

## Memorandum 90-26

Subject: Study L-3023 - Uniform TOD Security Registration Act

The Commission approved for distribution for comment a Tentative Recommendation Relating to Uniform TOD Security Registration Act. A copy of the tentative recommendation is attached. This memorandum reviews the comments we received on the tentative recommendation.

Senator Beverly plans to introduce the Uniform Act, but he will not set the bill for hearing until he has received the Commission's recommendation concerning the act.

GENERAL REACTION TO TENTATIVE RECOMMENDATION

The tentative recommendation was distributed to all persons who have agreed to comment on tentative recommendations relating to probate law. The persons who sent in comments were overwhelmingly in favor of the uniform act. Some made suggestions for possible revision, and these are reviewed in this memorandum. The general reaction to the tentative recommendation is outlined below.

APPROVE (24)

The following persons approved the tentative recommendation, either without qualification or with suggestions for modification:

Kim T. Schoknecht, San Francisco (Exhibit 1)  
Jerome Sapiro, San Francisco (Exhibit 2)  
David W. Knapp, Sr., San Jose (Exhibit 3)  
Irving Kellogg, Beverly Hills (Exhibit 4)  
Allen J. Kent, San Francisco (Exhibit 6)  
Alvin G. Buchignani, San Francisco (Exhibit 7)  
Jeffrey A. Dennis-Strathmeyer, Berkeley (Exhibit 8)  
Wilbur L. Coats, Poway (Exhibit 9)  
Thomas R. Thurmond, Vacaville (Exhibit 10)  
John C. Hoag, Tigor Title Insurance, Los Angeles (Exhibit 11)  
Brian D. McGinty, Oakland (Exhibit 15)  
Frank M. Swirles, Rancho Santa Fe (Exhibit 16)  
Henry Angerbauer, Concord (Exhibit 17)  
Herbert I. Lazerow, San Diego (Exhibit 19)  
Susan Howie Burriss, Mountain View (Exhibit 20)  
Peter L. Muhs, San Francisco (Exhibit 21)  
Ruth E. Ratzlaff, Fresno (Exhibit 22)

Linda A. Moody, Mill Valley (Exhibit 23)  
Howard Serbin, Santa Ana (Exhibit 26)  
Charles Dobris, Davis (Exhibit 27)  
Susan J. Hazard, Los Angeles (Exhibit 28)  
Ruth A. Phelps, Pasadena (Exhibit 29)  
Damian B. Smyth, San Francisco (Exhibit 30)  
John G. Lyons, San Francisco (Exhibit 31)

**NO POSITION (5)**

The following persons made suggestions for revision of the tentative recommendation, but did not specifically approve or disapprove of the tentative recommendation:

Florence J. Luther, Fair Oaks (Exhibit 5)  
Rawlins Coffman, Red Bluff (Exhibit 12)  
Arnold F. Williams, Fresno (Exhibit 13)  
Larry M. Kaminsky, Fidelity National Title, Irvine (Exhibit 24)  
Michael J. Anderson, Sacramento (Exhibit 25)

**OPPOSED (2)**

The following person are opposed to the tentative recommendation:

Robert M. Maize, Jr., Santa Rosa (Exhibit 14)  
Luther J. Avery, San Francisco (Exhibit 18)

**The staff recommends that the Commission recommend the enactment of the Uniform Act in California, with such revisions as the Commission determines to make in the Tentative Recommendation after considering the suggestions discussed below.**

**STAFF SUGGESTED REVISIONS OF UNIFORM ACT**

**Definition of "security"**

Section 5501(d) defines "security" to mean:

"a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certified security, an uncertified security, and a security account."

This definition caused concern to two land title insurance commentators. See Exhibit 11 (page 15 of Exhibits) and Exhibit 24 (page 31 of Exhibits).

The definition of "security" in the Tentative Recommendation is the same as the definition in the official version of the Uniform Act.

The staff is reluctant to deviate from the definition in the Uniform Act. But the Uniform Act definition is an incomplete statement of the definition of security in the Uniform Commercial Code. For this reason, it confused some of the commentators. The Commission may wish to deal with the concern the land title insurers by providing a clearer definition of "security." The staff recommends that the following be substituted for the definition in the Tentative Recommendation."

(d) "Security" means a certificated security, an uncertificated security, and a security account. As used in this subdivision, "certificated security" and "uncertificated security" have the meanings given those terms by Section 8102 of the Uniform Commercial Code.

The recommended provision is consistent with Section 8102 of the California Uniform Commercial Code, which defines "security" as follows: "A security is either a certificated or an uncertificated security."

#### Community property held in survivorship form

Section 5502 (page 9 of the Tentative Recommendation) provides:

5502. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety, or as owners of community property held in survivorship form, and not as tenants in common. [emphasis added.]

A number of the commentators questioned the meaning of "community property held in survivorship form" as used in Section 5502. See Exhibit 4 (page 5 of Exhibits), Exhibit 14 (pages 20-21 of Exhibits), Exhibit 16 (page 23 of Exhibits), Exhibit 25 (page 32 of Exhibits). See also Exhibit 12 (page 17 of Exhibits).

Does this language (community property held in survivorship form) mean that the share of the first-to-die spouse is not subject to testamentary disposition by that spouse? If so, the concept would create tax problems because it might mean that the surviving spouse would not get a stepped-up basis for income tax purposes on the entire security upon the death of the first-to-die spouse. Instead the surviving spouse would get a stepped-up basis on only the deceased spouse's half.

The purpose of the Uniform Act concept of "community property held in survivorship form" is to permit the transfer agent to transfer the entire interest in the security to the surviving spouse upon death of the first-to-die spouse. Presumably, the transfer would be made upon receipt of the request for transfer and a certified copy of the death certificate for the first-to-die spouse, just as would be the case for a security held in joint tenancy. This purpose can be accomplished without depriving the first-to-die spouse of the right to dispose by will of his or her share of the community property security. That the first-to-die spouse retains this right appears to be essential if we are to be sure that we do not affect the right of the surviving spouse to a stepped-up basis on the entire security for income tax purposes.

The Uniform Act protects the registering entity that transfers or pays according to the registration. See Section 5508(c) ("A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with Section 5507 and does so in good faith reliance (1) on the registration, (2) on this part, and (3) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.") But transfer or payment according to the registration does not affect the rights of beneficiaries in disputes among themselves or the rights of claimants to ownership of the security transferred or its value or proceeds. See subdivision (d) of Section 5508. It is not inconsistent with the scheme of the Uniform Act to require (absent notice of an adverse claim) transfer or payment to the surviving spouse of a security owned as community property by the spouses and registered in beneficiary form, and at the same time to preserve the right of the first-to-die spouse to make testamentary disposition of his or her share in the community property security.

This situation is similar to the situation where community real property is held in joint tenancy form for convenience, and the first-to-die spouse makes a disposition of his or her interest in the property by will. The title to the entire property passes to the

surviving spouse, but the devisee under the will of the deceased spouse can recover from the surviving spouse the deceased spouse's share of the property if it is established that it is actually community property.

Nevertheless, the staff recommends that the California version of the Uniform Act be revised to make clear that the Uniform Act does not deprive the first-to-die spouse of the right to make a testamentary disposition of his or her interest in a security registered as community property with a POD beneficiary. To make this clear is essential to avoid possible adverse income tax consequences. To make such a clarification would not defeat the purpose of the Uniform Act.

Accordingly, the staff strongly recommends that the following provision be added to the recommended legislation:

5511. Nothing in this part alters the community character of community property or community rights in community property, including the right of testamentary disposition by the first-to-die spouse of his or her interest in a community property security owned by a husband and wife and registered in beneficiary form.

Comment. Section 5511 is a new provision not included in the Uniform Probate Code (Uniform TOD Security Registration Act) (1989). By preserving community rights in a community property security registered in beneficiary form, the section makes clear that this form of registration does not deprive the first-to-die spouse of the right of testamentary disposition over his or her share of a community property security. See Probate Code §§ 100, 101 (share of community and quasi-community property that is subject to testamentary disposition by first-to-die spouse).

At the same time, nothing in the section limits or affects the right and duty of the registering entity to reregister or pay on death of the deceased spouse pursuant to the right of survivorship created by the registration. (Section 5502 provides that a married couple who register a community property security in beneficiary form hold "as owners of community property held in survivorship form.") The registering entity is protected from claims by devisees of the deceased spouse if it complies with the statute. See Section 5508(c).

Although (absent a written objection) the registering entity must reregister the title to the security in the name of the surviving spouse upon the death of the other spouse (see subdivision (b) of Section 5508), a devisee to whom the deceased spouse's share of the community property security was devised can recover the devised share from the surviving

spouse. In addition, the registering entity will not reregister or pay the security to the surviving spouse if the devisee makes a written objection before the security is reregistered or paid. This is because subdivision (c) of Section 5508 provides that the registering entity is not protected if the reregistration or payment is made after it has received a written objection from a claimant to an interest in the security.

### Technical Revisions

The final version of the Uniform Act as proposed by the National Conference of Commissioners on Uniform State Law contains a few technical revisions in an earlier draft of the Uniform Act that we used to prepared the Tentative Recommendation. To conform to the final version of the Uniform Act, the staff recommends that the following revisions (shown in strike-out and underscore) be made in the statute set forth in the Tentative Recommendation:

(1) The introductory clause of Section 5501 (page 8 of Tentative Recommendation) should be revised to read:

In this part, unless the context otherwise requires:

(2) Subdivision (b) of Section 5508 (page 13 of Tentative Recommendation) should be revised to read:

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this part.

(3) The last sentence of subdivision (b) of Section 5508 (page 14 of Tentative Recommendation) should be revised to read:

No other notice or other information available to the registering entity ~~shall affect~~ affects its right to protection under this part.

(4) "A" should be substituted for "Any" as the first word of Section 5509 (page 15 of Tentative Recommendation).

(5) Subdivision (a) of Section 5510 (page 15 of Tentative Recommendation) should be revised to read:

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive and ~~implement~~ requests (1) for registration in that registrations in beneficiary form, and (2) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered beneficiary designations and requests for reregistration to effect a change of beneficiary.

(6) In the third line of paragraph (c)(3) of Section 5510 (page 16 of Tentative Recommendation), the comma after "Mary B Brown" should be deleted.

