IN THE SUPREME COURT
OF FLORIDA

CASE NO. 64,874

IN RE: THE ESTATE OF

HOLLY E. GAINER,

Deceased.

_____/

CAROL GAINER, Individually and as Personal Representative of the Estate of HOLLY E. GAINER,

Appellant,

vs.

DOROTHY DORAN AND MARY ADAMS,

Appellees.

_____/

INITIAL BRIEF OF APPELLANT

An Appeal Taken From
The District Court of Appeal
Fifth District of Florida

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STATEMENT AS TO JURISDICTION

The Supreme Court of Florida has jurisdiction to hear and decide this appeal because the Fifth District Court of Appeal declared invalid Section 665.063(1)(a) of Florida Statutes (1981). Rule 9.030(a)(1)(A)(ii) of Florida Rules of Appellate Procedure and Article V, Section 3(b)(i) of Florida Constitution (1980), provide this Court with the requisite jurisdiction to hear and decide this appeal.

STATEMENT OF THE CASE AND OF THE FACTS

The Appellant, CAROL GAINER, is one of three daughters of the decedent, HOLLY E. GAINER, and also is the Personal Representative of her father's estate. The Appellees, DOROTHY DORAN and MARY ADAMS, are the other two daughters of the decedent.

Prior to his death, the decedent had opened savings accounts and acquired certificates of deposits in the joint names of the Appellant and himself in The Merritt Square Bank, a state banking corporation ("Bank") and First Federal Savings & Loan Association of Titusville, a federal savings and loan association ("Federal").

A dispute arose among the daughters as to whether the Bank and Federal accounts should be assets of the estate or assets of the Appellant individually. After a bench trial, the Circuit Judge held that the Bank accounts were assets of the estate, but that the Federal accounts were assets of the Appellant, individually.

The Appellees appealed to the Fifth District Court of Appeal the lower Court's determination as to ownership of the Federal accounts. The Appellant cross-appealed the lower Court's ruling that the Bank accounts were assets of the estate and the lower Court's ruling as to the amount of interest the Appellant would be required to pay on the Bank accounts.

The Fifth District Court of Appeal upheld the lower Court's judgment that the Bank accounts were assets of the estate, but reversed the lower Court's method of assessment of interest against the Appellant on the Bank accounts. These two determinations of the Fifth District Court of Appeal are not issues in this appeal to the Supreme Court of the State of Florida.

The Fifth District Court of Appeal then reversed the lower Court's ruling that the Federal accounts were the assets of the Appellant, individually, and ruled that the Federal accounts were assets of the estate. This ruling of the Fifth District is the subject of this appeal. Doran and Adams v. Gainer, 443 So.2d 473 (5th DCA Fla. 1984).

The Fifth District Court of Appeal, in its opinion reversing the lower Court's judgment as to the Federal accounts, said, at 443 So.2d 479:

> "Accordingly, we hold that section 665.063(1)(a), Florida Statutes (1981), is unconstitutional under the equal protection clauses of the United States and Florida Constitutions insofar as it purports to provide that the opening of a joint account payable to a survivor or survivors in a savings association is conclusive evidence in an action wherein a survivor is a party against third-party claimants or other survivors. We therefore reverse the trial court's award to Carol Gainer of all of the monies deposited in the Federal account by her father, Holly Gainer."

ISSUE ON APPEAL

IS SECTION 665.063(1)(a) OF FLORIDA STATUTES (1981) UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS INSOFAR AS SAID STATUTE PROVIDES THAT THE OPENING OF A JOINT ACCOUNT IN THE STATUTORY FORM SHALL BE CONCLUSIVE EVIDENCE OF OWNERSHIP OF THE ACCOUNT IN AN ACTION AGAINST THE SURVIVING ACCOUNT HOLDER?

In the instant case, the Fifth District Court of Appeal held that Section 665.063(1)(a) of Florida Statutes (1981), relating to survivorship rights in a joint account in a federal savings and loan association, is unconstitutional under the equal protection clauses of the United States and Florida Constitution insofar as it purports to provide that the opening of a joint account in such an association is conclusive evidence in an action wherein the survivor is a party against third-party claimants or other survivors.

