

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Uniform TOD Security Registration Act

March 1998

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 May 31, 1998.**

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.

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## SUMMARY OF TENTATIVE RECOMMENDATION

This tentative recommendation proposes the enactment of the Uniform TOD Security Registration Act. This uniform act allows the owner of securities to register the title in transfer-on-death form. On the death of the owner, title to the securities passes to the beneficiary, and the beneficiary may obtain reregistration of the security in his or her own name.

This recommendation was prepared pursuant to Resolution Chapter 102 of the Statutes of 1997.

## UNIFORM TOD SECURITY REGISTRATION ACT

1 The Law Revision Commission recommends that the Uniform TOD Security  
2 Registration Act<sup>1</sup> be enacted in California. This uniform act allows an owner of  
3 securities to register the title in transfer-on-death (TOD) form and to designate a  
4 death beneficiary in the instrument.<sup>2</sup> The uniform act enables an issuer, transfer  
5 agent, broker, or other intermediary to transfer securities on the owner's death  
6 directly to the designated TOD transferee. The uniform act has been enacted in 36  
7 states.<sup>3</sup>

8 TOD registration is consistent with existing California law, which authorizes  
9 provisions for nonprobate transfer on death in a wide variety of written instru-  
10 ments, including a certificated or uncertificated security.<sup>4</sup> It is also consistent with  
11 long-standing and well-established California policy favoring nonprobate transfers  
12 at death for bank deposits,<sup>5</sup> certain state-registered vehicles and vessels,<sup>6</sup> individ-

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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 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 36 states that have enacted the Uniform TOD Security Registration Act are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, 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. The uniform act is pending in several other states.

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, trust, 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), 9852.7, 9916.5 & 9916.7 (undocumented vessel).

1 ual retirement accounts, pension plans, and other assets.<sup>7</sup> The uniform act fleshes  
2 out the existing California authority for nonprobate transfer of certificated or  
3 uncertificated securities by giving specific authority to issuing entities to register  
4 securities in TOD form. It is an issuer-protection measure that authorizes, but does  
5 not require, issuers to offer the TOD title form.<sup>8</sup>

6 TOD registration is designed to give an owner of securities who wants to arrange  
7 for a nonprobate transfer at death an alternative to the frequently troublesome joint  
8 tenancy form of title. Because joint tenancy registration of securities normally  
9 entails a sharing of lifetime entitlement and control, it works satisfactorily only as  
10 long as the co-owners cooperate. Difficulties arise when the co-owners fall into  
11 disagreement or when a co-owner becomes unable to manage his or her affairs or  
12 becomes insolvent. Joint tenancy registration to arrange for a nonprobate transfer  
13 at death may also create estate planning problems<sup>9</sup> and may have undesired tax  
14 consequences.<sup>10</sup>

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

25 The proposed law is subject to other provisions of California law to the same  
26 extent as most other forms of nonprobate transfer: It does not limit rights of credi-  
27 tors of security owners against beneficiaries and other transferees under other

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7. See also Educ. Code §§ 23300, 23811 (teachers' death benefits); Gov't Code §§ 21455-21458 (public employees' death benefits); 31 C.F.R. § 315.79(c) (U.S. savings bonds 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.

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.

1 law.<sup>11</sup> It does not deprive a married decedent of the right to dispose by will of his  
2 or her half interest in a community property security.<sup>12</sup> A TOD designation in a  
3 security by a married person naming his or her spouse as beneficiary will be  
4 revoked by dissolution of their marriage.<sup>13</sup> The proposed law is subject to provi-  
5 sions relating to simultaneous death,<sup>14</sup> effect of homicide,<sup>15</sup> disclaimers,<sup>16</sup> appor-  
6 tionment of estate taxes,<sup>17</sup> and antilapse.<sup>18</sup>

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11. This provision is the same as Probate Code Section 5000(c) (nonprobate transfer in written instrument) and Section 9(b) of the uniform act.

12. Prob. Code §§ 5020, 5021.

13. Prob. Code § 5600 (proposed in Commission's Tentative Recommendation on *Effect of Dissolution of Marriage on Nonprobate Transfers* (January 1998)).

14. Prob. Code §§ 220-226.

15. Prob. Code §§ 250-258.

16. Prob. Code §§ 260-288.

17. Prob. Code §§ 20100, 20110.

18. Prob. Code § 21110. Applying the antilapse statute is consistent with the intent of Section 7 of the uniform act. See Section 7 Comment.