**SUGGESTIONS BY COMMENTATORS CONCERNING MATTERS THAT WILL BE GOVERNED BY GUIDELINES TO BE ADOPTED BY TRANSFER AGENTS**

**Introduction.** Some of the commentators failed to appreciate that the Uniform Act contemplates that stock transfer agents will develop uniform terms and conditions that they will use as guidelines to govern the registration of securities in TOD form. These guidelines will provide forms and deal with the details of such matters as registrations in beneficiary form, cancellation of previously registered beneficiary designations, request for reregistration to effect a change of beneficiary, proving death, designating primary and contingent beneficiaries, and the like. See Section 5510. Having these national guidelines will avoid the need for transfer agents to comply with varying and inconsistent statutory provisions governing these matters in the various states. Having a uniform national set of guidelines will enable stock brokers to handle registrations in beneficiary form on a routine basis, rather than having to comply with the different requirements established by each transfer agent. The concept of uniform national guidelines is an essential feature of the uniform act. A transfer agent will not accept a request for registration in beneficiary form that does not comply with the applicable guidelines.

Nevertheless, although uniform national guidelines are contemplated, this does not preclude a particular transfer agent from adopting its own guidelines, although it is unlikely that a transfer agent that handles the securities of more than one company would deviate from the national guidelines. Also stock brokers will be unable to comply with different requirements for different stocks.

To provide flexibility in the development of the guidelines, the staff recommends that the California statute not deal with these matters of detail, but leave the matters to the national guidelines as contemplated by the official version of the Uniform Act.

The suggestions concerning matters to be governed by the guidelines are discussed below.

Permitting a transfer agent to adopt its own guidelines. Arnold F. Williams (Exhibit 13, pages 18-19 of Exhibits) states that the "procedures involved in transferring the ownership of stock are not uniform at the moment, being subject to the vagaries of various transfer agents." He fears that different transfer agents will adopt inconsistent guidelines and that some transfer agents will further limit the transfer of securities by imposing transfer requirements that do not now exist. Irving Kellogg (Exhibit 4, page 4 of Exhibits) is concerned that the scheme of the Uniform Act has the effect of permitting a security owner to register it in beneficiary form only in accordance with the guidelines adopted by the transfer agent. He fears that there will be many different procedures adopted by transfer agents and that it will be difficult to discover the procedure applicable to a particular security. Frank M. Swirles (Exhibit 16, page 23 of Exhibits) also questions whether implementation of the statute should be optional with the transfer agents: "Isn't it just as easy to state that the law recognizes this new form of title, as it is to make it mandatory that the issuers implement the concept. Why not set up uniform requirements for issuers? They all have different requirements now, and they are getting out of hand. Why not get a little uniformity out of them?"

As a practical matter, it would not be possible to enact the statute if it permitted each state to impose its own provisions governing the method and effect of beneficiary designations. Such a scheme would impose on the transfer agents the obligation to know and apply the law of many different states in place of the uniform guidelines contemplated by the Uniform Act. Stock brokers would be unable to comply with the provisions of the law of various states where companies are located. On the other hand, if uniform national guidelines are adopted as anticipated by the Uniform Act, registration in beneficiary form will be a routine matter, being covered by the uniform national guidelines. The staff believes that the scheme of the Uniform Act is the only practical one.



Requirement that guidelines be "reasonable." Section 5507 provides for reregistration of securities after the owner's death upon compliance with "any applicable requirements of the registering entity." Thomas R. Thurmond (Exhibit 10, page 13 of Exhibits) suggests that the statute should require that such requirements be "reasonable" and the statute provide examples of reasonable requirements, such as requiring the transferee to provide a taxpayer identification number. As a practical matter, it will be possible to enact this legislation only if the transfer agents can prescribe the conditions under which they will accept and implement registration in beneficiary form. We do not anticipate that the requirements for registration in beneficiary form will be unreasonable, because the transfer agents will want to encourage use of this form of registration. Nevertheless, to require that the guidelines be "reasonable" would expose the transfer agents to liability if it is found by a court in a particular state that the guidelines are unreasonable, even though the same guideline has been determined to be reasonable by the courts in one or more other states. For this reason, the staff recommends against adding a reasonableness requirement to the statute.

Adding statutory statement of what account ownership abbreviations mean and providing security owners with explanation of beneficiary registration procedure. Thomas R. Thurmond (Exhibit 10, page 13 of Exhibits) suggests that the statute make clear whether the list of registration forms in Section 5510 is inclusive or exclusive. The statute makes clear the list is only an example, and the staff sees no need to modify the statute.

Thurmond also believes that an explanation of "SUB BENE" (used in the sample registration forms) should be included in the statute. This term means substitute beneficiary, and the guidelines will spell this out in more detail.

Thurmond also suggests that the security owners be provided with an explanation of what the account ownership abbreviations mean. We would be reluctant to require this by statute, since it might imply that providing only that information to the security owner would be sufficient. Account brokers and security brokers will provide account holders and security owners with a copy of the uniform guidelines (or a

simplified statement of the relevant guidelines) as a matter of practice, but the staff does not believe that the statute should attempt to specify precisely what is to be provided to account holders and security owners. If an actual problem arises concerning this matter after the guidelines have been adopted, it might then be appropriate to consider whether this matter should be dealt with by statute.

Provision concerning how proof of death to be made. Jerome Sapiro (Exhibit 2, page 2 of Exhibits) suggests that the Sections 5508 and 5510 "should mandatorily require that proof of death include certified copy or copies of death certificate or certificates to protect against false or fraudulent affidavits." This is a matter that will be covered by the national guidelines. The statute does not contain this requirement, but the guidelines no doubt will impose this or an equivalent requirement.

Substitute provision for LDPS distribution. Jerome Sapiro (Exhibit 2, page 2 of Exhibits) questions why the statute does not include substitution "by right of representation" or something comparable. Frank M. Swirles (Exhibit 16, page 23 of Exhibits) also questions why the owner should not be permitted to register the stock in some form other than "LDPS" which is specifically mentioned in the statute.

Subdivision (b) of Section 5510 of the Tentative Recommendation provides that the letters LDPS (standing for "lineal descendants per stirpes") substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. [emphasis provided.] This appears to be a satisfactory rule. The same subdivision also contemplates that the guidelines may provide for the use of other forms of identifying beneficiaries who are to take on one or more contingencies. The overall scheme of the Uniform Act appears to be satisfactory.

Peter L. Muhs (Exhibit 21, page 28 of Exhibits) asks whether you may have an LDPS designation in a case of multiple beneficiaries. The staff believes that the Uniform Act is satisfactory in that it leaves

this matter to be covered by the national guidelines and does not attempt to deal with the matter in the statute.

Providing forms in statute. Irving Kellogg (Exhibit 4, page 4 of Exhibits) suggests that forms be included in the statute. The concept of the Uniform Act is that any necessary forms will be included in the nationally adopted guidelines. We do not want each state to adopt forms. The overall scheme of the Uniform Act appears to be satisfactory.

Use of "POD" registration designation. Thomas R. Thurmond (Exhibit 10, page 13 of Exhibits) suggests that the statute itself, rather than the official Comment, state that the use of "POD" does not mean that the security issuer or holder is to liquidate an account "automatically" on being notified of the owner's death. The Uniform Act and the Tentative Recommendation include such a statement in the official comment, and the staff believes that this is adequate. Frank M. Swirles (Exhibit 16, page 23 of Exhibits) would eliminate use of "POD" entirely. Here again, the staff would not deviate from the Uniform Act, although it is possible that the guidelines will not use the term "POD."

#### OTHER REVISIONS SUGGESTED BY COMMENTATORS

Designation of TOD beneficiary by owners of security held by owners as tenants in common. Florence J. Luther (Exhibit 5, pages 7-8 of Exhibits), believes that in some circumstances it would be useful for each of several tenants in common to designate a TOD beneficiary for the interest of that tenant. The Uniform Act does not permit this. Although there may be some merit to this suggestion, since this is not permitted by the Uniform Act, transfer agents will not accept registrations in beneficiary form for a security owned by tenants in common. Also, the guidelines for the registration in beneficiary form under the Uniform Act will not allow registration in beneficiary form for securities held by the owners as tenants in common. Accordingly, the staff recommends against modifying the Uniform Act to permit this.

Principles of law and equity supplement provisions of this part. John G. Lyons (Exhibit 31, page 38 of Exhibits) suggests that, in the first line on page 8 of the Tentative Recommendation, the word "displaced" should read "supplanted." This is a choice in wording, not

a substantive revision. The provision of the Tentative Recommendation is the same as the provision of the official version of the Uniform Act and is drawn from Section 1-103 of the Uniform Commercial Code (enacted without change in California as Section 1103 of the Uniform Commercial Code). The staff believes that the Uniform Act language should be retained.

Rights of creditors. Arnold F. Williams (Exhibit 13, pages 18-19 of Exhibits) is concerned about how a creditor's rights will be enforced under subdivision (b) of Section 5509 which provides that the statute does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state. A statutory provision could be enacted to deal with this matter without an adverse effect on the Uniform Act scheme. But the Commission is aware of the problems involved in reaching non-probate assets where the decedent's probate estate is not adequate to cover the decedent's debts. The staff is working on a statute to deal with this situation with respect to various types of non-probate assets, like trusts, deposit accounts, joint tenancies, and the like. The staff does not believe that we should attempt to deal with this problem in the Uniform TOD Security Registration Act.

Change of beneficiary by owner of security without the consent of the person named as beneficiary. Alvin G. Buchignani (Exhibit 7, page 10 of Exhibits) does "not see any provision which clearly and unequivocally confirms the right of the owner of a security to change its registration without the consent of a person who has already been named as the beneficiary in the event of the owner's death." This is covered by Section 5506 of the Tentative Recommendation which provides that registration in beneficiary form has no effect on ownership until the owner's death and that a registration in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary. The staff believes that Section 5506 adequately covers this matter.

Jeffrey A. Dennis-Strathmeyer (Exhibit 8, page 11 of Exhibits) questions whether one of two joint tenants could terminate the beneficiary designation. Section 5506 provides that a registration of a security in beneficiary form may be canceled or changed at any time

by the sole owner or all of then surviving owners without the consent of the beneficiary. The staff has suggested above that a provision be added to deal with the right of a married person to make a testamentary disposition of his or her share of a community property security despite the designation of a TOD beneficiary. With this addition, the staff believes that the Uniform Act is satisfactory. However, if the staff recommended provision concerning community property is added, we will add the following sentence to the Comment to Section 5506:

For a provision permitting the first-to-die spouse to make testamentary disposition of his or her share of a community property security registered in beneficiary form, see Section 5511.

Assets available for support of conservatee. Robert K. Maize, Jr. (Exhibit 14, pages 20-21 of Exhibits) recommends that the Commission propose legislation to:

Provide for what happens to joint tenancy and securities registrations, pay on death bank accounts, and transfer on death security registrations in the event of a conservatorship when other assets of the conservatee are being consumed for the conservatee's support so that the general testamentary intent of the conservatee may not be carried out.

