

Memorandum 89-107

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

Attached is a staff draft of a Tentative Recommendation proposing enactment in California of the new Uniform TOD Security Registration Act. The staff recommends that the Tentative Recommendation be sent out to interested persons and organizations for review and comment.

The staff draft proposes enactment of the uniform act as proposed by the Uniform Law Commissioners. The uniform act allows the owner of securities to register the title in transfer-on-death (TOD) form. 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.

Memorandum 89-75, prepared for the Commission's October meeting, proposed enactment of the uniform act with some significant additional provisions and revisions. Attached as Exhibit 1 is a letter from the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section strongly objecting to the additions and revisions in the uniform act proposed in Memorandum 89-75. After reviewing the letter, the staff now recommends enactment in California of the uniform act as proposed by the Uniform Law Commissioners (without any additions or revisions).

The attached letter from the Executive Committee of the State Bar Section also objects to the uniform act as proposed by the Uniform Law Commissioners. The State Bar Section would prefer to await the enactment of the uniform act by other states before it is enacted in California. However, even if California does not enact the act, the uniform act will apply to many securities held by California residents. This is because the act will govern securities held by

California residents if the uniform act or a similar statute is enacted in any of the following states:

- the state of organization of the issuer of the security.
- the state of organization of the registering entity.
- the state of the location of the registering entity's principal office.
- the state of the office of its transfer agent or its office making the registration.

The uniform act was developed with the cooperation of representatives of mutual funds and stock transfer industries, and it is reasonable to anticipate that the uniform act will soon be enacted in states where transfer agents are located for national corporations. The implementation of the uniform act is wholly optional with issuers, and the registering agents are expected to adopt uniform national guidelines setting out the terms and conditions of registration under the uniform act. Enactment of the uniform act in California now will encourage California registering entities to participate in the development of these national guidelines.

The State Bar Section also expresses concern that the TOD registration may adversely affect creditors. You will recall that the Commission abandoned its effort to prepare comprehensive legislation permitting creditors to reach nonprobate assets (such as joint tenancy assets, beneficiary designation assets, and the like) because the State Bar Section advised us that it was undertaking to draft and secure the enactment of such legislation. Creditors seem unconcerned about this matter.

The State Bar Section believes that the use of the TOD registration authorized pursuant to the uniform act will serve as a trap to unwary consumers. The State Bar Section fears that consumers will be faced with increased estate planning costs if the uniform act is enacted. Nevertheless, the staff believes that consumers should be given the option of designating a TOD beneficiary for securities if they so desire. It is not necessarily true that accounts in financial institutions are small and stock holdings are large: Financial institutions now offering certificates of deposit on large value with provision for POD beneficiary and brokerage houses with their so-called

cash management accounts and mutual funds with their money market accounts have rendered securities subject to small transactions. A significant reason for the development of the uniform act was the urging of a major California money market fund that provision be made for designation of POD beneficiaries to satisfy the needs of their customers.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

OCT 12 1989

**ESTATE PLANNING, TRUST AND
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October 9, 1989

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RE: CALIFORNIA LAW REVISION COMMISSION MEMO 89-75 AND FIRST
SUPPLEMENT RE UNIFORM TOD SECURITY REGISTRATION ACT

Dear Commissioners:

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California has serious concerns about this proposal and believes it should be opposed.

This memorandum is not the Uniform TOD Security Registration Act. While there may be some reason to promote uniformity in securities registration on a national basis, there is no reason that we can see for California to enact a non-uniform version to promote uniformity!

The changes away from the Uniform Act are changes for the worse. These are primarily the introduction of the concept of "community property held in joint tenancy." This is not the first time in the last several years that this peculiar concept has been advanced by the Staff. Each time it has been proposed in the past, the Commission has wisely decided not to adopt it. California law is clear that joint tenancy and community property are two incompatible concepts. While there is a presumption that joint tenancy assets are community property for purposes of division upon dissolution of marriage only, all prior attempts to combine or hybridize the two forms of title have failed. We understand there is a proposal for the Family Law Section and the Estate Planning, Trust and Probate Section of the State Bar to jointly study the issues of differing treatment of joint tenancies and community property at death and at dissolution of marriage. At the very least, any tinkering in that area should await completion of the study.

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We also find extremely disturbing the fact that the Staff is urging this radical change to the law for the wrong reasons. The discussion assumes that claiming community property is difficult and requires court proceedings, an assumption that is incorrect. The discussion also assumes that "community property held in joint tenancy" will receive the same step-up in income tax basis as community property under federal and California income tax law. That assumption is also wrong. The only state with such a form of property is Nevada, and the Internal Revenue Service has taken the position that this is not true community property and not entitled to a step-up in basis on both halves of the community property. Instead, it is treated as joint tenancy property held by husband and wife and only entitled to an income tax step-up in basis on one-half. With the major reasons for making the change based on false premises, we see no convincing argument in favor of the change.