PROPOSED LEGISLATION

1 **Prob. Code §§ 5500-5511 (added). Uniform TOD Security Registration Act**

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

4 **PART 3. UNIFORM TOD SECURITY**  
5 **REGISTRATION ACT**

6 **§ 5500. Short title; purposes; construction**

7 5500. (a) This part may be cited as the Uniform TOD Security Registration Act.

8 (b) This part shall be liberally construed and applied to promote its underlying  
9 purposes and policy (1) to encourage development of a title form for use by  
10 individuals that is effective, without probate and estate administration, to transfer  
11 property at death in accordance with directions of a deceased owner of a security  
12 as included in the title form in which the security is held and (2) to protect issuers  
13 offering and implementing the new title form.

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

16 **Comment.** Section 5500 is the same in substance as Section 11 of the Uniform TOD Security  
17 Registration Act (1989). As to construing provisions drawn from uniform acts, see Section 2(b).  
18 Clauses (1) and (2) of subdivision (b) are not in the uniform act, but are included as a useful  
19 statement of the underlying purposes and policy of this part. For a severability provision, see  
20 Section 11.

21 **§ 5501. Definitions**

22 5501. In this part:

23 (a) "Beneficiary form" means a registration of a security which indicates the  
24 present owner of the security and the intention of the owner regarding the person  
25 who will become the owner of the security upon the death of the owner.

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

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

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

36 (e) "Security account" means (1) a reinvestment account associated with a  
37 security, a securities account with a broker, a cash balance in a brokerage account,

1 cash, interest, earnings, or dividends earned or declared on a security in an  
2 account, a reinvestment account, or a brokerage account, whether or not credited  
3 to the account before the owner's death, or (2) a cash balance or other property  
4 held for or due to the owner of a security as a replacement for or product of an  
5 account security, whether or not credited to the account before the owner's death.

6 **Comment.** Section 5501 is the same as paragraphs (1), (7), (8), (9), and (10) of Section 1 of the  
7 Uniform TOD Security Registration Act (1989). Definitions in Section 1 of the uniform act that  
8 are not included here are in other provisions of this code. See Sections 34 ("devisee"), 44 ("heir"),  
9 56 ("person"), 58 ("personal representative"), 62 ("property"), 74 ("state").

10 The definition of "security" includes shares of mutual funds and other investment companies.  
11 Cf. Com. Code § 8102 (definitions). The defined term "security account" is not intended to  
12 include securities held in the name of a bank or similar institution as nominee for the benefit of a  
13 trust.

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

20 **§ 5502. Ownership requirement to obtain registration in beneficiary form**

21 5502. Only individuals whose registration of a security shows sole ownership by  
22 one individual or multiple ownership by two or more with right of survivorship,  
23 rather than as tenants in common, may obtain registration in beneficiary form.  
24 Multiple owners of a security registered in beneficiary form hold as joint tenants  
25 with right of survivorship, as tenants by the entireties, or as owners of community  
26 property held in survivorship form, and not as tenants in common.

27 **Comment.** Section 5502 is the same as Section 2 of the Uniform TOD Security Registration  
28 Act (1989). Section 5502 is designed to prevent co-owners from designating any death  
29 beneficiary other than one who is to take only upon survival of *all* co-owners. It coerces co-  
30 owning registrants to signal whether they hold as joint tenants with right of survivorship, as  
31 tenants by the entireties, or as owners of community property. Also, it imposes survivorship on  
32 co-owners holding in a beneficiary form that fails to specify a survivorship form of holding.  
33 Nothing in Section 5502 authorizes a California married couple to register a security as "tenants  
34 by the entireties," since California does not recognize that form of ownership. See Civ. Code §  
35 682. However, a California corporation may register a security to be held as tenants by the  
36 entireties if the shareholders are residents of another state which recognizes that form of  
37 ownership. Similarly, California does not permit property to be held as community property with  
38 a right of survivorship. However, this title form is recognized in Arizona and Nevada. See Ariz.  
39 Rev. Stat. Ann. § 33-431 (West Supp. 1997); Nevada Rev. Stat. Ann. ch. 111.064 (Michie 1993).

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

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



1 company, family corporation, or other entity, as well as an individual, may be designated as a  
2 beneficiary.

3 **§ 5503. Law authorizing registration in beneficiary form**

4 5503. A security may be registered in beneficiary form if the form is authorized  
5 by this or a similar statute of the state of organization of the issuer or registering  
6 entity, the location of the registering entity's principal office, the office of its  
7 transfer agent or its office making the registration, or by this or a similar statute of  
8 the law of the state listed as the owner's address at the time of registration. A  
9 registration governed by the law of a jurisdiction in which this or similar  
10 legislation is not in force or was not in force when a registration in beneficiary  
11 form was made is nevertheless presumed to be valid and authorized as a matter of  
12 contract law.