On this point, Ruth A. Phelps (Exhibit 29, page 36 of Exhibits) states: "Hopefully, this Section 5506 [designation of beneficiary has no effect on ownership until the owner's death], will mean that a conservator does not need to apply for a court order to transfer the account to the conservator."

The staff does not have a good understanding of what the precise problem is. Nevertheless, we believe that the problem, if there is one, is a general one that should be considered separate from the Uniform Act. Probate Code Sections 2580-2586 (substituted judgment) may deal adequately with the problem, but those sections require a court hearing and order.

The staff believes that further investigation of this problem is justified, but that the investigation should be directed toward whether a general provision is needed, not whether a provision is needed only for securities registered in beneficiary form. We would not delay the recommendation proposing the uniform act pending this further investigation.

Forty-day delay in reregistration or payment. Michael J. Anderson (Exhibit 25, page 32 of Exhibits) suggests a 40-day delay in reregistration or payment pursuant to a TOD beneficiary designation for a security. A 40-day delay is now required to obtain transfer or payment by use of an affidavit in case of a small estate. However, this is a different situation. The affidavit procedure is used in a case where the property is held in the name of decedent, and it is sought to have title transferred to the person executing the affidavit. In the case of a security registered in beneficiary form, the beneficiary designation is part of the registration of the security, and the only proof needed is that the registered owner is dead. We think it would be a mistake to delay reregistration or payment pursuant to the registration in beneficiary form for 40 days since there will be cases where immediate action may be necessary. More important, the Uniform Act has no such a delay, and we anticipate that the transfer agents will only accept registrations in beneficiary form if they comply with their national guidelines (which may or may not have a 40-day delay provision). The staff recommends against placing any such delay in the California version of the Uniform Act.

U.S. Estate Tax. Rawlins Coffman (Exhibit 12, page 17 of Exhibits) raises several problems in connection with the federal estate tax where there is a surviving non-citizen spouse. The Uniform Act does not attempt to deal with federal estate tax matters, and the staff believes that it would be a serious mistake to attempt to deal with these matters in the Uniform Act. The solution to estate tax problems is to obtain appropriate estate planning services prior to death. We also believe that IRS is well able to protect itself by appropriate regulations.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

JAN 2 1990

HANSON, BRIDGETT, MARCUS, VLAHOS & RUDY

JAN 4 1990

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IN REPLY REFER TO  
SAN FRANCISCO OFFICE

December 29, 1989

Mr. Don H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Uniform TOD Security Registration Act

Dear Mr. DeMouilly:

Thank you for sending me the commission's tentative recommendation concerning the above matter. The tentative recommendation is an interesting one and I approve it. I am especially interest in the notion of designation of a beneficiary "LDPS", which appears to be the first time such a designation has been proposed.

For persons of modest means, a TOD Security Registration may be the most useful way of avoiding the co-ownership pitfalls of joint tenancy and the delays inherent in a probate proceeding, without incurring the expenses involved with the creation and funding of a revocable trust.

Sincerely,

Kim T. Schoknecht

KTS:mjf

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**JAN 03 1990**

**RECEIVED**

Jan. 2, 1990

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 4000 Middlefield Road, Suite D-2  
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Re: Tentative Recommendation  
 Uniform TOD Security Registration  
 Act, Dec. 1989

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Hon. Commission Members:

I do approve the TOD Tentative Recommendation above-mentioned.

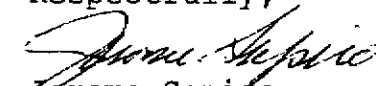
However, I do have a few possible clean-up proposals:

1. Proposed §5510 (b) (1) should mandatorily require that proof of death include certified copy or copies of death certificate or certificates to protect against false or fraudulent affidavits.

2. Proposed §5510 (b) substitution provision of LDPS, standing for "lineal descendants per stirpes" should be reconsidered. Why not include BROR "by right of representation" or something comparable. Using "per stirpes" seems to be a step backwards. Its use has been eliminated in appropriate parts of the Probate Code.

3. Proposed §5508 dealing with protection of the registering entity in its subdivision (c) should also specifically include certified copy or copies of death certificate or certificates of sole or multiple owners and other beneficiaries to protect against false or fraudulent affidavits. Protection of owners and beneficiaries is most important, - not just making it easier for registering entities to get immunity. The production of certified copies of death certificates should be a mandatory requirement.

Respectfully,

  
 Jerome Sapiro

JS:mes



CALIFORNIA LAW REVISION COMMISSION

**JAN 03 1990**

**RECEIVED**

LAW OFFICES

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DAVID W. KNAPP, SR.  
DAVID W. KNAPP, JR.

January 2, 1990

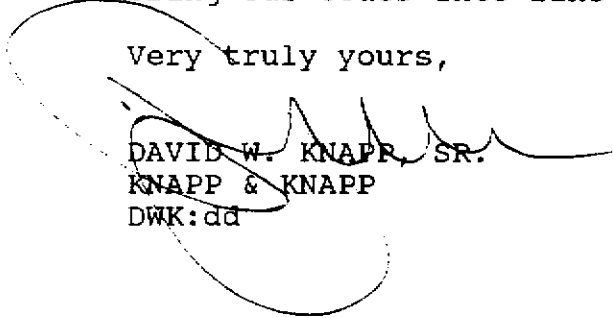
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

RE: UNIFORM TOD SECURITY REGISTRATION ACT

Thank you for sending me your tentative recommendation relating to the above; I read the same with great interest and cannot help from feeling that an individual should be allowed to dispose of ALL his assets using such a method (without the complicated intervivos trust method).

I commend the Commission for their continuous attempts to bring our Codes into line with reality.

Very truly yours,

  
DAVID W. KNAPP, SR.  
KNAPP & KNAPP  
DWK:dd

JAN 04 1990

Law Office  
Irving Kellogg

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821 Monte Leon Drive  
Beverly Hills, CA 90210-2629  
(213) 276-3415

December 31, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, Calif. 94303-4739

Re: Uniform TOD Security Registration Act

Dear Commission:

Thank you for sending me the Tentative Recommendation. I read it carefully and the following are my comments and suggestions:

1. This procedure is an enormous stride forward in simplifying the nonprobate administration of estates. It will prove to be a benefit to thousands of California residents who have enough sense to implement it. Therefore, I suggest that the Commission or the office of the Legislature use the Media to accomplish these steps:

a. Notifying lawyers and their support staffs of the availability and convenience of this procedure.

b. Notifying the brokerage, real estate, transfer agent, banking, and title company communities about the law and asking for their cooperation in implementing the law.

c. Notifying the general public about the law and its benefits.

2. I suggest that the Commission make these corrections and additions to the proposed Act:

a. Clarify the term: "community property held in survivorship form". As an estate planner with a considerable amount of experience and research, I have never heard of community property held in survivorship form. Every lawyer knows about joint tenancy with the right of survivorship. I believe that the Commission is creating an ambiguity and a confusion by using the new term, Community property held in survivorship form. The term appears in Section 5502.

b. Section 5506. You refer to the "designation of a beneficiary on a registration in beneficiary form" but you do not have a form in the Act. The addition of a form would be a tremendous help to lawyers and

others involved in this procedure. You have Statutory Durable Powers of Attorney for Property and Health Care, which serve as standards and provide acceptability. Why not have a Statutory Form of Designation of Beneficiary Under the Transfer On Death Security Registration Act? If a person used that form, the successors to that person should not have any problem with ignorant, officious, and bureaucratic nincompoops who might want to reject the transfer for the usual reason that they never heard of the procedure. I suggest you follow the Assignment of Stock (Bond) Power separate from the security, and provide that it is effective under either of these procedures: Acknowledgement by a Notary, or a Signature guaranteed by a bank or brokerage company. And provide that the "security" or asset be sufficiently identified on the face of the Form so that the transfer agent, (bank, transfer agent, title company) could identify the asset in its records.

c. Section 5508. As I read that section, you have allowed a transfer agent the right to reject all such transfers regardless of their validity under the Act. I believe this right, under subdivision (a) effectively castrates the Act. Further, by permitting the transfer agent to establish its own procedures which owners and successors must comply with, you are creating a forest of bramble bushes which, again, effectively destroy the benefits of the act. How can a lawyer cope with all those different procedures? Or an owner? Can't you foresee that the costs of finding out the special procedures of each transfer agent, for practical purposes, vetoes the Act and makes it a nullity? Who can afford those costs? Knowing the ability of banks, title companies, transfer agents and others in those fields to be creative and protective of their rights, I can see lawyers for those entities developing special procedures they consider necessary to protect their clients. A parallel experience is the life insurance industry whose myriad of companies had individual forms for the transfer of policies and the designation of beneficiaries. Only after the American Bar Association struggled for years in meetings and compromises did a Uniform Form evolve, which now lawyers can rely on to effectively transfer policies to revocable trusts and otherwise.

Subdivision (c) refers to an affidavit. Again, I urge the Commission to develop a simple form of

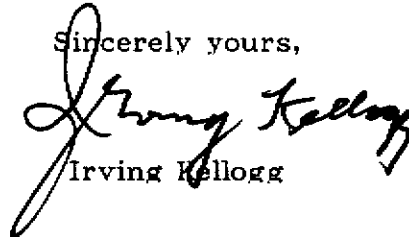
affidavit that at least contains the minimum amount of information required.

(d) Section 5510. The addition of LPDS, lineal descendants per stirpes, should be on the proposed form as an alternative designation, and the form should have additional lines for contingent beneficiaries, much as an insurance beneficiary form or a retirement form contains such lines. Another alternative, which the form would contain would be the designation to the Successor Trustee of the..... Trust, created on ....., by ..... Settlor(s).

As an estate planner and form designer with practical experience, I would be happy to cooperate with your drafting staff to develop the required forms. I enclose the Statutory Durable Power of Attorney Form (Property) that I drafted immediately after the Statute became effective. Please note on page 4 the declaration by attorney, which was incorporated into the Statutory Power of Attorney for Health Care.

Thank you again for the opportunity to comment on this important proposed statute.

Sincerely yours,



Irving Kellogg

Enclosure

JAN 04 1990

CHARLES W. LUTHER  
FLORENCE J. LUTHER

LAW OFFICES OF  
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January 2, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Attention: Mr. John D. DeMouly, Executive Secretary

Re: Uniform TOD Security Registration Act  
December, 1989  
Tentative Recommendation

Dear Mr. DeMouly and Commission:

Thank you for your tentative recommendations forwarded to me with respect to the Uniform TOD Security Registration Act and other recommendations forwarded in the past.

