

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Uniform TOD Security Registration Act

June 1998

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

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STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION

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June 4, 1998

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation proposes the enactment of the Uniform TOD Security Registration Act. The uniform act allows the owner of securities to register the title in transfer-on-death form.

This recommendation is submitted pursuant to Resolution Chapter 102 of the Statutes of 1997.

Respectfully submitted,

Edwin K. Marzec
Chairperson

UNIFORM TOD SECURITY REGISTRATION ACT

The Law Revision Commission recommends that the Uniform TOD Security Registration Act¹ be enacted in California. This uniform act allows an owner of securities to register the title in transfer-on-death (TOD) form and to designate a death beneficiary in the instrument.² The uniform act enables an issuer, transfer agent, broker, or other intermediary to transfer securities on the owner's death directly to the designated TOD transferee. The uniform act has been enacted in 39 states.³

TOD registration is consistent with existing California law, which authorizes provisions for nonprobate transfer on death in a wide variety of written instruments, including a certificated or uncertificated security.⁴ It is also consistent with

1. The 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 act was approved as an addition to the Uniform Probate Code as part of a revised Article VI (nonprobate transfers) and as a separate free-standing act.

2. 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.

3. The 39 states that have enacted the Uniform TOD Security Registration Act are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri (substantially similar), Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

4. Prob. Code § 5000; 1 B. Ross & H. Moore, California Practice Guide Probate §§ 2:175-2:178.5, at 2-93 to 2-98 (Rutter Group, rev. 1994); see also Estate of Petersen, 28 Cal. App. 4th 1742, 1751-53, 34 Cal. Rptr. 2d 449, 456-58 (1994) (annuity contracts). Probate Code Section 5000 provides that a "provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust,

long-standing and well-established California policy favoring nonprobate transfers at death for bank deposits,⁵ certain state-registered vehicles and vessels,⁶ individual retirement accounts, pension plans, and other assets.⁷ The uniform act fleshes out the existing California authority for nonprobate transfer of certificated or uncertificated securities by giving specific authority to issuing entities to register securities in TOD form. It is an issuer protection measure that authorizes, but does not require, issuers to offer the TOD title form.⁸

conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is not invalid because the instrument does not comply with the requirements for execution of a will, and this code does not invalidate the instrument.” Probate Code Section 5003 gives immunity to a holder of property described in Section 5000 who transfers it in compliance with the provision for nonprobate transfer. Sections 5000 and 5003, therefore, may already validate a TOD designation in securities. See Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 807-811 (1987). Section 5000 is the same in substance as Section 6-101 of the Uniform Probate Code (1993). The Uniform TOD Security Registration Act extends the nonprobate transfer provision in Uniform Probate Code Section 6-101. *Id.* at 794. Professor Wellman concluded that, for securities, “TOD registration probably will not become a widely used new title form without legislative authorization” such as the Uniform TOD Security Registration Act. *Id.* at 836.

5. Prob. Code §§ 5100-5407.

6. Health & Safety Code §§ 18080.2, 18102.2, 18102.3 (manufactured home, mobilehome, commercial coach, truck camper, floating home); Veh. Code §§ 4150.7, 5910.5, 5910.7 (motor vehicle); Veh. Code §§ 9852.7, 9916.5, 9916.7 (undocumented vessel).

7. See also Educ. Code §§ 23300, 23811 (teachers’ death benefits); Gov’t Code §§ 21455-21458 (public employees’ death benefits); 31 C.F.R. § 315.7(b)(3) (U.S. savings bond in beneficiary form).

8. The uniform act is sufficiently protective of issuers to attract their attention. Its primary purpose is “to induce a dominant segment of the world of financial intermediation to lead investors away from the joint and survivor title forms.” Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 835, 838 (1987). Implementation of the uniform act is wholly optional with issuers. The drafting committee that prepared the uniform act received advice and assistance from representatives of the mutual fund and stock transfer industries during its three years of preparatory work. Thus the uniform act takes full account of practical requirements for efficient transfer within the securities industry.

TOD registration is designed to give an owner of securities who wants to arrange for a nonprobate 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 as long as the co-owners cooperate. Difficulties arise when the co-owners fall into disagreement or when a co-owner becomes unable to manage his or her affairs or becomes insolvent. Joint tenancy registration to arrange for a nonprobate transfer at death may also create estate planning problems⁹ and may have undesired tax consequences.¹⁰

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 a 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 the survivor sees fit after the other's death.

9. 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.

10. 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.

The proposed law is subject to other provisions of California law to the same extent as most other forms of nonprobate transfer. It does not limit rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.¹¹ It does not deprive a married decedent of the right to dispose by will of his or her half interest in a community property security.¹² The proposed law is subject to provisions relating to simultaneous death,¹³ effect of homicide,¹⁴ disclaimers,¹⁵ apportionment of estate taxes,¹⁶ and antilapse.¹⁷

11. This provision is the same as California Probate Code Section 5000(c) (nonprobate transfer in written instrument) and Section 9(b) of the Uniform TOD Security Registration Act (1989).

12. Prob. Code §§ 5020, 5021.

13. Prob. Code §§ 220-226.

14. Prob. Code §§ 250-258.

15. Prob. Code §§ 260-288.

16. Prob. Code §§ 20100, 20110.

17. Prob. Code § 21110. Applying the antilapse statute is consistent with the intent of Section 7 of the Uniform TOD Security Registration Act (1989). See Comment to Section 7 of that act.