Section 658.56 of Florida Statutes (1981), relating to survivorship rights in a joint account in a commercial bank, provides that such accounts may be set aside by proof of fraud, undue influence or clear and convincing proof of a contrary intent whereas a joint account in a savings and loan association may be set aside only by proof of fraud or undue influence. The inability of a litigant to set aside a joint account in a savings and loan association by clear and convincing evidence of a contrary interest, the Fifth District reasoned, resulted in an unreasonable and unconstitutional classification by the Legislature of survivorship rights to joint accounts in different types of banking establishments.

Article I, Section 2, of the Florida constitution provides that all natural persons are equal before the law and the Fourteenth Amendment to the Constitution of the United States declares that no state shall deny

to any person within its jurisdiction the equal protection of the laws. Article 1, Section 9, of the Florida Constitution provides that no persons shall be deprived of life, liberty or property without due process of law as does the Fourteenth Amendment to the Federal Constitution. It is these provisions of our organic law that the Fifth District held to be violated by Section 665.063(1)(a) of Florida Statutes (1981).

The Circuit Court in the instant case determined the the savings and loan association statute was constitutional, finding that all depositors in savings and loan associations are treated equally, and that likewise, all depositors in banks are treated equally. The Circuit Court then determined that the distinctions between the two sections did not violate the rights of the two sisters attacking the joint accounts to due process and equal protection of the law. The Fifth District held that the affected classes are not the depositors, but, in this case, the testamentary beneficiaries of the Gainer estate, who receive variable treatment dependant solely upon the type of financial institution in which the testator's joint accounts were located at his death.

The Fifth District, therefore, held that the statute relating to joint deposits in a savings and loan association was unconstitutional because it does not contain the same language as the statute relating to joint accounts in a bank. One might just as succinctly state that the bank statute is unconstitutional because it is not identical to the savings and loan association statute. The Florida Legislature has determined to treat such joint accounts differently in the various chapters governing such financial institutions. This was the evident choice of the Florida legislature and not an oversight.

This Court has previously held that the Legislature may permit savings and loan associations to charge higher interest rates than other financial institutions are allowed to charge. Cesary, infra, and Catogas, infra. This Court also has determined that there is nothing in the Federal Constitution which prevents the state legislature from limiting, conditioning, or even abolishing the power of testamentary disposition of property within its jurisdiction. In Re Estate of Greenberg, infra.

The cases cited by the Fifth District as authority that Section 665.063(1)(a) is unconstitutional both involved deprivation of a protected property right--master plumbers' licenses in Wiggens v. City of Jacksonville, 311 So.2d 406 (Fla. 1st DCA 1975) and marketing of mullet in Caldwell v. Mann, 26 So.2d 788 (Fla. 1946). The Appellees had no property right in the assets of Holly E. Gainer which is entitled to protection under the constitutions of the United States and the State of Florida. The Appellees at most had a mere expectancy that they would inherit assets from their father, Holly E. Gainer.

The Appellees did not allege in their pleadings that Section 665.063(1)(a) of Florida Statutes (1981) was unconstitutional (R: 153-162). They did not present any evidence at the trial which showed the statute was unconstitutional (R: 1-147; 176-237). This issue was first presented to the lower Court by Appellees' Motion for Rehearing (R: 238) filed after the Court entered its final order in this cause. The Appellees failed to meet their burden to establish the invalidity of the statute. Prior v. White, 132 Fla. 1, 180 So. 347 (1938). Basic tenets of constitutional law provide that the statute is presumptively constitutional and prima facie valid. This Court is required to construe the statute as valid unless it can be said that it positively

and certainly conflicts with the Constitution under any rational view taken. The District Court's holding that Section 665.063(1)(a) is unconstitutional is tantamount to saying that the Legislature is required to provide the same survivorship rules, in all instances, for all species of property.

Equal protection of the laws means that each person is entitled to stand before the law on equal terms with, to enjoy the same rights as belong to, and to bear the same burdens as are imposed on, others in a similar situation. The guaranty of equal protection does not require that a statute must apply equally and uniformly to all persons within the state. it is sufficient if the statute applies uniformly to all persons similarly situated. Thus, the right to equal protection of the laws is not denied when a statutory provision is applicable to all persons in the state under similar circumstances and conditions.

Florida is not the only state to have adopted statutes providing that the opening of a joint account in the statutory form vests title to the funds remaining in the account upon the death of a depositor in the surviving account holder except where fraud or undue influence is proven. Courts in several states have sustained such statutes which prevent judicial inquiry into the intent of the deceased depositor as to the funds in such account.