13 **Comment.** Section 5503 is the same as Section 3 of the Uniform TOD Security Registration  
14 Act (1989). This section encourages registrations in beneficiary form to be made whenever a state  
15 with which either of the parties to a registration has contact has enacted this or a similar statute.  
16 Thus, a registration in beneficiary form of X Company shares might rely on the enactment of the  
17 uniform act in X Company's state of incorporation, or in the state of incorporation of X  
18 Company's transfer agent. Or, an enactment by the state of the issuer's principal office, of the  
19 transfer agent's principal office, or of the issuer's office making the registration also would  
20 validate the registration. An enactment of the state of the registered owner's address at the time of  
21 registration also might be used for validation purposes.

22 The last sentence of this section is designed to establish a statutory presumption that a general  
23 principle of law is available to achieve a result like that made possible by this part.

24 **§ 5504. Origination of registration in beneficiary form**

25 5504. A security, whether evidenced by certificate or account, is registered in  
26 beneficiary form when the registration includes a designation of a beneficiary to  
27 take the ownership at the death of the owner or the deaths of all multiple owners.

28 **Comment.** Section 5504 is the same as Section 4 of the Uniform TOD Security Registration  
29 Act (1989). As noted in the Comment to Section 5502, this part places no restriction on who may  
30 be designated beneficiary in a registration in beneficiary form. Any legal entity may be  
31 designated as a beneficiary in a registration in beneficiary form.

32 **§ 5505. Form of registration in beneficiary form**

33 5505. Registration in beneficiary form may be shown by the words "transfer on  
34 death" or the abbreviation "TOD," or by the words "pay on death" or the  
35 abbreviation "POD," after the name of the registered owner and before the name  
36 of a beneficiary.

37 **Comment.** Section 5505 is the same as Section 5 of the Uniform TOD Security Registration  
38 Act (1989). The abbreviation "POD" is included for use without regard to whether the subject is a  
39 money claim against an issuer, such as its own note or bond for money loaned, or is a claim to  
40 securities evidenced by conventional title documentation. The use of "POD" in a registration in  
41 beneficiary form of shares in an investment company should not be taken as a signal that the  
42 investment is to be sold or redeemed on the owner's death so that the sums realized may be  
43 "paid" to the death beneficiary. Rather, only a transfer on death, not a liquidation on death, is  
44 indicated. The drafters of the uniform act would have used only the abbreviation "TOD" except  
45 for the familiarity, rooted in experience with certificates of deposit and other deposit accounts in

1 banks, with the abbreviation "POD" as signaling a valid nonprobate death benefit or transfer on  
2 death.

3 **§ 5506. Effect of registration in beneficiary form**

4 5506. The designation of a TOD beneficiary on a registration in beneficiary form  
5 has no effect on ownership until the owner's death. A registration of a security in  
6 beneficiary form may be canceled or changed at any time by the sole owner or all  
7 then surviving owners without the consent of the beneficiary.

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

15 **§ 5507. Ownership on death of prior owner**

16 5507. On death of a sole owner or the last to die of all multiple owners,  
17 ownership of securities registered in beneficiary form passes to the beneficiary or  
18 beneficiaries who survive all owners. On proof of death of all owners and  
19 compliance with any applicable requirements of the registering entity, a security  
20 registered in beneficiary form may be reregistered in the name of the beneficiary  
21 or beneficiaries who survive the death of all owners. Until division of the security  
22 after the death of all owners, multiple beneficiaries surviving the death of all  
23 owners hold their interests as tenants in common. If no beneficiary survives the  
24 death of all owners, the security belongs to the estate of the deceased sole owner or  
25 the estate of the last to die of all multiple owners.

