

First Supplement to Memorandum 89-75

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

The staff has received a draft of the free-standing (not part of the Uniform Probate Code) Uniform TOD Security Registration Act. We have reviewed the draft. As a result of this review, we have revised the preliminary portion of the staff draft attached to Memorandum 89-75. A copy of the revised preliminary portion is attached.

The new draft of the uniform act also includes a few technical revisions in the statute draft. If the Commission approves the tentative recommendation for distribution for comment, we will include the technical revisions in the Tentative Recommendation we send out for comment.

Respectfully submitted,

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Executive Secretary

09/21/89

RECOMMENDATION

The Law Revision Commission recommends that the Uniform TOD Security Registration Act¹ be enacted in California. This uniform act allows the owner of investment securities (stocks, bonds, etc.) to register the securities in transfer-on-death form. Mutual fund shares and accounts maintained by brokers and others to reflect a customer's holdings of securities (so-called "street account") are also covered by the uniform act.

The uniform act enables an issuer, transfer agent, broker, or other account holder to transfer securities directly to the designated transferee on the owner's death. Thus, transfer-on-death registration may achieve parity for securities with existing transfer-on-death provisions for US savings bonds, bank accounts, life insurance, death benefits under retirement plans, revocable trusts, and other assets passing at death outside the probate process.

The TOD registration is designed to give securities owners an alternative to the frequently troublesome joint tenancy title form as an arrangement for a non-probate transfer at death. A joint tenancy registration of securities normally entails a sharing of control and 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.

Use of the TOD registration form provided by the uniform act has no effect on the registered owner's full control of the subject investment during his or her lifetime. A TOD title and any beneficiary

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.

interest therein ends whenever the registered asset is transferred or withdrawn, or whenever the owner otherwise complies with issuer 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.

The uniform act permits securities to be registered by a married couple as "community property" with a TOD beneficiary designation. This form of registration imposes a right of survivorship on the co-owning married persons that cannot be altered by will.² The legislation recommended by the Commission expands this concept by adding a provision that permits a married couple to register a security as "community property held in joint tenancy form." This new form of registration is allowed whether or not the security is registered with a TOD beneficiary designation. The right of survivorship created by the new form of registration cannot be altered by will. This makes it easy for the surviving spouse to transfer the security after the death of the other spouse³ and, at the same time, makes clear that the

2. Community property otherwise than in a survivorship setting is negated for registration in beneficiary form because persons desiring to signal independent death beneficiaries of 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. See Uniform Probate Code § 6-302, Comment.

3. If a security is registered as "community property," there is a possibility that the will of the first spouse to die may dispose of his or her share of the community property security. Accordingly, it must be established in some manner that no such disposition took place before the surviving spouse may transfer the security. Ordinarily, it is necessary for the surviving spouse to obtain a court order determining that the surviving spouse is the owner of the security or to use the affidavit procedure under Sections 13100-13116 (collection or transfer of personal property of small estate) to establish the ownership of the surviving spouse. Since a security registered as community property in joint tenancy form may not be affected by a will, the property passes to the surviving spouse the same as any other joint tenancy property, and upon the death of a spouse the transfer agent can treat the property as if it were joint tenancy property.

security is community property for purposes of federal and state income taxes.⁴

Although 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.

4. Registration of a security as "community property held in joint tenancy form" will make it easier to obtain a stepped up basis for the entire property for purposes of California and federal income tax purposes. For state and federal income purposes, basis is determined differently depending on whether property is characterized as community or as true joint tenancy (separate) property. If property is community property, the entire property, not just the decedent's half, acquires a new basis equal to its fair market value at the valuation date. If the property is separate property, only the decedent's portion of the property acquires a new basis. It is possible to establish for the purpose of the new basis for income tax purposes that community property registered as joint tenancy property is actually community property. But to do so, it may be necessary to probate the property or to have its ownership confirmed to the surviving spouse as community property, and the tax authorities are not necessarily bound even then. See 1 California Decedent Estate Practice § 4.14 (Cal. Cont. Ed. Bar Rev. 2/89). Registration of a security as "community property held in joint tenancy form" will make clear that the property is community property, thereby avoiding the need to probate the property or to have its ownership confirmed to the surviving spouse in order to establish that the entire property is entitled to a stepped up basis.