A New Jersey statute provided that if a joint account is opened in the manner prescribed by statute, that the surviving joint account holder shall be conclusively presumed to be the owner of such account upon the death of the other joint account holder. In Ward v. Marine Nat'l Bank, 183 A.2d 60 (Sp.Ct.N.J. 1962), the estate of a decedent contended that the statute worked an unconstitutional denial of property

because the device of a "conclusive presumption" precluded judicial probing into the true nature of the the parties' intent, thus denying to the estate the opportunity to introduce evidence of intent. In affirming the estate against the constitutional attack, the Court in Ward, supra, at Pages 63-64, stated:

> "In obvious response to the court's insistence that, if the Legislature meant survivorship to be an invariable attribute of a joint bank account, it would have to say so in terms not capable of being interpreted as causing a mere rebuttable presumption, the amending act here at issue was passed. Confirmation of the conclusion that the phrasing of the new statute in terms of a conclusive presumption was in response to judicial prodding is afforded by the introducer's statement attached to the bill which became L. 1954, c. 209.
>
> > 'It is the purpose of this bill to provide for survivorship in certain time or demand deposit accounts maintained in banking institutions.
> >
> > The courts have held that present law raises only a rebuttable presumption of an intent to create the right of survivorship.
> >
> > This bill provides that the presumption of an intent to create the right of survivorship shall be conclusive.'
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> "It becomes clear, then, that both N.J.S.A. 17:9A-216 and N.J.S.A. 17:9A-218 were fashioned in terms designed to fill the same judicially expressed need. For the same reasons set out in Howard, supra, i.e., that although the statute is couched in terms of a presumption, the true legislative intent was to make a new rule of substantive law, we reject the attack on the constitutionality of the latter statte and hold that it represents a valid exercise of the legislative power to alter both the common law requirements of gifts and the Statute of Wills. Nor are we alone in this view for other states have held similar statutes governing these accounts constitutional. See Hill v. Badeljy, 107 Cal.App. 598, 290 P. 637 (D.Ct.App. 1930); Heiner v. Greenwich Savings Bank, 118 Misc. 326, 193 N.Y.S. 291 (Sup.Ct. 1922). Quite clearly, the statute here involved gives both parties to the account a present right of survivorship."

This Court, in In Re Estate of Greenberg, 390 So.2d 40 (Fla. 1980), appeal dismissed, 450 U.S. 961, held that Florida may enact statutes which prohibit non-residents who are not related to the decedent in a

specified manner from qualifying as a personal representative of an estate. Sections 733.302 and 733.304 were asserted by a non-resident seeking appointment as a personal representative to be violative of the equal protection and due process clause of the Fourteenth Amendment. In discussing the judicial principles to be applied in determining whether a statute denies equal protection of the laws, this Court said, at Pages 42-43:

> "The rational basis or minimum scrutiny test generally employed in equal protection analysis requires only that a statute bear some reasonable relationship to a legitimate state purpose. That the statute may result incidentally in some inequality or that it is not drawn with mathematical precision will not result in its invalidity. Rather, the statutory classification to be held unconstitutionally violative of the equal protection clause under this test must cause different treatments so disparate as relates to the difference in classification so as to be wholly arbitrary...."
>
> "The strict scrutiny analysis requires careful examination of the governmental interest claimed to justify the classification in order to determine whether that interest is substantial and compelling and requires inquiry as to whether the means adopted to achieve the legislative goal are necessarily and precisely drawn.... This test, which is almost always fatal in its application, imposes a heavy burden of justification upon the state and applies only when the statute operates to the disadvantage of some suspect class such as race, nationality, or alienage or impinges upon a fundamental right explicitly or implicitly protected by the constitution. Those fundamental rights to which this test applies have been carefully and narrowly defined by the Supreme Court of the United States and have included rights of a uniquely private nature such as abortions, ...; the right to vote, ...; the right of interstate travel, ...; first amendment rights, ...; and procreation ...."
>
> "The Supreme Court of the United States has refused to expand fundamental rights beyond those explicitly or implicitly guaranteed by the constitution. Addressing the constitutionality of the Texas statutory system for public education against an equal protection challenge, the Supreme Court, in San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), held that the financing system did not impinge on any fundamental right so as to call for application of the strict scrutiny test since education was not a right afforded explicit or implicit protection under the constitution. The Supreme Court carefully delineated the limits of the fundamental rights rationale in its equal protection decisions; explained that the Court does

not pick out particular human activities, characterize them as fundamental, and then give them added protection; and emphasized that it was not within the Court's province to create substantive rights in the name of guaranteeing equal protection. It declared that just because state legislation affects a matter gravely important to society, this is not a sufficient basis to characterize it as fundamental. See also Lindsey v. Normet, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972). Rather, the Court stated that it merely recognizes an established constitutional right and gives to that right no less protection than the constitution itself demands."