I do wish to receive future tentative recommendations.

With respect to commenting on the Uniform TOD Security Registration Act, I note in proposed Section 5501 "Security" means a share, participation, or other interest in property, in a business, or in an obligation. . .".

Given this definition of "security," Section 5502 seems to prohibit tenants in common from nominating a "TOD" beneficiary.

I agree with the comment on 5502 that with respect to the vast majority of securities, an individual in a security normally will split holdings into separate registrations of the number of units desired if they wish to hold as tenants in common. However, there may be some instances where a specific dollar amount would have to be invested in a business or an obligation in order to qualify for investment in that particular interest. Perhaps in that case where you are required to hold as tenants in common, it may be feasible to have each tenant in common have a TOD beneficiary.

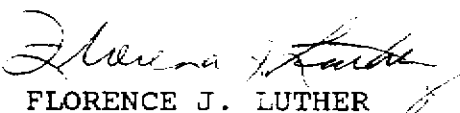
Perhaps this possibility has been considered and discarded. Since the definition of "security" encompasses many types of investments, it is possible some consideration may be given to this extension of the transfer on death beneficiary.

California Law Revision Commission  
Attention: Mr. John D. DeMouilly  
January 2, 1990  
Page 2

Once again, I thank you for forwarding to me your  
recommendations.

Very truly yours,

LUTHER & LUTHER  
A Professional Corporation

By   
FLORENCE J. LUTHER

FJL:jj.1

DOOLEY, ANDERSON, JOHNSON & PARDINI

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J. A. PARDINI  
(898-1986)  
DAVID M. DOOLEY\*  
JULIAN PARDINI  
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JAMES T. JOHNSON  
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THOMAS O. HARAN  
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OF COUNSEL  
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January 3, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303

Re: Tentative Recommendation Relating To  
Uniform TOD Security Registration Act

Greetings:

Thank you for forwarding to me the Tentative Recommendation Relating to the Uniform TOD Security Registration Act.

I certainly agree with the reasoning behind the Tentative Recommendation and the manner in which its implementation is proposed. My only concern is that it certainly seems to be an extremely complicated and convoluted manner in which to accomplish what also appears to be a rather simple transaction.

This particular area of law is one in which I do not customarily become involved nor practice in. I just cannot get out of my mind the thought that there must be a simpler way to accomplish what is intended here, a way that would not require the addition of 13 new code sections to our ever increasing body of legislative enactments.

Very truly yours,



Allen J. Kent

AJK:eyr

skent/ajk/pers/280

JAN 04 1990

ALVIN G. BUCHIGNANI

ATTORNEY AT LAW

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ASSOCIATED WITH  
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January 3, 1990

California Law Revision Commission  
400 Middlefield Road, Suite D-2  
Palo Alto, CA 94303

Re: Uniform TOD Security Registration Act

Ladies & Gentlemen,

I agree that the Uniform TOD Security Registration Act should be enacted in California. However, in briefly reviewing the law, I did not see any provision which clearly and unequivocally confirms the right of the owner of a security to change its registration without the consent of a person who has already been named as the beneficiary in the event of the owner's death. While it may be implicit in the law that the owner continues to have the right to change the registration, I believe it would be wise to have some explicit statutory provision that confirms the right of the owner to make further changes, without any approval or even notice to the beneficiary of the transfer on death provision.

Very sincerely,



Alvin G. Buchignani

AGB/pzg



JEFFREY A. DENNIS-STRATHMEYER  
ATTORNEY AT LAW

JAN 05 1990

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POST OFFICE BOX 533 - BERKELEY, CALIFORNIA 94701  
(415) 842-8317

January 4, 1990

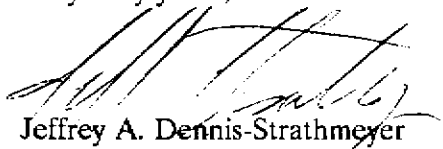
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Tentative Recommendation relating to Uniform TOD  
Security Registration Act

Sirs:

For the most part the proposed legislation seems helpful to the extent that passage may encourage more transfer agents to allow TOD registration. My only concern involves the situation where X and Y register a security for transfer to Z on the death of the survivor. Prob C §5506 could be construed to mean that there cannot be unilateral termination by X or Y. This raises the usual problems regarding whether unilater severance of joint tenancy is possible, with the added twist that creation of the tenancy may be an immediate gift to Z. I do not have time to research the point at the moment. It may be that we need another statute elsewhere clarifying the right of either X or Y to terminate the arrangement even if we do not require transfer agents to recognize unilateral severances for registration purposes in the absence of a court order.

Very truly yours,



Jeffrey A. Dennis-Strathmeyer

**JAN 05 1990**

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**WILBUR L. COATS**  
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

January 3, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, Ca 94303-4739

In re Proposed Uniform TOD Security Registration Act.

Gentlemen:

The proposed Uniform TOD Security Registration Act would provide an effective method of transferring securities upon death outside of formal probate.

I concur in the tentative recommendation of the commission as a practical alternative for the transfer of securities upon death.

Very truly yours,

  
Wilbur L. Coats

## THOMAS R. THURMOND

ATTORNEY AT LAW

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JAN 05 1990

RECEIVED

January 3, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Uniform TOD Act

I have reviewed the tentative recommendations of the California Law Revision Commission relative to the Uniform TOD Securities Registration Act. I concur with and support the objective of this statute, avoiding the delays and confusion that are often attendant to the transfer of securities after the owner's death. However, I believe that several elements of potential confusion should be cleared up prior to passage of this proposed legislation.

§ 5505 provides for registration of securities using either of two designations, POD or TOD. As noted in the Comment, the use of POD could cause a security issuer or holder to liquidate an account "automatically" on being notified of the owner's death. Some statement should be included in the statute to emphasize that "POD" does not mean that the security should be liquidated without instructions from the beneficiary.

§ 5507 provides for reregistration of securities after the owner's death upon "any applicable requirements of the registering entity." This appears to move away from the concept of a uniform act and to allow any reasonable or unreasonable requirement by the registering entity. The statute should specify that such requirements be reasonable and provide examples, such as requiring the transferee to provide a taxpayer identification number.

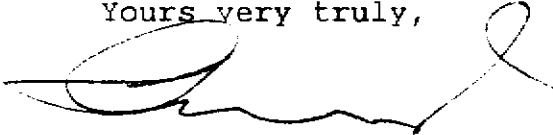
§ 5510(c) lists a variety of proposed registration forms. It is not clear from the words whether this list is inclusive or exclusive. This should be clarified. Also there is no explanation in the statute for the designation "SUB BENE" which is used in the third set of examples. The designation "LDPS" is explained in subparagraph (b). An explanation of the SUB BENE designation should be contained within the statute. There should also be a requirement that registering entities make available to account owners, either on the account application form or otherwise, an explanation of what the account ownership abbreviations mean.

Page 2  
California Law Revision Commission  
January 3, 1990

With these minor modifications, I believe that the benefits to owners of securities accounts would constitute a sufficient justification for the enactment of this legislation.

Thank you for allowing me to comment on these tentative recommendations.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Thomas R. Thurmond', with a large, stylized flourish extending to the right.

Thomas R. Thurmond  
Attorney at Law

TT/sr

**JAN 08 1990****RECEIVED**

John C. Hoag  
Vice President and  
Senior Associate Title Counsel

January 3, 1990

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation  
Uniform TOD Security Registration Act

Dear Mr. DeMouilly:

Thank you for the TOD Tentative Recommendation (12/89).

Generally, the recommendation is a useful addition to California law. The key difficulty with the recommendation is the definition of security (5501(d)). The definition - as it is written in the tentative recommendation - needs work because it does not make sense since the phrase it contains 'or other interest in property' is too broad; too vague. Do you mean real property? Beneficial interests under a deed of trust or the interest of a mortgagee in a mortgage? Condominium interests if a pooling arrangement is involved?

My solution is this: The comment to 5501(d) refers to UCC (1977) sec. 8-102 and I have inferred from that reference that 5501(d) and UCC sec. 8-102 are substantially the same.

5501 (d), however, only has a part of 8-102; namely, 8-102 (1)(a)(iv). Left out are sections (1)(a)(i) through (iii) of 8-102. Those sections of 8-102 omitted from 5501(d) seem essential to give meaning to a definition of the word "security"; namely, (1) an instrument issued in bearer or registered form; (2) commonly dealt with on securities exchanges; and (3) divisible into a class or series of instruments, etc.

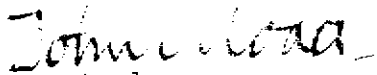
It make sense to incorporate UCC 8-102 in its entirety into 5501(d).

- 15 -

Mr. John H. DeMouilly  
California Law Revision Commission  
January 3, 1990  
Page #2.

One last comment that may be useful to you. The comment to 5502 at paragraph 4 page 10 of the tentative recommendation (12/89) beginning with the words 'Tenancy in common and community property otherwise than' puzzled me. I've read the paragraph several times and am still wondering what it is you are trying to say in that paragraph.

Best wishes for a Happy New Year.

  
Very truly yours,

JCH:j

cc: Stanley G. Ulrich III

bcc: Larry M. Kaminsky  
J. C. Bonita  
R. Reyburn

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January 3, 1990

CA LAW REV. COMM'N

JAN 08 1990

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California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Uniform TOD Security Registration Act

Ladies and Gentlemen:

Thank you for forwarding me your tentative recommendations relating to Uniform TOD Security Registration Act.

There are two aspects of the act which cause me concern:

First, it would appear that the registration of the husband and wife, as community property, is to be treated the same as husband and wife as joint tenants. Hopefully, if one spouse dies and title has been registered as husband and wife as community, both halves will get the stepped-up basis provided by Section 1014 of the Internal Revenue Code.

Second, it would appear that recommended Probate Section 5508 does not recognize the problems created by IRC 2056(d), which denies a surviving non-citizen spouse the marital deduction. Who is to be responsible to Internal Revenue Service for payment of U. S. Estate Tax when the citizen spouse dies first and leaves substantial holdings far in excess of the \$100,000 annual exclusion (registered under the Uniform TOD Security Registration Act) to a non-citizen spouse?

Very truly yours,

  
RAWLINS COFFMAN

RC:mb

JAN 08 1990

DOWLING, MAGARIAN, PHILLIPS & AARON

INCORPORATED

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MORRIS M. SHERR  
OF COUNSEL

January 4, 1990

OUR FILE NO. \_\_\_\_\_

Mr. John H. DeMouly  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303

Re: Uniform TOD Security Registration Act

Dear Mr. DeMouly:

With regard to the above-referenced act, there are a couple of situations which need to be considered by the Law Revision Commission.

