member or close associate of an eligible adult; (2) An authorized contact provided by the eligible adult to the covered financial institution; (3) A co-owner, additional authorized signatory, or beneficiary on the eligible adult's account.



Please note that notification is now permissive. It is not mandatory. The Act further provides strong immunity language such that it is clear that the Act does not create any mandate to report, and thereby potentially exposing staff and credit unions to litigation, for any failure to report.

Delaying Suspicious Transactions

The Act provides that a credit union may, but is not required to, delay a transaction involving an account of an eligible adult, an account on which an eligible adult is a beneficiary, or an account of a person suspected of perpetrating financial exploitation if either of the following conditions apply: (1) The covered financial institution reasonably believes that the requested financial transaction may result in financial exploitation of an eligible adult. (2) A covered agency provides information demonstrating to the financial institution that it is reasonable to believe that financial exploitation is occurring, has or may have occurred, or is being attempted, or has been, or may have been attempted.

If a transaction is delayed, the credit union must, no later than two business days after the financial transaction is delayed, send written notification of the delay and the reason for the delay to all parties authorized to transact business on the account for which the covered financial institution has contact information, unless any such party is reasonably believed to have engaged in attempted financial exploitation of the eligible adult.

Further, if a transaction is delayed, the Act establishes specific timeframes for the expiration of any such delay. If a transaction is delayed, staff should consult Sections 1374(E) and (F).

ACT 302 and 96 - \$20,000 PAYMENT TO SURVIVING SPOUSE AND HEIRS

Effective Dates: August 1, 2018

Acts 302 and 96 work in tandem to partially increase the threshold to close, in some circumstances, a deceased account from \$10,000 to \$20,000.

Act 302 expands its application from banks to credit unions. If an account is in the name of the deceased and/or surviving spouse, then a credit union may pay funds up to an amount of \$20,000 to the surviving spouse. Prior to receiving the funds, the surviving spouse must offer an affidavit stating that the total funds withdrawn from any depository does not exceed \$20,000.

Act 96 provides that upon the death of a member, who has deposits standing solely in his/her name or jointly with a surviving spouse and heirs, if any, in the total aggregate amount of \$20,000 dollars or less, the amount may be transferred to the spouse, and, if no spouse, to the heirs, if an affidavit is received. The affidavit must include: (1) a description of jurisdiction and relationship; (2) the deceased member left no will; and (3) the aggregate amount on deposit does not exceed \$20,000 dollars.

The payment of funds in compliance with Acts 302 and 96 releases a credit union from liability, including potential claims from other heirs or creditors.