"Pincus characterizes as fundamental the testator's right to appoint a personal representative, thus impelling application of the strict scrutiny test. We cannot agree since this right is not one explicitly or implicitly guaranteed by the constitution. In fact, the right to make a will and other matters relating thereto such as designation of a personal representative are rights created by statute. The constitution commits to the states the power to control the administration of the estates of their citizens. Labine v. Vincent, 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed. 288 (1971); Demorest v. City Bank Farmers Trust Co., 321 U.S. 36, 64 S.Ct. 384, 88 L.Ed. 526 (1944). There is nothing in the federal constitution which would forbid the state legislature to limit, condition, or even abolish the power of testamentary disposition of property within its jurisdiction. We have ofttimes reiterated that the power to alienate property by last will and testament is not an inherent right of a citizen but rather is one derived from legislation. Efstathion v. Saucer, 158 Fla. 422, 29 So.2d 304 (1947); Taylor v. Payne, 154 Fla. 359, 17 So.2d 615 (1944), appeal dismissed, 323 U.S. 666, 65 S.Ct. 49, 89 L.Ed. 647 (1944); In re Sharp's Estate, 133 Fla. 802, 183 So. 470 (1938). See also Simon, Redfearn Wills and Administration in Florida, 5th edition (1977), section 2.03. Notwithstanding the decision of the federal district court in Fain v. Hall, 463 F.Supp. 661 (M.D.Fla. 1979), which we find to be wholly unpersuasive, we hold that the right to appoint a personal representative is not one of the fundamental rights implicating utilization of the strict scrutiny test."

After determining that the rational basis or minimum scrutiny test should apply, this Court then held Sections 733.302 and 733.304 of Florida Statutes to be constitutional and stated, at Pages 45-46:

"Since neither a suspect class nor a fundamental right is affected by the legislation in question, the rational basis or minimum scrutiny test applies in evaluating the equal protection challenge. Utilizing this test, we hold that the distinctions drawn by sections 733.302 and 733.304 bear a reasonable relationship to a legitimate state objective and therefore do not violate the equal protection clause. The state, in enacting these provisions, recognized that the administration of a decedent's estate is an intensely localized matter requiring the personal representative to

be thoroughly informed on local matters and to be available to the court, beneficiaries, and creditors of the estate. The state declares that these statutes serve the valid function of ensuring that the personal representative, if not a relative of the testator, is close enough in proximity to the Florida estate to protect the rights of the creditors, ensure that the estate will be probated without needless delays caused by travel, and reduce the cost of representation to the estate by reducing travel costs or preventing the need to associate an in-state representative. In In re the Estate of Fernandez, 335 So.2d 829 (Fla. 1976), we expressly recognized that the residency requirement, along with the statutory provision that a person incompetent to discharge the duties of a personal representative is not qualified to serve, guarantees the basic ability to perform the duties of a personal representative."

"Pincus further maintains that the exemption in section 733.304 for nonresident relatives of a decedent demonstrates that the statute is irrational. We disagree. Where utilizing the rationality test, the equal protection clause is not violated merely because a classification made by the laws is not perfect. Equal protection does not require a state to choose between attacking every aspect of the problem or not attacking it at all, and a statutory discrimination will not be set aside if any statement of facts reasonably may be conceived to justify it. Dandridge v. Williams. To be constitutional, a statutory classification need not be all-inclusive. Newman v. Carson, 280 So.2d 426 (Fla. 1973). Furthermore, we find that it is not unreasonable for an exception to be created for nonresident relatives because, more than likely, the nonresident relative will also be a beneficiary of the decedent's estate."