First, with regard to Section 5509 may the creditor unwind the transaction to collect his debt? This has the potential of frustrating the owner's intention in that should inadequate cash be present in the deceased's estate to pay the creditor, the creditor must, out of prudence, bring a fraudulent conveyance action against all of this stock, bringing it back into the estate in order to insure that he was paid off. After he has been paid, the entirety of the stock would pass by will or by intestate succession, rather than by the TOD instruction.

With regard to Section 5510(b), the effect of this section is to vest in the registering entity the power to regulate the transfer of property in the State of California. Because of the sentence beginning "Other forms of identifying beneficiaries who are to take on one or more contingencies", the registering entity may face pressure by its stock owners to elaborate the contingencies of descent, inviting problems with the Rule Against Perpetuities or the creation of "corporation trusts" in the registration regulations of the registering entity. The procedures involved in transferring the ownership of stock are not uniform at the moment, being subject to the vagaries of various transfer agents. I see no reason to invite the financial institutions who act as transfer agents to create a new market for themselves, or to make the process more expensive.

Some transfer agents will not accept instructions for transfer upon death without an assurance that the person to whom they are transferring



DOWLING, MAGARIAN, PHILLIPS & AARON  
INCORPORATED  
ATTORNEYS AND COUNSELORS AT LAW

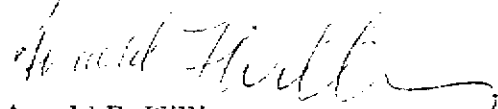
Mr. John H. DeMouly  
January 4, 1990  
Page 2

this stock either has made adequate provision for estate taxes or is personally liable for them. At the moment, such demands can be forestalled. With this section, such a requirement may be considered "authorized" as "legitimate concern."

Please call if you have any questions.

Very truly yours,

DOWLING, MAGARIAN,  
PHILLIPS & AARON



Arnold F. Williams

AFW:ped

~~CALIF. LAW REV. COMMISSION~~

**ROBERT K. MAIZE, JR.**  
A PROFESSIONAL LAW CORPORATION

JAN 09 1990

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January 8, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Uniform TOD Security Registration Act

Ladies/Gentlemen:

I have had an opportunity to review your recommendations that the Uniform Act be adopted. I believe the Act introduces additional ambiguities into the area of testamentary dispositions and other transfers at death.

Section 5502 introduces what appears to me to be a new concept when it provides for "owners of community property held in survivorship form". This is an item that I have discussed with other estate planning attorneys in Sonoma County and something that we would like to be able to do for real estate held by clients with a modest estate. The purpose would be to provide an income tax step-up-in-basis on both halves yet avoid all court administration in regards to the property. The local title companies will not even recognize the vesting of the title to community property assets in the surviving spouse once the statutory period has elapsed. I only believe that this section will add further uncertainty to the passing of community property. If I were to try to establish such a form of ownership by deed I expect that I will not have avoided court administration because either a probate petition or a spousal property petition will need to be filed to clear the title to the property.

Further, I see a transfer on death registration as creating additional complexity of the area of conservatorships where under current law joint tenancy bank accounts, pay on death bank accounts, and (I presume) transfer on death securities registrations will not be available for the conservatee's support until a substantial portion of the remaining assets of the conservatee have been consumed, which may substantially distort an individuals general testamentary intentions.

And I believe the TOD registration only adds additional complexity to various testamentary dispositions available to individuals and will contribute in furthering an unorganized plan for disposition of an individuals assets at the persons death. If

the transfer on death is a necessary benefit that individuals need, the living trust is available to meet that need, and I have had occasion to use an abbreviated form of trust to handle a limited number or amount of assets so that the clients purpose can be accomplished.

If this Uniform Act is recommended for adoption then the Law Revision Commission should also consider the adoption of statutory provisions to cover the following situations:

1. Recognize community property ownership with rights of survivorship and detail how the spouses are to administer the property during their lifetime (including their rights to terminate the survivorship provision) and at the death of one spouse.
2. Provide for what happens to joint tenancy and securities registrations, pay on death bank accounts, and transfer on death security registrations in the event of a conservatorship when other assets of the conservatee are being consumed for the conservatee's support so that the general testamentary intent of the conservatee may not be carried out.

It appears that the underlying legal argument for allowing a transfer of securities on death would be a contract between the registering entity and the owner of the security. The primary purpose of this legislation appears to be to provide statutory protection to the registering entity and allowing them to specify the terms of the contract. It is my opinion that the securities industry will be given authority under this Act to effectively write laws concerning how Californian's dispose of their assets without consideration of other consequences of the transfer on death accounts.

Very truly yours,

ROBERT K. MAIZE, JR.,  
A Professional Law Corporation

by: 

ROBERT K. MAIZE, JR.

RKM:jas

CA LAW REV. COMM'N

JAN 09 1990

R E C E I V E D

**Matthew Bender**

**Matthew Bender  
& Company, Inc.**  
2101 Webster Street  
Post Office Box 2077  
Oakland, CA 94604  
415: 446-7100

January 5, 1990

Mr. John H. DeMouilly, Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite 3-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation relating to Uniform TOD Security  
Registration Act

Dear Mr. De Mouilly:

Thank you for sending me a copy of the above-referenced  
recommendation.

Transfer-on-death registration of securities in California  
would, in my opinion, be beneficial. For quite understandable  
reasons, many Californians wish to avoid probate after their  
deaths. However, few Californians are able to enter into the  
formal trust arrangements that have traditionally made probate  
avoidance practicable. California law already sanctions POD  
registration of accounts in banks, savings and loan  
associations, and similar institutions. It would only make  
sense to make similar provisions for securities and accounts in  
mutual funds.

I favor this recommendation.

Sincerely yours,

*Brian McGinty*

Brian D. McGinty  
Staff Writer

# Frank M. Swirles Law Corporation

POST OFFICE BOX 1490 RANCHO SANTA FE, CALIFORNIA 92067  
January 6, 1990

(619) 756-2080

CA LAW REV. COMM'N

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

JAN 09 1990

R E C E I V E D

Re: Uniform TOD Security Registration Act

Gentlemen:

Following are my comments re your recommendation on subject:

The concept is good. But, if it is good for the registration of securities, why isn't it good for all kinds of properties, including chattels and real property? Why the limitation? Why not create a new form of title applicable to all properties?

If the concept is good, why permit the implementation to be optional with the issuers? Isn't it just as easy to state that the law recognizes this new form of title, as it is to make it mandatory that the issuers implement the concept? Why not set up uniform requirements for issuers? They all have different requirements now, and they are getting out of hand. Why not get a little uniformity out of them?

Part 3. I believe that the title should be "UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT". Use of the TOD probably should be permitted in the body of the act, but not in the title. I would really prefer the title to be, "UNIFORM TRANSFER ON DEATH TITLE ACT".

Sec. 5502. Your language is to the effect that multiple owners include owners as community property held in survivorship form. What does that mean? Joint tenants of community property? This should be clarified. Your explanation is not satisfactory.

Sec. 5505. I cannot see any justification for the use of "POD" as an alternative to "TOD". It would appear that a comment to the fact that "POD" has the same meaning would be sufficient. If we are going to be uniform, let's be uniform and have one title, that being "TOD".

Sec. 5510. If you use LDPS to designate "lineal descendants per stirpes", why not use LDPC to designate "lineal descendants per capita"?

Very truly yours,



Frank M. Swirles

HENRY ANGERBAUER, CPA  
4401 WILLOW GLEN CT.  
CONCORD, CA 94521

JAN 09 1990

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1/6/90

Note to California Law Revision Commission:

I have reviewed your Tentative Recommendation relating to The Uniform Transfer on Death Security Registration Act recently approved by the National Conference of Commissioners on Uniform State Laws in 1989.

I agree with your conclusions and recommendation and suggest you make your proposal to the state legislature to have the act implemented into law. Thank you for permitting me to make my views known.

Sincerely  
HAA



CA LAW REV. COMM'N

January 5, 1990

JAN 09 1990

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Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

OUR FILE NUMBER
9911.81-35

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JAMES R. BANCROFT
OF COUNSEL

JAMES H. MCALISTER
LUTHER J. AVERY
ALAN D. BONAPART
NORMAN A. ZILBER
EDMOND G. THIEDE
ROBERT L. DUNN
JAMES WISNER
SANDRA J. SHAPIRO
GEORGE R. DIRKES
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DENNIS O. LEUER
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RONALD S. KRAVITZ
LAURIE A. LONGIARU
FORREST E. FANG
HELEN OLIVE MILOWE
LEAH R. WEINGER
DAVID K. KAGAN SERGI

TENTATIVE RECOMMENDATIONS

Dear Mr. DeMouilly:

Your Letter of Transmittal received December 29, 1989
says I should comment on the Tentative Recommendation
relating to Uniform TOD Security Registration Act or I
will be dropped from the list of persons who receive
free copies of future Tentative Recommendations. I
have frequently in the past been commenting on probate
matters, one of my areas of expertise.

I do not claim to be an expert on all securities
matters. I do claim to be an expert in tax matters,
probate and trust and estate planning and real estate
and law office economics and ethics. However, I can
comment on the transfer of ownership of securities at
death.

In my opinion, the Uniform TOD Security Registration
Act is a mistake and is not needed. The TOD registra-
tion will create a new form of property ownership that
will simply be a source of further confusion for the
public. The tax consequences of TOD registration are
unclear under federal law, or at least will result in
further complexity.

It appears to me that TOD registration is simply a
convenience for the brokers and dealers in security who
will use it without thought or planning as they now use
joint tenancy and the Uniform Gifts to Minors Act. I
do not believe TOD registration would be desirable for
the same reasons that Totten Trusts have been undesir-
able. The Totten Trust is a convenience for banks and
an inconvenience for customers.

I would recommend against the Uniform TOD Security
Registration Act being enacted in California.

Yours sincerely,

[Handwritten signature of Luther J. Avery]

Luther J. Avery

841.8.demouilly

bc: Alan D. Bonapart, Esq.
(w/copy of Tentative Recommendation)

## CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2  
PALO ALTO, CA 94303-4739  
(415) 494-1335

CA LAW REV. COMM'N

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## LETTER OF TRANSMITTAL

We are sending you a free copy of this Tentative Recommendation. This is because you have sent us your comments on ones we have sent to you in the past.

If you send us your comments on this Tentative Recommendation, we will continue your name on the list of persons to whom we will send free copies of future Tentative Recommendations. If you fail to send your comments, we must drop you from this list.

If you want to receive copies of future tentative recommendations but do not want to undertake to comment on them, you can purchase copies. Call (415) 494-1335 for information on purchasing.