Even if the proposed California modifications to the Uniform Act are eliminated, we have other objections to the adoption of this legislation in California at this time. The Uniform Act, which was just adopted late this year, has not been enacted as yet in any state, and thus the goal of uniformity of treatment is more illusory than real. Since California is the most populous state in the nation, we do not believe it is wise for this state to be the one to suffer the problems of dealing with the unanticipated problems of this law. We believe it to be better public policy for this new legislation to be tested in smaller states, where the potential number of people to be adversely affected by problems is a smaller number, and then adopted by California when the problems have been discovered and corrected.

There are additional reasons to oppose this proposal. We believe that this legislation will add further complexity to an area of the law that is already complex. It will complicate simple estate plans for modest estates and lead to litigation as securities brokers implement the law in a way which produces results not intended by married couples. If this law passes, those clients who consult lawyers for a "simple Will" will incur additional charges as the lawyer reviews title to each security to make sure the Will will affect the security and to make sure no beneficiary designation is inconsistent with the estate plan desired by the client. The reason this is necessary is the TOD designation can not be changed by the Will. This will add to the charges the public has to pay for estate planning, a service which is already moving beyond the reach of the middle class.

The TOD designation restricts the ability of spouses to independently change their estate plans. If Husband and Wife register a security in both of their names, TOD John, their only son, they must both agree or no change in title can be accomplished. If Husband later discovers John taking drugs, but Wife refuses to change the title, Husband can not unilaterally remove John from the beneficiary designation. While this example may sound extreme, others can be easily imagined. A related issue is that any change in title requires reregistration of the security. Reregistration is a slow process, and the law doesn't even address what the rights of the parties are if the owners have requested but not received a reregistration at the time of death of one or more of the multiple owners.

These problems are not present in POD accounts with financial institutions, because in most cases, one of the joint multiple owners of the account can withdraw all or his portion of the funds, and thus is not precluded from making unilateral changes. Thus, the approval of the Multiple Party Accounts legislation by our section is not relevant to this proposal.

Transfers under the proposed legislation are not subject to Wills, and presumably are unable to benefit from the benefits of the anti-lapse provisions of the Probate Code. While the law contemplates the possibility of a title designation "LDPS" to allow a gift to descendants of a deceased beneficiary, our committee members expressed great scepticism that the securities industry would expend time and money educating the public about this option and its great desirability. We think it more likely that a parent will name his or her children without the LDPS designation. Then, if a child predeceases the parent, the security will not pass to the deceased child's issue, but will instead pass to the other surviving child or children named as beneficiaries. We think this is contrary to most parents' intents, contrary to the previously enacted public policy of the legislature as evidenced in the intestacy and anti-lapse statutes, and bad public policy. But that is the likely result if this statute is passed.

The statute introduces to California law the concept of "tenancy by the entirety" without defining or regulating it. This term should be omitted from all legislation in this state.

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Finally, we are concerned that this proposal does not attempt to deal with the issue of creditors. Section 5509(b) might be sufficient, but we are very concerned as to how it will be applied. Unlike the affidavit procedures adopted previously, there is no option on the part of the beneficiary to seek probate administration in order to deal with and resolve creditors' claims. At its worst, we are concerned that the legislation may be inadvertently creating another class of assets free from the claims of creditors by expanding the category of assets treated as joint tenancies are treated. We believe this to be unsound public policy.

Thus, we believe there are more than sufficient reasons to oppose this suggested legislation, and we suggest the Commission disapprove of this memorandum and its supplement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Valerie J. Merritt", with a large, sweeping flourish extending from the end of the signature.

Valerie J. Merritt

cc: James V. Quillinan
Irwin D. Goldring
Sterling L. Ross
Matthew S. Rae, Jr.

10/27/89

STATE OF CALIFORNIA
Law Revision Commission

TENTATIVE RECOMMENDATION

relating to

UNIFORM TOD SECURITY REGISTRATION ACT

November 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 10, 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, CA 94303-4739

LETTER OF TRANSMITTAL

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 Act¹ 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 account") 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.

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

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.

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 act² 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 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

2. 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).

nationally as guidelines to govern the registration of securities in TOD form.³

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. 709 (1987).

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.

(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:

3. 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).

(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 entireties, 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 entireties (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.

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 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.