The Appellant is "In Re Estate of Greenberg, supra, also maintained that Sections 733.302 and 733.304 violated the due process clause of the Fourteenth Amendment because said statutes create an irrebuttable presumption that otherwise competent persons are not qualified to serve as personal representatives because of their non-residency. This Court held that the conclusive presumption contained in the statutes regulating appointment of personal representatives was constitutional as measured against the reasonableness test since the statutes represent a rational means of accomplishing a legitimate state goal.

In State v. Woodruff, 184 So. 81 (Fla. 1938), a Tampa ordinance regulating "fire sales" and "Bankrupt sales" contained classifications as to those who conducted business at the same site for a least one year

and those who had not been in business at the same site for one year. The classification was sustained, with this Court saying that such city ordinances should not be held invalid unless they are unreasonable and arbitrary or grossly unjust and oppressive under classifications as made.

In sustaining a statute regulating motion pictures operations in only cities having a population of 6,000 or more, this Court said that there was a reasonable basis for the statute to regulate the business of operating motion picture operations in the larger cities while omitting the smaller as a matter of legislative wisdom and policy. Gandy v. Borras, 154 So. 248 (Fla. 1934).

This Court, in Gray v. Central Florida Lumber Co., 141 So. 604 (Fla. 1932) held that the legislature could establish classifications of corporations that would be required to file annual reports. The statute in question exempted corporation paying a filing fee of $1,000.00 from filing such annual reports.

A Florida statute provided that pharmacists already practicing this profession in the State of Florida would be exempt from new provisions requiring applicants to be graduates of an accredited four-year college of pharmacy. This exemption did not apply to an out-of-state pharmacist who sought to take the examination for pharmacists in Florida. His application for permission to take the examination was denied and he initiated litigation asserting the statute was unconstitutional. This Court, in State v. Canova, 123 So.2d 672 (Fla. 1969), appeal dismissed, 365 U.S. 608, held that the statute was valid and that the classification was reasonable.

This Court also has sustained legislation distinguishing between the dower rights of a widow with, and a widow without, lineal descendants, since the classification has a basis in economic considerations. Adams v. Adams, 2 So.2d 855 (Fla. 1941), appeal dismissed, 314 U.S. 572.

A classification which differentiates between the right of a citizen to travel upon a highway, and those persons using the highways for private gain, has been held by this Court not to be violative of the equal protection clause. State et rel. Pennington v. Quigg, 114 So. 859 (Fla. 1927).

A Florida statute prohibiting the use of the word "savings" by a corporation unless organized under the laws relating to building and loan associations was held by this Court not unconstitutional as a violation of equal protection although the prohibition applies only to corporations and not to individuals. Greater Miami Financial Corp. v. Dickinson, 214 So.2d 874 (Fla. 1978).

A Florida statute regulating dealing in eggs, though applicable only to dealers handling 30 dozen or more each week, was held to be valid against an attack that the statute did not apply to all persons dealing in eggs, thereby creating an unreasonable and arbitrary classification. Mayo v. Bossenbury, 10 So.2d 725 (Fla. 1942). This Court, quoting another case, said at page 726-727:

> "This Court has frequently held that the legislative authority, acting within it proper field, is not bound to extend its regulation to all cases which is might possibly reach. The Legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest." If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.' There is no 'doctrinaire requirement' that the legislation should be couched in all embracing terms."

In Cesary v. The Second National Bank of North Miami, 369 So.2d 917 (Fla. 1979), this Court determined that a Florida Statute establishing allowable interest rates for Morris Plan banks and industrial savings banks at a higher level than the general usury law was constitutional. In sustaining the classification made by the legislature, this Court said, at Page 921:

> "The uniformity of operation throughout the state required by this constitutional provision does not mean universality of operation over the state. Reasonable classification as to subject matter is permitted. Cates v. Heffernan, 154 Fla. 422, 18 So.2d 11 (1944). Justice Terrell in Cantwell v. St. Petersburg Port Authority, 155 Fla. 651, 653, 21 So.2d 139, 140 (1945), explained:
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> > 'A law does not have to be universal in application to be a general law. Laws relating to the location of the capital of the state, the state university, the state prison farm, the hospital for the insane and other state institutions are local in character but general in application and are regarded as general laws. The act under consideration is easily within this class.'
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> "Classification" is the grouping of things because they agree with one another in certain particulars and differ from other things in those same particulars. Anderson v. Board of Public Instruction, 102 Fla. 695, 136 So. 334 (1931). This Court has ofttimes recognized the wide discretion of the legislature in formulating classifications when establishing regulations for the public welfare but has also acknowledged that statutory classifications must be reasonable and must be based upon some difference bearing a reasonable and just relationship to the subject matter regulated. Carter v. Norman, 38 So.2d 30 (Fla. 1948); State ex rel. White v. Foley, 132 Fla. 595, 182 So. 195 (1938). A statute which relates to subjects, persons, or things as a class, based upon proper differences which are inherent in or peculiar to the class is, a general law. State ex rel. Gray v. Stoutamire, 131 Fla. 698, 179 So. 730 (1938).
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> "The determination of the maximum amount of interest which may be charged for the use of money loaned is within the police power of the state, and the details of the legislation and exceptions to be made rest within discretion of the state legislature. Griffith v. Connecticut, 218 U.S. 563, 31 S.Ct. 132, 54 L.Ed. 1151 (1910). When dealing with usury questions and classifications established by the legislature relating thereto, the legislature has a great deal of discretion, and its classifications will not be disturbed unless clearly unconstitutional. Edwards v. State, 62 Fla. 40, 56 So. 401 (1911). The legislature enacted the usury laws to remedy an existing evil, and it has the authority to classify regulatory

enactments with reference to degrees of evil. Beasley v. Cahoon, 109 Fla. 106, 147 So. 288 (1933).

"A party who challenges the classification of a statute has the burden of proving that the classification therein does not rest upon any reasonable basis and is therefore arbitrary. Anderson v. Board of Public Instruction, supra. Cesary failed to show that the grounds justifying the particular classification created by the legislature for exceptions to the general law governing interest and usury are unreasonable.

"The classification of lenders created by sections 687.031 and 656.17(1) have a basis in real differences of conditions affecting the subject matter regulated. In establishing these classifications, the legislature considered the need for convenient, reasonable credit for as broad a group of borrowers as possible; the need to protect necessitous borrowers from overreaching "loanshark" type lenders; the costs of different credit arrangements, including substantial bookkeeping and computer costs involved in smaller loans; the risk of nonpayment; the nature of the lender's business and the degree of existing government regulation of that business; and the nature and needs of the borrower. For each classification of lender, the legislature has established a particularized regulatory procedure relating not only to the allowable interest rates by also to the type of security which may be taken, the length of terms over which repayment can be made, the charges and costs which may be assessed, and the penalties to be imposed if any of the regulatory provisions are violated."

This Court hold, in Catogas V. Southern Fed. Sav. & Loan Ass'n., 369 So.2d 922 (Fla. 1979), that a statutory usury exemption for federal savings and loan associations does not create an arbitrary and unreasonable classification and thus does not violate the equal protection clause. This Court said in Catogas, at Page 927:

"We agree with Southern Federal and hold that section 665.395 violates neither the equal protection clause nor article III, section 11(a)(9). As this Court emphasized in Cesary v. Second National Bank of North Miami, No. 53,497, 369 So.2d 917 (Fla. 1979), the legislature, when dealing with usury questions and the classifications to be established, has great discretion, and its classifications will not be disturbed unless plainly unconstitutional. As we said in Cesary:

> 'The legislature enacted the usuary laws to remedy an existing evil, and it has the authority to classify regulatory enactments with reference to degrees of evil.' Slip op. at 8.

"The Catogases have failed to prove that this classification did not rest upon any reasonable basis and is therefore, arbitrary. The classification of lenders exempted by section 665.395 from the usury law has a basis in real differences of conditions affecting the subject matter regulated. In Cesary, we likewise held that the classifications of lenders created by sections 687.031 and 656.17(1), Florida Statutes, were not unreasonable and arbitrary. Since we find the classification reasonable and since section 665.395 operates uniformly throughout the state upon this classification, we conclude that this statute is a general law. Cf. Cesary."

In United Yacht Brokers, Inc. v. Gillespie, 377 So.2d 668 (Fla. 1979), a licensed yacht broker contended that a Florida statute requiring it to obtain prior written authorization before acting on behalf of a principal was unconstitutional because such written authorization was not required of any other licensed brokers of regulated commodities in the state of Florida. The equal protection clause was allegedly violated by the statute which singled out yacht brokers for disparate treatment. This Court held the classification by the legislature valid, saying, at Page 671:

"We reject the contention that this written authorization requirement must be struck down because a similar statutory provision does not apply to other licensed brokers of regulated commodities. In assessing a similar challenge to a law regulating the filling of eyeglasses, the United States Supreme Court said:

> 'The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. . . . Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others. . . .'

Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 489, 75 S.Ct. 461, 99 L.Ed. 563 (1955) (citations omitted).

"Indeed, Florida courts, too, have recognized that the legislature may move in increments to regulate businesses within

the state. In Noble v. State, 68 Fla. 1, 4, 66 So. 153, 154 (1914), this Court reasoned:

> 'The Legislature may regulate some occupations, and not regulate others, when private rights secured by the Constitution are not thereby invaded and the regulations that are provided operate with substantial fairness upon practically all persons similarly situated, so that the governmental authority be not arbitrarily exercised to injure the substantial rights of or to oppress any person. . . .'

"Accord, Mayo v. Polk, 124 Fla. 534, 169 So. 41, appeal dismissed, 299 U.S. 507, 57 S.Ct. 39, 81 L.Ed. 376 (1936).

"Finally, to accept United's position would virtually require that all brokers of all commodities must be regulated identically. This is not required, and, accordingly, we find that section 537.05(2) is a reasonable legislative classification serving a valid purpose under the state's police power.

"While equal protection concerns legislative classifications, due process of law protects against legislative deprivation of life, liberty, or property. The test applied, when no fundamental rights are at stake, is basically the same under either constitutional provision. To sustain a legislative action of this type against a due process attack, the statute must simply bear 'a reasonable relation to a permissible legislative objective' and must not be "discriminatory, arbitrary or oppressive." Lasky v. State Farm Insurance Co., 296 So.2d 9, 15 (Fla. 1974) (footnote omitted). The determination in our equal protection analysis that the statute bears a reasonable relationship to a permissible purpose similarly satisfies the requirements of this due process test. We totally reject the contention that section 537.05(2) unconstitutionally restricts or abridges the opportunities of yacht brokers to pursue their livelihood."

In discussing a similar statute of the State of New Hampshire, the Supreme Court of that state in In Re Wszolek Estate, 295 A.2d 444 (1972) said, at Pages 446-447:

> "This statute, and similar ones in other States, have been classified as 'special statutes' that specifically allow the donee to take the balance remaining in the account by precluding any investigation of the donor's intent after the donor's death. 60 Mich.L.Rev., 972, 990 (1962); 41 Calif.L.Rev. 596, 608-12 (1953). In other words, such a statute establishes property rights in the survivor authorizing the payment of the balance to him without a showing of a donative intent on the part of the party furnishing the funds, or delivery of the pass book or access thereto. 26 U.Chi.L.Rev. 376, 380-89 (1959). It was intended 'to put at rest

the uncertain results attendant on litigation predicated on the theory of gifts.' Parenteau v. Gaillardetz, 103 N.H. 92, 95, 166 A.2d 112, 114 (1960). It has relieved the surviving joint tenant of the burden of establishing a gift inter vivos. Brennan v. Timmins, 104 N.H. 384, 389, 187 A.2d 793, 797 (1963)."

A statute of the State of Connecticut, as is the case in savings and loan association joint federal accounts in Florida, provided that the opening of a joint account in statutory form would be conclusive evidence of ownership of the account. In Alaimo v. First National Bank of Thompsonville, 190 A.2d (Sp.Ct.Conn. 1963), the Connecticut Supreme Court gave effect to such a statute, holding, at Page 926:

"Both New York and California have statutes similar to the above, and those jurisdictions have decided that where there is survivorship the conclusive presumption created by the statute is applicable in favor of the survivor to moneys still remaining in the account at the time of death. Paterson v. Comastri, 39 Cal.2d 66, 244 P.2d 902; Moskowitz v. Marrow, 251 N.Y. 380, 167 N.E. 506, 66 A.L.R. 870; note, 66 A.L.R. 881, 884; 7 Am.Jur. 302, Banks, Sec. 428 n. 13. It has been stated that the statute becomes a part of the contract between the bank and the depositors of the account; Medeiros v. Cotta, 134 Cal.App.2d 452, 286 P.2d 546; and in earlier cases it was held that where circumstances of the case, sometimes aided by statutory presumption, indicae a survivorship account, the survivor takes by virtue of contract right. McDougald v. Boyd, 172 Cal. 753, 159 P. 168; Ludwig v. Brunner, 203 Mich. 556, 169 N.W. 890; Illinois Trust & Savings Bank v. VanVlack, 310 Ill. 185, 141 N.E. 546."