Sincerely,

John H. DeMouilly  
Executive Secretary

*I approve the Uniform TOD Security Registration Act and  
have no suggestions for improvements.*

*Herbert Lazerow  
1/3/90*

Professor Herbert I, Lazerow  
School of Law  
University of San Diego  
Alcala Park  
San Diego CA 92110



**BURRISS, PALLEY, MONAHAN & RILEY**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

OLD MILL OFFICE CENTER

201 SAN ANTONIO CIRCLE

SUITE 160

MOUNTAIN VIEW, CALIFORNIA 94040

TELEPHONE (415) 948-7127

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**JAN 11 1990**

**RECEIVED**

REPLY TO SANTA CRUZ COUNTY OFFICE

24193 SUMMIT ROAD

LOS GATOS, CA 95030

TELEPHONE (408) 353-3290

TELECOPIER (408) 353-1998

RICHARD S. BURRISS  
SUSAN HOWIE BURRISS  
WILLIAM J. MONAHAN  
SHEILA M. RILEY  
DAVID B. PALLEY  
ALAN T. FOSTER  
JOE E. BROCK

January 10, 1990

Mr. John H. DeMouilly,  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

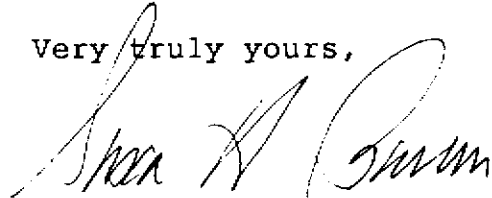
Dear Mr. DeMouilly:

This letter is to comment on the Tentative Recommendation relating to the Uniform TOD Security Registration Act.

This proposed legislation is long overdue. The only suggested change I have to offer is that it be applicable earlier than as to decedent's dying on or after January 1, 1991.

Please retain my name on your Tentative Recommendation list.

Very truly yours,

  
SUSAN HOWIE BURRISS

SHB/cc

LAW OFFICES OF

COOPER, WHITE & COOPER

101 CALIFORNIA STREET SIXTEENTH FLOOR

SAN FRANCISCO CALIFORNIA 94111

(415) 433-1900

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CONTRA COSTA OFFICE  
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WALNUT CREEK  
CALIFORNIA 94596  
(415) 935-0700

January 11, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation Relating to Uniform TOD Security  
Registration Act

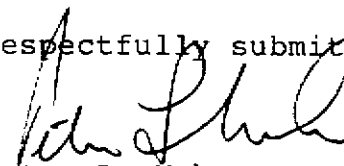
Gentlemen:

I have reviewed your tentative recommendation relating to Uniform TOD Security Registration Act, and endorse it as a very desirable way to avoid the income, gift and estate tax consequences of joint tenancies for simple estate planning purposes.

In connection with section 5510, it appears that in the case of multiple beneficiaries, the lineal descendants per stirpes ("LDPS") designation could apply to each of them. Alternatively, it could be made clear that the LDPS designation applies only in the case of a single beneficiary. I therefore suggest that in the comment to section 5510, the question of whether you may have an LDPS designation in a case of multiple beneficiaries should be addressed.

Thank you for providing the opportunity to comment on the tentative recommendation.

Respectfully submitted,



Peter L. Muhs

PLM:mv:3221

RUTH E. RATZLAFF  
Attorney at Law  
925 "N" Street, Suite 150  
P.O. Box 411  
Fresno, California 93708  
(209) 442-8018

CA LAW REV. COM. STAFF  
JAN 12 1990  
RECEIVED

January 10, 1990

Re: Uniform TOD Security Registration Act

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Dear Commissioners:

I have reviewed your tentative recommendation relating to the Uniform TOD Security Registration Act. I concur wholeheartedly in your recommendation.

In practice I have frequently seen names of children or other parties added to securities accounts for convenience as a probate-avoidance device without the actual owner of the account understanding the actual legal implications of joint ownership.

The addition of the new method of holding securities accounts will enable securities owners to more accurately state their intentions.

Sincerely,

  
Ruth E. Ratzlaff

RER/tih

**MOODY & MOODY**

ATTORNEYS AT LAW  
100 SHORELINE HIGHWAY  
BUILDING B, SUITE 300  
MILL VALLEY, CALIFORNIA 94941

CA LAW REV. COMMISSION

**JAN 18 1990**

**R E C E I V E D**

LINDA A. MOODY  
GRAHAM B. MOODY

TEL (415) 332-0216  
FAX (415) 331-5367

January 17, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Ladies and Gentlemen:

This office fully supports the Commission's recommendations relating to the Uniform TOD Security Registration Act. It is high time that a TOD form of ownership for securities be approved. When it is, word of its passing should be widely publicized so that people will understand its use and availability.

People simply do not understand the pitfalls of joint tenancy ownership, particularly in relation to securities. We have one case in the office where a husband and wife had all their mutual funds titled in joint tenancy form. The husband lost capacity, and the wife's only option to gain control of the assets was through a conservatorship proceeding. This example does not bear directly on your recommendation, but a TOD Security Registration Law would give attorneys, money managers, the press, and the like, a springboard for re-examination of titling issues.

Thank you for the mailing.

Very truly yours,



Linda A. Moody



# Fidelity National Title

INSURANCE COMPANY

**Larry M. Kaminsky**  
Vice President  
Assistant General Counsel

CA LAW REV. COMMISSION

JAN 19 1990

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January 17, 1990

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

RE: Tentative Recommendation  
Uniform TOD Security Registration Act

Dear Mr. DeMouilly,

Thank you for sending the Tentative Recommendation for the Uniform TOD Security Registration Act.

On behalf of the California Land Title Association Forms & Practices Committee, I would like to echo the comments made to you by John C. Hoag of Ticor Title Insurance Company of California in his letter to you dated January 3, 1990, regarding the need for a clarification in the Act eliminating any possible interpretation of the term "security" as including an interest in real property or an obligation secured by a deed of trust or mortgage on real property, or the deed of trust or mortgage itself.

Thank you for your consideration of our comments.

Sincerely,  
FIDELITY NATIONAL TITLE INSURANCE  
COMPANY

A handwritten signature in cursive script that reads "Larry M. Kaminsky".

Larry M. Kaminsky  
Vice President  
Assistant General Counsel

Law Offices of  
**Michael J. Anderson, Inc.**  
77 Cadillac Drive, Suite 260  
Sacramento, California 95825  
(916) 921-6921  
FAX (916) 921-9697

CA LAW REV. COMM'N

JAN 23 1990

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Michael J. Anderson

January 22, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

RE: Uniform TOD Security Registration Act

In respect to the new provision I have the following comments.

First, I would suggest a delay on distribution similar to the one we have for affidavits to transfer property of small estates under \$60,000 ie. forty day wait period. The reason being is that there may be change of beneficiary designations made shortly before a person's death that are suspect or will result in litigation because of the nature of the transaction. This would give the parties time to resolve their dispute or institute legal proceedings to protect their rights.

It is probably only a small percentage of cases that a dispute would result. Making transfers too easy encourages people to act wrongly.

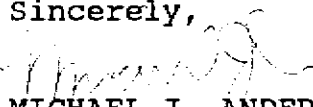
My second comment deals with the proposal's proposition that "pay on death" would only apply to a joint tenancy holding if you had multiple owners.

Under the Federal Income Tax Rules dealing with step up in basis, joint tenancy between spouses gets a partial step while community property gets a full step up when we are dealing with capital assets.

Under this proposal you are creating an income tax trap because the registration is clearly in joint tenancy and not community property. It would be my thought that in California that it should be authorized for community property as well.

In all other respects have no comments on the provisions.

Sincerely,

  
MICHAEL J. ANDERSON

MJA:md

CA LAW REV. COMMISSION

JAN 24 1990

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Post Office Box 1379  
Santa Ana, California 92702-1379

January 22, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

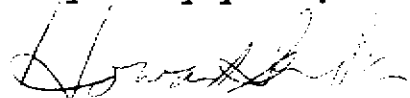
Ladies and Gentlemen:

Thank you for sending me your tentative recommendation relating to Uniform TOD Security Registration Act.

Although I am a Deputy County Counsel for the County of Orange, as before, the opinions I write you are my individual views, and I do not write as a representative of the County of Orange, the Orange County Counsel, or the Orange County Public Administrator/Public Guardian.

I support your recommendations.

Very truly yours,



Howard Serbin

HS:mm

- cc: William A. Baker, Public Administrator/Public Guardian
- Carol Gandy, Assistant Public Administrator/Public Guardian
- Dwight Tipping, Supervising Deputy Public Administrator
- James F. Meade, Deputy County Counsel
- Hope E. Snyder, Deputy County Counsel

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2  
PALO ALTO, CA 94303-4739  
(415) 494-1335



CA LAW REV. COMM'N

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LETTER OF TRANSMITTAL

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If you want to receive copies of future tentative recommendations but do not want to undertake to comment on them, you can purchase copies. Call (415) 494-1335 for information on purchasing.

Sincerely,

John H. DeMouilly  
Executive Secretary

*I strongly recommend the enactment of the Uniform TOD Security Registration Act.*

*Professor Joel Charles Dobris*

40	00	phil	z2
University of California Davis, CA 95616			



JAN 25 1990

RECEIVED

ELVON MUSICK 1890-1966  
LEROY A. GARRETT 1906-1963  
JOSEPH D. PEELER (RETIRED)

MUSICK, PEELER & GARRETT  
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ONE WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90017

TELEPHONE (213) 629-7600  
TELEX 701357  
FACSIMILE (213) 624-1376

January 24, 1990

WRITER'S DIRECT DIAL NUMBER  
(213) 629-7857

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BAY AREA OFFICE

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577 AIRPORT BOULEVARD  
BERLINGAME, CALIFORNIA 94010  
(415) 375-1000

SACRAMENTO OFFICE

SUITE 100  
1121 "L" STREET  
SACRAMENTO, CALIFORNIA 95814  
(916) 442-1200

VIA FEDERAL EXPRESS

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Enactment of the Uniform  
TOD Security Registration Act

To Whom It May Concern:

I agree with the recommendation that the Uniform TOD Security Registration Act be enacted in California. The recommendation correctly points out all of the problems with joint tenancy registration and this appears to be a promising alternative.