PROPOSED LEGISLATION

Prob. Code §§ 5500-5512 (added). Uniform TOD Security Registration Act

SEC. _____. Part 3 (commencing with Section 5500) is added to Division 5 of the Probate Code, to read:

PART 3 . UNIFORM TOD SECURITY REGISTRATION ACT

§ 5500. Short title; purposes; construction

5500. (a) This part 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 (1) to encourage development of a title form for use by individuals that is effective, without probate and estate administration, to transfer 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) to protect issuers offering and implementing the new title form.

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

Comment. Section 5500 is the same in substance as Section 11 of the Uniform TOD Security Registration Act (1989). As to construing provisions drawn from uniform acts, see Section 2(b). Paragraphs (1) and (2) of subdivision (b) are not in the uniform act, but are 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 which 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 as paragraphs (1), (7), (8), (9), and (10) of Section 1 of the Uniform TOD Security Registration Act (1989). Definitions in Section 1 of the Uniform TOD Security Registration Act that are not included here are in other provisions of this code. See Sections 34 (“devisee”), 44 (“heir”), 56 (“person”), 58 (“personal representative”), 62 (“property”), 74 (“state”).

The definition of “security” includes shares of mutual funds and other investment companies. *Cf.* Com. Code § 8102 (definitions). 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 2 of the 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 entirety,” since California does not recognize that form of ownership. See Civ. Code § 682. However, a California corporation may register a security to be held as tenants by the entirety if the shareholders are residents of another state which recognizes that form of ownership. Similarly, California does not permit property to be held as community property with a right of survivorship. However, this title form is recognized in Nevada and Arizona. See Nevada Rev. Stat. Ann. ch. 111.064 (Michie 1993); Ariz. Rev. Stat. Ann. § 33-431 (Supp. 1997).

Tenancy in common and community property otherwise than in a survivorship setting are 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 holdings 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 3 of the 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, of 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 registered owner’s address at the 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 4 of the 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 5 of the Uniform TOD Security Registration Act (1989). The abbreviation “POD” is included for use without regard to 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 signaling a valid nonprobate death benefit or transfer on death.

§ 5506. Effect of registration in beneficiary form

5506. The designation of a TOD 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 of the 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 survive 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 7 of the 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 designations 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 antilapse statute that might direct a nonprobate transfer on death to the surviving issue of a beneficiary who failed to survive the owner. See, e.g., Section 21110 (antilapse). 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 also the Comment to Section 5501 on the meaning of "survive" for purposes of this part.

§ 5508. Protection of registering entity

5508. (a) A registering entity is not required to offer or to accept a request 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 on death of the deceased owner 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 affects 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 8 of the Uniform TOD Security Registration Act (1989), except for substitution of "part" for "act" and "Section 5507" for "Section 7." A "request" for 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) A 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 9 of the Uniform TOD Security Registration Act (1989), with the addition of the last portion of subdivision (a), drawn from Section 5000.

§ 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 requests (1) for registrations in beneficiary form, and (2) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and 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.

(b) 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 as Section 10 of the 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 an "LDPS" designation appended to a beneficiary's name take as TOD beneficiaries rather than as intestate successors. For distributions to lineal descendants per stirpes, see Section 246. If no descendant of a predeceased primary beneficiary survives the owner, the security passes as part of the owner's estate as provided in Section 5507.

§ 5511. Community property rights of nonconsenting spouse

5511. Nothing in this part alters the community character of community property or community rights in community property. This part is subject to Chapter 2 (commencing with Section 5010) of Part 1.

Comment. Section 5511 makes clear that rights granted by this part are subject to Sections 5010-5032 (community property rights of nonconsenting spouse in nonprobate transfers).

Property rights under this part may be subject to other statutory qualifications than those noted in Section 5511. See, e.g., Sections 220-226 (simultaneous death), 250-258 (effect of homicide), 260-288

(disclaimer). Property received under this part may be subject to apportionment of estate taxes. See Sections 20100-20225. If a TOD beneficiary fails to survive the owner, the beneficiary's interest may be subject to the antilapse statute. See Section 21110.

§ 5512. Application of part

5512. This part applies to registrations of securities in beneficiary form made before, on, or after January 1, 2000, by decedents dying on or after January 1, 2000.

Comment. Section 5512 is the same as Section 11 of the Uniform TOD Security Registration Act (1989), except that it applies this part to registrations made before, "on," or after the operative date.

CONFORMING REVISION

Com. Code § 8107 (amended). Appropriate person; effectiveness of endorsement, instruction, or entitlement order

SEC. _____. Section 8107 of the Commercial Code is amended to read:

8107. (a) "Appropriate person" means any of the following:

(1) With respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security.

(2) With respect to an instruction, the registered owner of an uncertificated security.

(3) With respect to an entitlement order, the entitlement holder.

(4) If the person designated in paragraph (1), (2), or (3) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent.

(5) If the person designated in paragraph (1), (2), or (3) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(6) With respect to an endorsement or an instruction, 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.

(b) An endorsement, instruction, or entitlement order is effective if it is made by any of the following:

(1) It is made by the appropriate person.

(2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under paragraph (2) of subdivision (c) or paragraph (2) of subdivision (d) of Section 8106.

(3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An endorsement, instruction, or entitlement order made by a representative is effective even if:

(1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction.

(2) The representative's action in making the endorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially endorsed to a person described as a representative, or if a security account is maintained in the name of a person described as a representative, an endorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an endorsement, instruction, or entitlement order is determined as of the date the

endorsement, instruction, or entitlement order is made, and an endorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

Comment. Section 8107 is amended to add paragraph (6) to subdivision (a). 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 Prob. Code §§ 5500-5512. See also Section 8102 (“entitlement order,” “financial asset,” “endorsement,” “instruction,” “security,” “security certificate,” and “uncertificated security” defined).
