

## Memorandum 2020-16

**Stock Cooperatives and Uniform TOD Security Registration Act  
(Discussion of Issues)**

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In its recent recommendation on revocable transfer on death deeds (RTODD), the Commission<sup>1</sup> concluded that the RTODD statute should not be applied to an interest in a stock cooperative (a kind of residential real property development).<sup>2</sup> Instead, the Commission would investigate whether the Uniform TOD Security Registration Act could be adapted for use in transferring an interest in a stock cooperative, outside of probate, on the death of the interest holder.<sup>3</sup> That inquiry was commenced earlier this year.<sup>4</sup> This memorandum continues it.

Unless otherwise indicated, all statutory references in this memorandum are to the Probate Code.

## BACKGROUND

A stock cooperative is a form of “common interest development,” in which title to the development is held by corporation.<sup>5</sup> Individuals own a share of stock in the corporation, which entitles them to the exclusive right to occupy a unit in the development.<sup>6</sup> That right is typically expressed in a long-term lease agreement. While the individual’s ownership interest in a stock cooperative is a real property interest,<sup>7</sup> it is not evidenced or conveyed by a deed. While the lease is sometimes recorded, that practice is not required by law and is not universal.

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm’n Reports 135, 157 (2019).

3. *Id.*

4. See Memorandum 2020-5.

5. See Civ. Code §§ 4100(d), 4190.

6. See Civ. Code §§ 4185(a)(4), 4190.

7. See Civ. Code § 783.1.

The RTODD statute authorizes a real property owner to execute a statutory form deed that names a beneficiary to receive title to the property on the owner's death, outside of probate.<sup>8</sup> The deed must be recorded.<sup>9</sup> The efficacy of the RTODD depends on the title recordation system.

The Uniform TOD Security Registration Act ("Security Act") permits a security to be registered in transfer-on-death (TOD) form.<sup>10</sup> On the owner's death, title to the security passes to the beneficiary named in the TOD registration documents, outside of probate. As the name implies, the Security Act is California's enactment of a Uniform Act that was promulgated by the Uniform Law Commission (ULC).<sup>11</sup> Its enactment was recommended by the Commission.<sup>12</sup> A copy of California's statute is attached for reference.

When the Commission concluded that RTODD statute would be a poor fit for stock cooperatives (because it relies on the recordation of a deed), the Commission decided to investigate whether the Security Act could be adapted for use in transferring an interest in a stock cooperative on the owner's death. The Security Act was designed to transfer ownership of shares of stock, so it might be suited to the transfer of a share of stock in a stock cooperative.

At the January meeting, the Commission decided that this study should proceed with the following two steps:

- (1) Research whether any other jurisdiction had modified the Security Act so that it applies to stock cooperatives. The staff would also look for any case law holding that the unmodified Security Act could be used to transfer an interest in a stock cooperative.
- (2) Identify any parts of the Act that may need to be adjusted to make the Act applicable to California stock cooperatives. Work steadily through the resolution of those issues.<sup>13</sup>

This memorandum presents the results of the first step and begins the second step (by discussing the related issues of voluntariness and liability).

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8. See Sections 5600-5706.

9. See Section 5626.

10. See Sections 5500-5512.

11. See Uniform TOD Security Registration Act (1989/1998); <[www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=c1a18c95-cbd2-8da2-aec5-2d5e4f4ccd0a&forceDialog=0](http://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=c1a18c95-cbd2-8da2-aec5-2d5e4f4ccd0a&forceDialog=0)>.

12. See *Uniform TOD Security Registration Act*, 28 Cal. L. Revision Comm'n Reports 577 (1998).

13. See Memorandum 2020-5, p. 4; Minutes (Jan. 2020), p. 4.

## OTHER JURISDICTIONS

The Uniform TOD Security Registration Act has been enacted in 48 states (all but Texas and Louisiana), as well as the District of Columbia.<sup>14</sup> Stock cooperatives have long existed in most of those jurisdictions.<sup>15</sup>

The staff examined the enactment of the Security Act in those jurisdictions and found no evidence that those statutes had been modified to address the application of the statutes to stock cooperatives.