Very truly yours,

Susan J. Hazard  
for MUSICK, PEELER & GARRETT

SJH:jo  
S1291551

**Phelps, Schwarz & Phelps**

Attorneys At Law

221 East Walnut Street, Suite 136  
Pasadena, California 91101

Edward M. Phelps  
Deborah Ballins Schwarz  
Ruth A. Phelps

**JAN 25 1990**

**RECEIVED**

(818) 795-8844

Facsimile: (818) 795-9586

January 23, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Attention: John H. DeMouly

Re: Uniform TOD Security Registration Act  
Tentative Comments

Dear Mr. DeMouly:

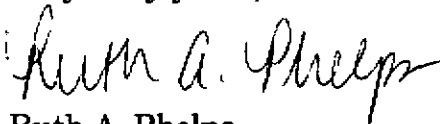
I am writing to comment on the tentative recommendation relating to Uniform TOD Security Registration Act.

I approve the tentative recommendation.

I was especially pleased to see Section 5506, which states that designation of a beneficiary has no effect on ownership until the owner's death. It has been my experience that with pay-on death accounts, commonly referred to as "Totten Trusts", at banks and savings and loans, that when a conservator of the owner is approved, the bank will not transfer the account to the conservator without either the consent of the beneficiary or a court order. Hopefully, this Section 5506, will mean that a conservator does not need to apply for a court order to transfer the account to the conservator.

Thank you for sending me this tentative recommendation.

Very truly yours,



Ruth A. Phelps  
PHELPS, SCHWARZ & PHELPS

RAP:sp

DAMIAN B. SMYTH

ATTORNEY AT LAW

220 MONTGOMERY STREET, SUITE 814

SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE (415) 434-2285

JAN 26 1990

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January 25, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA. 94303-4739

Re: Uniform TOD Security Registration Act

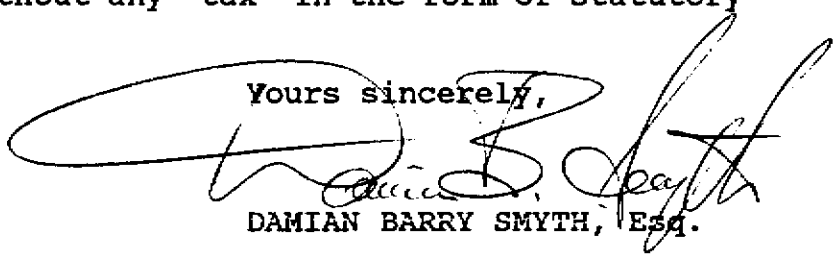
Gentlemen:

As a probate attorney I welcome the proposal to enact the above in California.

The transfer of securities pursuant to an Order of Final Distribution has typically been an incredibly time-consuming exercise. The representative is generally unfamiliar with the procedure, which accordingly devolves on the attorney. Different transfer agents have different requirements in terms of documentation. Meanwhile, during administration dividends continue to arrive payable to the decedent.

This also means that the post-mortem transfer will be rapid, and the entire portfolio will pass to the named beneficiaries without any "tax" in the form of statutory fees !

Yours sincerely,

  
DAMIAN BARRY SMYTH, Esq.

DBS/hp

EXHIBIT 31  
LAW OFFICES OF  
VAUGHAN, PAUL & LYONS  
1418 MILLS TOWER  
220 BUSH STREET  
SAN FRANCISCO 94104  
(415) 392-1423

Study L-3023

FAX: (415) 392-2308

CA LAW REV. COM. DIV.  
JAN 29 1990  
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January 22, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation relating to  
Uniform TUD Security Registration Act

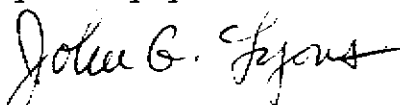
Gentlemen:

I approve the proposal. It will be particularly helpful in avoiding the drawbacks of joint tenancy. I have in mind the gift tax impact of the creation of the joint tenancy.

One small suggestion: In proposed Section 5500(d), in the first line on page 8 of the Recommendation, the word "displaced" would read "supplanted".

Unfortunately, I have not had access to the Wellman article in 21 Georgia Law Review.

Very truly yours,

  
John G. Lyons

JGL:car

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

relating to

## Uniform TOD Security Registration Act

December 1989

*This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.*

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN JANUARY 25, 1990.**

*The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.*

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

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*Member of Assembly*

**BILL LOCKYER**  
*Member of Senate*

**ARTHUR K. MARSHALL**  
*Member*

**FORREST A. PLANT**  
*Member*

**ANN E. STODDEN**  
*Member*

**VAUGHN R. WALKER**  
*Member*

**VACANCY**  
*Member*

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**Legal**

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*Executive Secretary*  
**NATHANIEL STERLING**  
*Assistant Executive Secretary*

**ROBERT J. MURPHY III**  
*Staff Counsel*  
**STAN G. ULRICH**  
*Staff Counsel*

**Administrative-Secretarial**

**STEPHEN F. ZIMMERMAN**  
*Administrative Assistant*  
**EUGENIA AYALA**  
*Word Processing Technician*

**VICTORIA MATIAS**  
*Word Processing Technician*

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

---

**CALIFORNIA LAW REVISION COMMISSION**

4000 MIDDLEFIELD ROAD, SUITE D-2  
PALO ALTO, CA 94303-4739  
(415) 494-1335

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SENATOR BILL LOCKYER  
ARTHUR K. MARSHALL  
FORREST A. PLANT  
ANN E. STODDEN  
VAUGHN R. WALKER

This tentative recommendation proposes the enactment of the Uniform TOD Security Registration Act. This new uniform act allows the owner of securities to register the title in transfer-on-death form. This recommendation is made pursuant to 1980 Cal. Stat. res. ch. 37.





## RECOMMENDATION

The Law Revision Commission recommends that the Uniform TOD Security Registration Act<sup>1</sup> be enacted in California. This uniform act allows the owner of securities to register the title in transfer-on-death (TOD) form. Mutual fund shares and accounts maintained by brokers and others to reflect a customer's holdings of securities (so-called "street accounts") are also covered by the uniform act.

The uniform act enables an issuer, transfer agent, broker, or other such intermediary to transfer securities directly to the designated TOD transferee on the owner's death. Thus, TOD registration achieves parity for securities with existing pay-on-death (POD) provisions for bank deposits, individual retirement accounts, pension plans, and other assets passing at death outside the probate process.

The TOD registration is designed to give the owner of securities who wishes to arrange for a non-probate transfer at death an alternative to the frequently troublesome joint tenancy form of title. Because joint tenancy registration of securities normally entails a sharing of lifetime entitlement and control, it works satisfactorily only so long as the co-owners cooperate. Difficulties arise when the co-owners fall into disagreement or when one of the co-owners becomes unable to manage his or her affairs or becomes insolvent. Joint tenancy registration in order to arrange for a non-probate transfer at death may also create estate planning problems<sup>2</sup>

---

1. The new Uniform TOD Security Registration Act was approved and recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws in 1989. The new uniform act was approved as an addition to the Uniform Probate Code as a part of a revised Article VI (non-probate transfers) and as a separate free standing act.

2. If the owner of a security takes title in joint tenancy with a nonowner, there is a present transfer of a share of the owner's interest. This transfer may create problems for the estate planner who is consulted after the security has been registered in joint tenancy. The estate planner has more flexibility if a TOD beneficiary is designated, since the TOD beneficiary designation can easily be changed.

and have undesired tax consequences.<sup>3</sup>

Use of the TOD registration form encouraged by the uniform act has no effect on the registered owner's full control of the affected security during his or her lifetime. A TOD designation and any beneficiary interest arising under the designation ends whenever the registered asset is transferred or whenever the owner otherwise complies with issuer's conditions for changing the title form of the investment. The uniform act recognizes that co-owners with right of survivorship may be registered as owners together with a TOD beneficiary designated to take if the registration remains unchanged until the beneficiary survives the joint owners. In such a case, the survivor of the joint owners has full control of the asset and may change the registration form as he or she sees fit after the other's death.

Implementation of the uniform act is wholly optional with issuers. The drafting committee that prepared the uniform act received the benefit of considerable advice and assistance from representatives of the mutual fund and stock transfer industries during the course of its three years of preparatory work. Accordingly, it is believed that the uniform act takes full account of the practical requirements for efficient transfer within the securities industry.

A provision of the uniform act<sup>4</sup> invites application of the uniform act to locally owned securities even though the uniform act may not have been locally enacted, so long as the uniform act or similar legislation is in force in a jurisdiction of the issuer or transfer agent. Thus, if the principal jurisdictions

---

3. The TOD beneficiary may have a more favorable basis for income tax purposes since there is no transfer to the TOD beneficiary until the death of the owner of the security. In addition, creation of a joint tenancy may create a gift tax liability at the time the interest is created.

4. Section 6-303 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989) (proposed to be enacted as Probate Code Section 5503 by the recommended legislation).

in which securities issuers and transfer agents are sited enact the uniform act, its benefits will become generally available to persons domiciled in states that do not at once enact the uniform act. Nevertheless, it is important that the uniform act be enacted at once in California so that California registering entities can participate in the development of the terms and conditions that the registering entities will use nationally as guidelines to govern the registration of securities in TOD form.<sup>5</sup>

For a comprehensive discussion of the issues entailed in the uniform act, see Wellman, *Transfer-On-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789 (1987).

### PROPOSED LEGISLATION

This recommendation would be effectuated by enactment of the following provisions.

#### PART 3. UNIFORM TOD SECURITY REGISTRATION ACT

(proposed to be added to Division 5 of the Probate Code)

##### § 5500. Short title; purposes; rules of construction

5500. (a) This part shall be known as and may be cited as the Uniform TOD Security Registration Act.

(b) This part shall be liberally construed and applied to promote its underlying purposes and policy.

(c) The underlying purposes and policy of this act are to (1) encourage development of a title form for use by individuals that is effective, without probate and estate administration, for transferring property at death in accordance with directions of a deceased owner of a security as included in the title form in which the security is held and (2) protect issuers offering and implementing the new title form.

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5. See Section 6-310 of the Uniform Probate Code (Uniform TOD Securities Registration Act) (1989) (proposed to be enacted as Probate Code Section 5510 by the recommended legislation).

(d) Unless displaced by the particular provisions of this part, the principles of law and equity supplement its provisions.

**Comment.** Subdivisions (a), (b), and (d) of Section 5500 are the same in substance as Section 1 of the free standing Uniform TOD Security Registration Act (1989). Subdivision (b) is drawn from Section 1-102(a) of the Uniform Probate Code (1987). Subdivision (d) is drawn from Section 1-103 of the Uniform Probate Code (1987). As to the construction of provisions drawn from uniform acts, see Section 2(b). Subdivision (c) is not found in the uniform act but is included as a useful statement of the underlying purposes and policy of this part. For a severability provision, see Section 11.