The State of California has a joint account statute similar to Florida's and the Supreme Court of that state has on several occasions considered the applicability of the statute. That Court, in Paterson v. Comastri, 244 P.2d 902 (Sp.Ct.Cal. 1952), held that such a statute creates during the lifetime of both account holders only a presumption of ownership of the account which may be rebutted but that on death the surviving account holder is entitled to the conclusive presumption of the statutes. The Court in Paterson, supra, stated, at Page 905:

"This section, which was copied from the New York Bank Act, has been construed by the courts of this state and of New York to set up two presumptions: First, that a deposit in the names of the

> depositor and another person 'in form to be paid to' either or the survivor of them, becomes the property of such persons as joint tenants. This first presumption is not conclusive, and may be overcome by proof that the owner-depositor, when making the deposit, had no intention to create a true joint tenancy. The second presumption, that in the absence of fraud or undue influence, it was the intention of the depositors to vest title in the survivor, is conclusive. In order that the conclusive presumption may be applicable, however, there must be survivorship, and even then it applies only in favor of the survivor to monies still remaining in the account at the time of death. It does not apply in respect to monies withdrawn by either of the depositors during life, even if one of the depositors has subsequently died. Wallace v. Riley, 23 Cal.App.2d 654, 661, 74 P.2d 807; Moskowitz v. Marrow, 251 N.Y. 380, 396, 167 N.E. 506, 512, 66 A.L.R. 870; Matter of Porianda's Estate, 256 N.Y. 423, 425-426, 176 N.E. 826; Matter of Juedel's Will, 280 N.Y. 37, 40, 19 N.E.2d 671; Walsh v. Kennan, 293 N.Y. 573, 578, 59 N.E.2d 409."

See also, Estate of Zeisel, 192 Cal.Rptr. 25 (Ct.App.4th Dis.Calif. 1983).

The California Supreme Court, in In Re Gaines Estate, 100 P.2d 1055 (Sp.Ct.Cal. 1940), in discussing the conclusive presumption of the joint account statute, said, at Page 1061:

> "It therefore becomes unnecessary to give extended consideration to the provisions of section 15a of the California Bank Act. Deering's General Laws, Act 652. This statute provides that the making of a bank deposit in the form of a joint tenancy with right of survivorship shall be conclusive evidence of the intention of the depositors to vest title in the survivor. The agreement involved herein was made in the form contemplated by the statute, and in the absence of fraud or undue influence, which are recognized as exceptions under the statute, cannot be challenged by other evidence of intent. This statute applies, of course, only to the bank deposit...."

The Indiana Courts have ruled that parol evidence of the intent of the joint account holders cannot be admitted to vary the clear and unequivocal language of the joint account instrument, even when the dispute over the joint account is between the nondepositing account holder and a guardian of the depositing account holder. Blaircom v. Hires, 423 N.E.2d 609 (Sp.Ct.Ind. 1981).

The Texas Courts have held that once a joint account is established, all funds on deposit at death of a party belong to the survivor and that the intention of the depositor of the funds may not be considered. Sheffield v. Estate of Dozier, 643 S.W.2d 197 (Ct.of App.Texas 1982). The Missouri Courts also have held that evidence of the intent of a depositor is immaterial in disputes over the survivorship rights of joint tenants. Blue Valley Federal Sav. and Loan v. Burrus, 637 S.W.2d 737 (Mo.App. 1982).

CONCLUSION

Section 665.063(1)(a), Florida Statutes (1981) creates a mandatory, irrebuttable presumption of ownership by a surviving joint account holder absent a showing of fraud or undue influence. This statute has no constitutional infirmities. Therefore, the decision of the Fifth District Court of Appeal holding the statute unconstitutional and awarding to the Gainer estate the joint accounts in the federal savings and loan association should be reversed and the order of the lower Court awarding such accounts to the Appellant should be reinstated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven copies of the foregoing was furnished by U.S. mail to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee 32301 and a true and conformed copy was furnished by U.S. mail to Ronald W. Sikes, Esq., 150 Taylor Street, Suite B, Titusville, Florida 32780, Attorney for Dorothy Doran and Mary Adams on this 12th day of March, 1984.

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