The staff also found no evidence of court decisions holding that the Uniform Act, as drafted by the ULC, can be used to transfer an ownership interest in a stock cooperative.

However, in conducting that research, the staff did find a bit of interesting history, from the Commission's and the ULC's examination of RTODDs.

## INTERESTING HISTORY

In 2007, when the Legislature was first considering legislation to implement the Commission's recommendation on RTODDs, we received an email from Bob Sheppard, the owner of an interest in a stock cooperative.<sup>16</sup> Mr. Sheppard was a regular contributor to the Commission's study of common interest developments and he often shared useful information on how stock cooperatives are different from other common interest developments.

Mr. Sheppard expressed concern that the RTODD statute, as drafted, would not be workable for stock cooperatives, because the owner's separate interest is not evidenced by a recorded deed. At that time, the staff deemed the concern to be too complex to address in the pending legislation and recommended that it be studied separately, after enactment of the bill. The bill was not enacted and repeated attempts to enact the bill over the next few years were unsuccessful. For that reason, the separate study of the application of the statute to stock cooperatives was never conducted.

Mr. Sheppard's concern is consistent with the Commission's reasoning in its 2019 recommendation on RTODDs. The character of an ownership interest in a stock cooperative is not a good fit for a statute that depends on recordation of a

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14. See <[www.uniformlaws.org/committees/community-home?CommunityKey=4138971b-da18-4a73-8bfa-86a3790c4408](http://www.uniformlaws.org/committees/community-home?CommunityKey=4138971b-da18-4a73-8bfa-86a3790c4408)>.

15. See <<https://coophousing.org/resources/living-in-a-cooperative/how-to-find-a-housing-cooperative/>>.

16. See Memorandum 2007-9, Exhibit pp. 1-4.

deed. The staff regrets not having remembered Mr. Sheppard's email when conducting its 2018 consideration of the matter. It would have added useful context for that study.

As it turns out, Mr. Sheppard's email was also forwarded to Thomas P. Gallanis, the Reporter for the ULC drafting committee working on the Uniform Real Property Transfer on Death Act (a uniform RTODD statute). The Commission's former Executive Secretary, Nathaniel Sterling, was the Chair of that committee.

Mr. Gallanis prepared a memorandum on the issue raised by Mr. Sheppard for consideration by the committee at its next meeting. The memorandum, which includes Mr. Sheppard's email, is attached as an Exhibit.<sup>17</sup>

In his memorandum, Mr. Gallanis makes three main points:

- (1) He explains Mr. Sheppard's concern that the Real Property Transfer on Death Act's reliance on recordation of a deed is a poor fit for the conveyance of an interest in a stock cooperative.
- (2) He suggests the possibility of modifying the Real Property Transfer on Death Act to make it workable for conveyance of a stock cooperative.
- (3) As an alternative, he offers the possibility of adapting the Uniform TOD Security Registration Act for use in transferring an interest in a stock cooperative.

Mr. Gallanis's memorandum was considered by the drafting committee at its next meeting.<sup>18</sup> However, Minutes corresponding to the meeting are no longer available,<sup>19</sup> and nothing in a review of subsequent ULC history indicates that either the committee or the ULC took any further action on the issues raised in the memorandum.

The staff was able to locate and contact Mr. Gallanis. Although he had no independent recollection of the committee meeting, he still had his personal notes from the meeting. In an email, he indicated that the notes reflected only that the committee had decided the uniform act it was presently working on should be limited to interests in real property transferred by deed, and should exclude

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17. See Exhibit pp. 1-15, *infra*.

18. See <<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=11724768-e711-4dd7-4a5f-b706a714a62a&forceDialog=0>>.

19. The ULC reported to staff that Minutes of ULC Committee meetings are sometimes either not prepared or not retained.

ownership interests that did not fit this description, such as shares in a cooperative, or some timeshares.