26 **Comment.** Section 5507 is the same as Section 7 of the Uniform TOD Security Registration  
27 Act (1989). Even though multiple owners of a security registered in beneficiary form hold with  
28 right of survivorship, no survivorship rights attend the positions of multiple beneficiaries who  
29 become entitled to securities by reason of having survived the sole owner or the last to die of  
30 multiple owners. Issuers (and registering entities) who decide to accept registrations in  
31 beneficiary form involving more than one primary beneficiary should provide by rule whether  
32 fractional shares will be registered in the names of surviving beneficiaries where the number of  
33 shares held by the deceased owner does not divide without remnant among the survivors. If  
34 fractional shares are not desired, the issuer may wish to provide for sale of odd shares and  
35 division of proceeds, for an uneven distribution with the first or last named to receive the odd  
36 share, or for other resolution. Section 5508 deals with whether intermediaries have any obligation  
37 to offer beneficiary designations of any sort. Section 5510 enables issuers to adopt terms and  
38 conditions controlling the details of applications for registrations they decide to accept and  
39 procedures for implementing such registrations after an owner's death.

40 The statement that a security registered in beneficiary form is in the deceased owner's estate  
41 when no beneficiary survives the owner is not intended to prevent application of any antilapse  
42 statute that might direct a nonprobate transfer on death to the surviving issue of a beneficiary who  
43 failed to survive the owner. See, e.g., Section 21110 (antilapse). Rather, the statement is intended  
44 only to indicate that the registering entity involved should transfer or reregister the security as  
45 directed by the decedent's personal representative.

46 See also the Comment to Section 5501 on the meaning of "survive" for purposes of this part.

1 § 5507.5. Community property rights of nonconsenting spouse; effect of dissolution of  
2 marriage

3 5507.5. This part is subject to Chapter 2 (commencing with Section 5010) of  
4 Part 1 [and to Part 4 (commencing with Section 5600)].

5 **Comment.** Section 5507.5 makes clear that rights granted by this part are subject to Sections  
6 5010-5032 (community property rights of nonconsenting spouse in nonprobate transfers) [and  
7 5600-5602 (dissolution of marriage revokes all nonprobate transfers to former spouse)].

8 Property rights under this part may be subject to statutory qualifications other than those noted  
9 in Section 5507.5. See, e.g., Sections 220-226 (simultaneous death), 250-258 (effect of  
10 homicide), 260-288 (disclaimer). Property received under Section 5507 may be subject to  
11 apportionment of estate taxes. See Sections 20100-20225. If a TOD beneficiary fails to survive  
12 the owner, the beneficiary's interest may be subject to the antilapse statute. See Section 21110.

13 **Note.** AB 1683 (Kuykendall) deals with the community property problem by saying  
14 "Nothing in this part alters the community character of community property or  
15 community rights in community property." The Commission prefers a specific reference  
16 to Sections 5010-5032, which spell out the rights of a nonconsenting spouse in a  
17 nonprobate transfer of community property, as in Section 5507.5 above. The Commission  
18 solicits comment on this language.

19 The bracketed language, "Part 4 (commencing with Section 5600)," refers to the  
20 Commission's Tentative Recommendation on *Effect of Dissolution of Marriage on*  
21 *Nonprobate Transfers* (January 1998), which would provide that dissolution of marriage  
22 revokes all nonprobate transfers to a former spouse.

23 § 5508. Protection of registering entity

24 5508. (a) A registering entity is not required to offer or to accept a request for  
25 security registration in beneficiary form. If a registration in beneficiary form is  
26 offered by a registering entity, the owner requesting registration in beneficiary  
27 form assents to the protections given to the registering entity by this part.

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

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

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

1 **Comment.** Section 5508 is the same as Section 8 of the Uniform TOD Security Registration  
2 Act (1989), except for substitution of “part” for “act” and “Section 5507” for “Section 7.” A  
3 “request” for registration in beneficiary form may be in any form chosen by a registering entity.  
4 This part does not prescribe a particular form and does not impose record-keeping requirements.  
5 Registering entities’ business practices, including any industry standards or rules of transfer agent  
6 associations, will control.

7 The written notice referred to in subdivision (c) would qualify as a notice under Commercial  
8 Code Section 8403. “Good faith” as used in subdivision (c) is intended to mean “honesty in fact  
9 and the observance of reasonable commercial standards of fair dealing in the trade,” as specified  
10 in Commercial Code Section 2103(1)(b).

11 The protections described in this section are designed to meet any questions regarding  
12 registering entity protection that may not be foreclosed by issuer protections provided in the  
13 Uniform Commercial Code. For a discussion of the relevant Uniform Commercial Code  
14 provisions, see Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga.  
15 L. Rev. 789, 823 n.90 (1987).

16 **§ 5509. Nontestamentary transfer on death; rights of creditors**

17 5509. (a) A transfer on death resulting from a registration in beneficiary form is  
18 effective by reason of the contract regarding the registration between the owner  
19 and the registering entity and this part and is not testamentary, and is not invalid  
20 because the registration does not comply with the requirements for execution of a  
21 will, and this code does not invalidate the registration.