### **§ 5501. Definitions**

**5501. In this part:**

(a) “Beneficiary form” means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(b) “Register,” including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(c) “Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(d) “Security” means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(e) “Security account” means (1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner’s death, or (2) a cash balance or other property held for or due to the owner of a

security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

**Comment.** Section 5501 is the same in substance as Section 6-301 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989).

"Security" is defined as provided in Section 8-102 of the Uniform Commercial Code (1977) and includes shares of mutual funds and other investment companies. The defined term "security account" is not intended to include securities held in the name of a bank or similar institution as nominee for the benefit of a trust.

"Survive" is not defined. No effort is made in this part to define survival as it is for purposes of intestate succession in Section 6403 which requires survival by an heir of the ancestor for 120 hours. For purposes of this part, survive is used in its common law sense of outliving another for any time interval no matter how brief. The drafters of the uniform act sought to avoid imposition of a new and unfamiliar meaning of the term on intermediaries familiar with the meaning of "survive" in joint tenancy registrations.

**§ 5502. Ownership requirement to obtain registration in beneficiary form**

5502. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety, or as owners of community property held in survivorship form, and not as tenants in common.

**Comment.** Section 5502 is the same as Section 6-302 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989).

Section 5502 is designed to prevent co-owners from designating any death beneficiary other than one who is to take only upon survival of *all* co-owners. It coerces co-owning registrants to signal whether they hold as joint tenants with right of survivorship (JT TEN), as tenants by the entirety (T ENT), or as owners of community property. Also, it imposes survivorship on co-owners holding in a beneficiary form that fails to specify a survivorship form of holding. Nothing in Section 5502

authorizes a California married couple to register a security as "tenants by the entireties," since California does not recognize that form of ownership. However, a California corporation may register a security to be held as tenants by the entireties if the shareholders are residents of another state which recognizes that form of ownership.

Tenancy in common and community property otherwise than in a survivorship setting is negated for registration in beneficiary form because persons desiring to signal independent death beneficiaries for each individual's fractional interest in a co-owned security normally will split their holding into separate registrations of the number of units previously constituting their fractional share. Once divided, each can name his or her own choice of death beneficiary.

The term "individual," as used in this section, limits those who may register as owner or co-owner of a security in beneficiary form to natural persons. However, the section does not restrict an individual using this ownership form as to the choice of death beneficiary. The definition of "beneficiary form" in Section 5501 indicates that any "person" may be designated beneficiary in a registration in beneficiary form. "Person" is defined in Section 56 so that a church, trust company, family corporation, or other entity, as well as an individual, may be designated as a beneficiary.

### **§ 5503. Law authorizing registration in beneficiary form**

5503. A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

**Comment.** Section 5503 is the same as Section 6-303 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989). The section encourages registrations in beneficiary form to be made whenever a state with which either of the parties to a registration has contact has enacted this or a similar statute. Thus, a registration in beneficiary form

of X Company shares might rely on the enactment of the uniform act in X Company's state of incorporation, or in the state of incorporation of X Company's transfer agent. Or, an enactment by the state of the issuer's principal office, the transfer agent's principal office, or of the issuer's office making the registration also would validate the registration. An enactment of the state of the registering owner's address at time of registration also might be used for validation purposes. The last sentence of Section 5503 is designed to establish a statutory presumption that a general principle of law is available to achieve a result like that made possible by this part.

**§ 5504. Origination of registration in beneficiary form**

5504. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

*Comment.* Section 5504 is the same as Section 6-304 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989). As noted in the Comment to Section 5502, this part places no restriction on who may be designated beneficiary in a registration in beneficiary form. Any legal entity may be designated beneficiary in a registration in beneficiary form.

**§ 5505. Form of registration in beneficiary form**

5505. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

*Comment.* Section 5505 is the same as Section 6-305 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989). The abbreviation POD is included for use without regard for whether the subject is a money claim against an issuer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation. The use of POD in a registration in beneficiary form of shares in an investment company should not be taken as a signal that the investment is to be sold or redeemed on the owner's death so that the sums realized may be "paid" to the death beneficiary. Rather, only a

transfer on death, not a liquidation on death, is indicated. The drafters of the uniform act would have used only the abbreviation TOD except for the familiarity, rooted in experience with certificates of deposit and other deposit accounts in banks, with the abbreviation POD as signalling a valid non-probate death benefit or transfer on death.

**§ 5506. Effect of registration in beneficiary form**

5506. The designation of a beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

*Comment.* Section 5506 is the same as Section 6-306 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989). The section simply affirms the right of a sole owner, or the right of all multiple owners, to end a TOD beneficiary registration without the assent of the beneficiary. The section says nothing about how a TOD beneficiary designation may be canceled, meaning that the registering entity's terms and conditions, if any, may be relevant. See Section 5510. If the terms and conditions have nothing on the point, cancellation of a beneficiary designation presumably would be effected by a reregistration showing a different beneficiary or omitting reference to a TOD beneficiary.

**§ 5507. Ownership on death of owner**

5507. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.



**Comment.** Section 5507 is the same as Section 6-307 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989). Even though multiple owners of a security registered in beneficiary form hold with right of survivorship, no survivorship rights attend the positions of multiple beneficiaries who become entitled to securities by reason of having survived the sole owner or the last to die of multiple owners. Issuers (and registering entities) who decide to accept registrations in beneficiary form involving more than one primary beneficiary should provide by rule whether fractional shares will be registered in the names of surviving beneficiaries where the number of shares held by the deceased owner does not divide without remnant among the survivors. If fractional shares are not desired, the issuer may wish to provide for sale of odd shares and division of proceeds, for an uneven distribution with the first or last named to receive the odd share, or for other resolution. Section 5508 deals with whether intermediaries have any obligation to offer beneficiary registrations of any sort; Section 5510 enables issuers to adopt terms and conditions controlling the details of applications for registrations they decide to accept and procedures for implementing such registrations after an owner's death.

The statement that a security registered in beneficiary form is in the deceased owner's estate when no beneficiary survives the owner is not intended to prevent application of any anti-lapse statute that might direct a non-probate transfer on death to the surviving issue of a beneficiary who failed to survive the owner. Rather, the statement is intended only to indicate that the registering entity involved should transfer or reregister the security as directed by the decedent's personal representative.

See the Comment to Section 5501 regarding the meaning of "survive" for purposes of this part.

**§ 5508. Protection of registering entity**

5508. (a) A registering entity is not obliged to offer or to accept requests for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented as provided in this part.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 5507 and does so in good faith reliance (1) on the registration, (2) on this part, and (3) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity shall affect its right to protection under this part.

(d) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

**Comment.** Section 5508 is the same as Section 6-308 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989). It is to be noted that the "request" for a registration in beneficiary form may be in any form chosen by a registering entity. This part does not prescribe a particular form and does not impose record-keeping requirements. Registering entities' business practices, including any industry standards or rules of transfer agent associations, will control.

The written notice referred to in subdivision (c) would qualify as a notice under Section 8403 of the Uniform Commercial Code.

"Good faith" as used in subdivision (c) is intended to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade," as specified in Section 2103(1)(b) of the Uniform Commercial Code.

The protections described in this section are designed to meet any questions regarding registering entity protection that may not be foreclosed by issuer protections provided in the Uniform Commercial Code. For a discussion of the relevant Uniform Commercial Code

provisions, see Wellman, *Transfer-On-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 823 n.90 (1987).

**§ 5509. Nontestamentary transfer on death; rights of creditors**

5509. (a) Any transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary and is not invalid because the registration does not comply with the requirements for execution of a will, and this code does not invalidate the registration.

(b) This part does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

**Comment.** Section 5509 is the same as Section 6-309 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989) with the addition of the last portion of subdivision (a) which is drawn from Section 160 [Section 5000 of the new Probate Code].

**§ 5510. Terms, conditions, and forms for registration**

5510. (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive and implement requests for registration in that form, including requests for cancellation of previously registered beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions established pursuant to subdivision (a) may provide for (1) proving death, (2) avoiding or resolving any problems concerning fractional shares, (3) designating primary and contingent beneficiaries, and (4) substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This

designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(c) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries:

John S Brown Mary B Brown, JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown

or

John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

**Comment.** Section 5510 is the same in substance as Section 6-310 of the Uniform Probate Code (Uniform TOD Security Registration Act) (1989).

Use of "and" or "or" between the names of persons registered as co-owners is unnecessary under this part and should be discouraged. If used, the two words should have the same meaning insofar as concerns a title form; i.e., that of "and" to indicate that both named persons own the asset.

Descendants of a named beneficiary who take by virtue of a "LDPS" designation appended to a beneficiary's name take as TOD beneficiaries rather than as intestate successors. If no descendant of a pre-deceased

primary beneficiary survives the owner, the security passes as a part of the owner's estate as provided in Section 5507.

**§ 5511. Application of part**

5511. This part applies to registrations of securities in beneficiary form made before, on, or after January 1, 1991, by decedents dying on or after January 1, 1991.

**CONFORMING REVISIONS**

**Commercial Code § 8308 (amended). Indorsements; instructions**

8308. (1) An indorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his or her signature is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) An indorsement purporting to be only a part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is any of the following:

- (a) A writing signed by an appropriate person.
- (b) A communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subdivision (1) means the person specified by the certificated security or by special indorsement to be entitled to the security.

(7) "An appropriate person" in subdivision (5) means:

(a) For an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner.

(b) For an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subdivisions (6) and (7), "an appropriate person" in subdivisions (1) and (5) includes all of the following:

(a) If the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his or her successor.

(b) *The beneficiary of a security registered in beneficiary form (as defined in subdivision (a) of Section 5501 of the Probate Code) if the beneficiary has survived the death of the registered owner or all registered owners.*

(c) If the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his or her executor, administrator, guardian, or like fiduciary.

(d) If the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason by death all cannot sign, the survivor or survivors.

(e) A person having power to sign under applicable law or controlling instrument.

(f) To the extent that the person designated or any of the foregoing persons may act through an agent, his or her authorized agent.

(9) Unless otherwise agreed, the indorser of a certificated security by his or her indorsement or the originator of an instruction by his or her origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in Section 8306.

(10) Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by him or her does not become unauthorized for the purposes of this division by virtue of any subsequent change of circumstances.

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his or her indorsement or an instruction originated by him or her unauthorized for the purposes of this division.

**Comment.** Section 8308 is amended to add paragraph (b) to subdivision (8). This is a technical amendment to make clear that a TOD beneficiary is an "appropriate person" when the beneficiary has survived the registered sole owner or all the registered owners of a security registered in beneficiary form under the Uniform TOD Security Registration Act (1989). See Probate Code §§ 5500-5511.