It is helpful to know that drafting committee reached a conclusion similar to the Commission's and that the idea of adapting the Security Act is a reasonable one.

The staff has not reached out to Nathaniel Sterling to ask him about these issues. We will send him a copy of this memorandum and ask for his thoughts.

#### VOLUNTARINESS AND LIABILITY LIMITATION

The first provision of the Security Act that should be considered is Section 5508. That section, which does not differ materially from Section 8 of the Uniform Act, establishes two important principles:

- (1) The "registering entity" who maintains records of security ownership and transfer (e.g., a stockbroker) is not required to offer TOD registration as a service.
- (2) The liability of a registering entity that offers TOD registration is limited.

For ease of reference, Section 5508 is reproduced below:

5508. (a) A registering entity is not required 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 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.

The two main elements of that provision are discussed separately below.

### **Voluntariness**

Under existing law, a registering entity is never required to offer TOD registration of securities as a service. That makes sense, given that the registering entities are private business entities and are in the best position to weigh the relative advantages and disadvantages of providing the service. The apparent advantage of offering the service is that it might attract customers, who value the option of inexpensively avoiding probate through TOD registration.

The likely disadvantages are the cost of administering the service and the risk of liability that would result. As discussed further in the next section of the memorandum, the Security Act includes an express liability limitation provision, to minimize the risk of providing the service. However, the statute's provision is not an absolute bar on immunity. There could still be situations in which a registering entity, through its own negligence, could face liability for a botched transfer.

If the Security Act were made applicable to stock cooperatives, the corporation that owns the development would be the registering entity. With one important exception, a stock cooperative's decision on whether to offer TOD registration to its members would probably turn on similar considerations: Would administering the option be too much hassle and would the resulting risk of liability be too great?

The added consideration is that a stock cooperative is a democratically governed body. If a majority of members favor the option of TOD registration, then presumably the governing board of the cooperative would eventually authorize it. That would be a self-interested decision, rather than a business decision. The costs and benefits would both be borne by the same group.

As noted above, the risk of liability cannot be entirely eliminated. And the stakes could be quite high, as the harm would involve the erroneous transfer of a real property interest. While some stock cooperatives are part of large professionally managed organizations, others are likely quite small, with laypeople elected to act as board members.

In the larger developments the risks and burdens of providing TOD registration might be manageable and attractive to the membership. Smaller developments may lack the resources to competently manage a program that could create large losses.

**In light of all of the above, the staff believes that the voluntariness rule should not be changed.** In other words, the statute should not be revised to make the TOD registration option mandatory. This would ensure, as under the existing Security Act, that there is no one-size-fits-all mandate that would be disadvantageous to some registering entities. Stock cooperatives would be free to assess their own circumstances and make their own decision on whether to offer the service. That decision would be informed by the preferences of their membership and an appraisal of their own capabilities and tolerance for risk.

### **Liability**

As noted, Section 5508(c) expressly limits the liability of a registering entity:

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 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.

Under that provision, a registering entity is not liable if it transfers property pursuant to the statute and the terms of the registration, so long as it acted in good faith and without first having received written notice of a contrary claim. No other notice or information available to the registering entity affects that rule.

That is a strong limitation, but it is not absolute. A registering entity could still be liable if it acts contrary to the statute or the terms of the registration, acts in bad faith, or acts after having received written notice of a contrary claim.

As a matter of policy, it seems fair that the registering entity would be liable in those circumstances. However, the Commission should consider whether that

degree of exposure would deter participation by stock cooperatives, to such an extent that the statute would not be used enough to justify the effort involved in its development and enactment.

If the Commission is concerned about that possibility, it might consider strengthening the liability limitation.