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

24 **Comment.** Section 5509 is the same as Section 9 of the Uniform TOD Security Registration  
25 Act (1989), with the addition of the last portion of subdivision (a), drawn from Section 5000.

26 **§ 5510. Terms, conditions, and forms for registration**

27 5510. (a) A registering entity offering to accept registrations in beneficiary form  
28 may establish the terms and conditions under which it will receive requests (1) for  
29 registrations in beneficiary form, and (2) for implementation of registrations in  
30 beneficiary form, including requests for cancellation of previously registered TOD  
31 beneficiary designations and requests for reregistration to effect a change of  
32 beneficiary. The terms and conditions so established may provide for proving  
33 death, avoiding or resolving any problems concerning fractional shares,  
34 designating primary and contingent beneficiaries, and substituting a named  
35 beneficiary’s descendants to take in the place of the named beneficiary in the event  
36 of the beneficiary’s death. Substitution may be indicated by appending to the name  
37 of the primary beneficiary the letters LDPS, standing for “lineal descendants per  
38 stirpes.” This designation substitutes a deceased beneficiary’s descendants who  
39 survive the owner for a beneficiary who fails to so survive, the descendants to be  
40 identified and to share in accordance with the law of the beneficiary’s domicile at  
41 the owner’s death governing inheritance by descendants of an intestate. Other  
42 forms of identifying beneficiaries who are to take on one or more contingencies,  
43 and rules for providing proofs and assurances needed to satisfy reasonable  
44 concerns by registering entities regarding conditions and identities relevant to

1 accurate implementation of registrations in beneficiary form, may be contained in  
2 a registering entity's terms and conditions.

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

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

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

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

9 John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter  
10 Q Brown *or* John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

11 **Comment.** Section 5510 is the same as Section 10 of the Uniform TOD Security Registration  
12 Act (1989). Use of "and" or "or" between the names of persons registered as co-owners is  
13 unnecessary under this part and should be discouraged. If used, the two words should have the  
14 same meaning insofar as concerns a title form, i.e., that of "and" to indicate that both named  
15 persons own the asset.

16 Descendants of a named beneficiary who take by virtue of an "LDPS" designation appended to  
17 a beneficiary's name take as TOD beneficiaries rather than as intestate successors. If no  
18 descendant of a predeceased primary beneficiary survives the owner, the security passes as part of  
19 the owner's estate as provided in Section 5507.

20 **§ 5511. Application of part**

21 5511. This part applies to registrations of securities in beneficiary form made  
22 before, on, or after January 1, 2000, by decedents dying on or after January 1,  
23 2000.

24 **Comment.** Section 5511 is the same as Section 11 of the Uniform TOD Security Registration  
25 Act (1989), except that it applies this part to registrations made before, "on," or after the operative  
26 date.

## CONFORMING REVISIONS

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

29 SEC. \_\_\_\_\_. Section 8107 of the Commercial Code is amended to read:

30 8107. (a) "Appropriate person" means any of the following:

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

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

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

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

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

1 (6) With respect to an endorsement or an instruction, the beneficiary of a  
2 security registered in beneficiary form as defined in subdivision (a) of Section  
3 5501 of the Probate Code, if the beneficiary has survived the death of the  
4 registered owner or all registered owners.

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

7 (1) It is made by the appropriate person.

8 (2) It is made by a person who has power under the law of agency to transfer the  
9 security or financial asset on behalf of the appropriate person, including, in the  
10 case of an instruction or entitlement order, a person who has control under  
11 paragraph (2) of subdivision (c) or paragraph (2) of subdivision (d) of Section  
12 8106.

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

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

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

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

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

28 (e) Effectiveness of an endorsement, instruction, or entitlement order is  
29 determined as of the date the endorsement, instruction, or entitlement order is  
30 made, and an endorsement, instruction, or entitlement order does not become  
31 ineffective by reason of any later change of circumstances.

32 **Comment.** Section 8107 is amended to add paragraph (6) to subdivision (a). This is a technical  
33 amendment to make clear that a TOD beneficiary is an "appropriate person" when the beneficiary  
34 has survived the registered sole owner or all the registered owners of a security registered in  
35 beneficiary form under the Uniform TOD Security Registration Act (1989). See Prob. Code §§  
36 5500-5511. See also Section 8102 ("entitlement order," "financial asset," "endorsement,"  
37 "instruction," "security," "security certificate," and "uncertificated security" defined).