For example, the liability limitation provision that governs a financial institution that transfers funds pursuant to a “pay on death” account does not include a requirement of “good faith.”<sup>20</sup> In addition, mere receipt of “written notice” of a contrary claim is not sufficient to negate the liability limitation. Instead, the liability shield is only negated if the financial institution transfers funds after being “served with a court order restraining payment.”<sup>21</sup>

In addition, the staff noticed that the commentary on the Security Act states that the term “good faith” has the meaning given that term in the Uniform Commercial Code. While that seems appropriate when applying the statute to business entities, it might be inappropriate as applied to nonprofit self-governing communities. If the term “good faith” is retained in a provision made applicable to stock cooperatives, it might make sense to add a comment making clear that the UCC definition does not apply.

#### CONCLUSION

**If the Security Act is adapted for use in transferring interests in stock cooperatives, the staff believes that it should continue to be optional.** Each stock cooperative should be free to decide for itself whether to take on the burden and risk of administering TOD registration.

That risk could perhaps be minimized by modifying the liability limitation rule to strengthen its protections. That could be done by adopting the approach taken in the provision that governs a POD account in a financial institution (i.e., removing the “good faith” requirement, and tightening the provision on actual notice of a contrary claim). **If the Commission is interested in this possibility, the staff could do a broader survey of similar provisions before presenting specific language.**

The Commission should also consider whether, in practice, any risk of liability would be such a deterrent as to obstruct meaningful participation, thereby

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20. See, e.g., Section 5405(a).

21. See, e.g., Section 5405(b).



negating much of the benefit of the statutory reform. If the Commission believes that to be true, it could decide to drop the effort to tailor the Security Act to stock cooperatives and think about whether there is some other approach that would not involve the stock cooperative in the process.

**How would the Commission like to proceed?**

Respectfully submitted,

Steve Cohen  
Staff Counsel

Brian Hebert  
Executive Director



## MEMORANDUM

To: Drafting Committee for a Uniform Transfer on Death for Real Property Act

From: Thomas P. Gallanis, Reporter

Date: November 8, 2007

Re: Application of Act to Housing Units in Stock Cooperatives

Attached is an e-mail message from Mr. Bob Sheppard of California to the California Law Revision Commission (CLRC), in connection with the CLRC's proposed statute on transfer on death deeds. Our chair, Nathaniel Sterling, has also corresponded by e-mail with Mr. Sheppard. The aim of Mr. Sheppard's messages is to encourage the CLRC (and NCCUSL) to expand the TOD deed statute beyond recorded interests, to include ownership interests in housing organized as a stock cooperative. As Mr. Sheppard explains, the documents evidencing such ownership interests are often not recorded in the office of the county recorder but instead are kept by the board of the cooperative. Accordingly, a transfer on death deed recorded in the county where the property is located would not be a helpful instrument for the transfer on death of interests in a stock cooperative.

A question for our drafting committee is whether to expand our statute beyond recorded interests transferred by deed. This memorandum raises the issue without taking a position. If we do expand our statute, a possible model might be the 1989 Uniform Nonprobate Transfers on Death Act ("UNTDA"), which contains separate Parts for different kinds of nonprobate assets: e.g., Part 2 on multiple-person bank accounts, Part 3 on securities. I had been envisioning that our act on TOD deeds would be incorporated into UNTDA as Part 4. If we draft sections on the transfer on death of ownership interests in housing organized as a stock cooperative, it would make sense to organize those sections as a separate Part 5.

If we draft such provisions, they could be modeled loosely on UNTDA Part 3, concerning the TOD registration of securities. (Part 3 is attached.) I want to draw your attention, in particular, to Section 308. Section 308 provides that the registering entity (which in this new context could be defined as the board of the cooperative) is not required to accept a request for TOD registration, but if the entity does accept the request then certain rights, responsibilities, and protections attach.

At our drafting committee meeting, I would welcome your thoughts on Mr. Sheppard's suggestion.

From bob@bobsheppard.org Tue Mar 20 11:58:08 2007  
Date: Tue, 20 Mar 2007 11:58:08 -0700 (PDT)  
From: Bob Sheppard <bob@bobsheppard.org>  
To: Brian Hebert <bhebert@clrc.ca.gov>  
Subject: Re: TOD deed study

Brian:

I appreciate the Commission's valuable work developing proposed TOD deed (transfer on death deed) legislation. My concern is that the current TOD deed draft legislation might prevent owners of units in stock co-operatives from taking advantage of this option.

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Since the purpose of a TOD deed is to allow limited-income homeowners to transfer their home to designated beneficiaries, it should apply to all homeowners, including owners of co-operative housing units, without the need to incur legal expenses. I don't think it would be clear to such owners (especially limited-equity housing co-op owners), how they should proceed under the Commission's current draft, or even if it's possible to use it.

In a stock cooperative, a homeowner's interest consists of two linked instruments. The first is the ownership of a membership interest in the corporation that owns or leases the project. The membership interest is generally evidenced by a share or membership certificate. This gives the homeowner the right to participate in the governance of the cooperative and to enter into a proprietary lease to occupy their unit. The second instrument is a proprietary lease that grants the right of occupancy to the member owning the membership interest. The lease imposes restrictions on the use of the unit and has other obligations. It also grants the owner the right to use the common areas. These two documents are generally not severable or transferable unless permitted by the co-op. The share may be appurtenant to the lease, or vice versa. There is also a set of house rules that interpret the restrictions in the lease.

There are "market-rate" cooperatives in which the unit owners may sell their units for whatever price they can obtain. There are also "limited-equity" housing cooperatives (LEHC) that meet the requirements of section 33007.5 of the Health and Safety Code. The resale price of the unit is limited by this code section to the "transfer value" defined in it.

Other relevant characteristics of stock co-ops include the following:

- Leases or memoranda of lease are often recorded in market-rate co-ops. However, there are cases where they are not.
- I know of no cases (there may be a few) where such instruments are recorded in limited-equity co-ops. . . .
- Cooperatives that do not currently record might be resistant to starting the practice due to legal expense, ignorance, politics, etc.

- The sale of a unit in a market-rate co-op is generally handled by the unit owner, which might involve a broker. The co-op must approve of a buyer, but this is often a formality.
- When an owner of a unit in a limited-equity co-op wishes to sell the unit, the co-op generally buys the unit back at the transfer value (see Section 33007.5) and the co-op markets and sells the unit to the subsequent unit owner. The approval of a new member is generally not a formality and often includes a formal selection process.
- The initial financing of a cooperative generally involves the co-op carrying a blanket mortgage. This mortgage is superior to the unit owner's interest. The initial member buys a membership interest that is their proportionate share of the difference between the acquisition/development cost of the project and the amount of the blanket mortgage.
- Some newer limited-equity cooperatives created by land trusts hold a leasehold interest in their property.

Because of these, the procedure for the transfer on death for a co-op unit is significantly different than in other CIDs:

#### Market-rate co-ops:

- In most, but not all, cases, a memorandum of lease would have been recorded when the deceased member originally purchased the unit. The member would also have had to purchase shares or a membership in the cooperative.
- Depending on the language in the proprietary lease and bylaws, the right to occupy the unit may terminate on the death of the member. The shares and possibly the lease become part of the member's estate. The estate is responsible for paying monthly assessments until the unit is sold or inherited. In other words, the obligations of the proprietary lease will continue to be enforced on the member's estate until satisfied.
- If permitted by the co-op's governing documents, the shares and the right to occupy the unit can be inherited by the beneficiary. Otherwise, the beneficiary may need to be interviewed and qualified by the co-op's board. If accepted by the co-op the beneficiary would become the owner of the unit. Otherwise, the estate would sell the unit to a buyer that would need to be approved by the co-op. This could range from a formality to a political process (e.g. Richard Nixon).
- If the Board approves of the beneficiary, the estate signs over the shares/membership to the beneficiary and signs a document canceling the lease. The lease cancellation is recorded if a memorandum of lease had been previously recorded.
- The Board enters into a new lease with the beneficiary and transfers the shares/membership to the beneficiary. Depending on the co-op's practices, a new memorandum of lease may be recorded.

#### Limited-equity housing co-ops:

- Generally nothing would have been recorded when the deceased member purchased the unit. The member would also have had to purchase shares or a membership in the cooperative.
- The right to occupy the unit and membership rights terminate upon the member's death. However, the obligations in the proprietary lease will continue to be enforced on the member's estate until satisfied.

- The right to receive the proceeds from the sale of the shares becomes part of the member’s estate.
- There is generally a requirement that the co-op be given advanced notice of a member’s intention to vacate the unit (e.g. 60 days). Thus, the member’s estate is responsible for monthly assessment for this period.
- Since the shares and right to occupy the unit must generally be transferred only to the co-op, the co-op markets the unit at its expense.
- At the end of the notice period, the estate removes or abandons the contents of the unit and signs over the shares to the co-op.
- The co-op pays the estate for the shares at the transfer value, executes a new lease with the new member and issues a new share certificate to the new member, who has purchased the unit for the transfer value. The estate’s obligations under the proprietary lease end.

Since the deceased member’s estate might only acquire the *value* of the shares, I believe the CLRC’s draft should permit a beneficiary to acquire the funds from the sale of the unit outside of probate or a trust. Also, the draft should apply in cases where there is no original recordation of a lease or memorandum of lease.

I believe that a TOD deed law should allow members to designate beneficiary(s) of the sale of the shares and should require co-op boards to comply with the member’s wishes.

Since the draft requires the recordation of a TOD deed, it’s hard to see how an owner of a unit in an limited-equity housing co-op could use the TOD deed document, since transfers of leases are generally not permitted by such cooperatives and there is no provision in the draft for a TOD deed that would include a share or membership.

I urge the Commission to make sure that the TOD deed draft does not disenfranchise homeowners in a stock cooperative developments. If the Commission believes that the draft already applies to such owners, I urge you to insert clarifying language so that such a lay person can use this instrument. One possible modification to the name of the instrument would be a “revocable transfer on death instrument”.

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If you have any questions about my comments, please feel free to contact me.

Yours truly,

Bob Sheppard

**UNIFORM NONPROBATE TRANSFERS ON DEATH ACT (1989)**  
**PART 3. TOD SECURITY REGISTRATION**

SECTION 301. DEFINITIONS. In this part, unless the context otherwise requires:

- (1) “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.
- (2) “Devisee” means any person designated in a will to receive a disposition of real or personal property.
- (3) “Heirs” means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
- (4) “Person” means an individual, a corporation, an organization, or other legal entity.
- (5) “Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.
- (6) “Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- (7) “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.
- (8) “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.

(9) “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.

(10) “Security account” means (i) 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 (ii) 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.

(11) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

#### COMMENT

The definition of “security” is derived from UCC § 8-102 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 UPC § 2-104 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 drafting committee 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.

The definitions of “devisee,” “heirs,” “person,” “personal representative,” “property,” and “state” are taken from Section 1-201 of the Uniform Probate Code which, as revised in 1989, includes this part as Part 3 of Article VI.



## SECTION 302. REGISTRATION IN BENEFICIARY FORM; SOLE OR JOINT

TENANCY OWNERSHIP. 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

This section 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. 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 "individuals," 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 individuals using this ownership form as to their choice of death beneficiary. The definition of "beneficiary form" in Section 301 indicates that any "person" may be designated beneficiary in a registration in beneficiary form. "Person" is defined so that a church, trust company, family corporation, or other entity, as well as any individual, may be designated as a beneficiary.

SECTION 303. REGISTRATION IN BENEFICIARY FORM; APPLICABLE LAW. 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

This 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 an enactment of this 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 this section is designed, as is Section 101, to establish a statutory presumption that a general principle of law is available to achieve a result like that made possible by this part.

SECTION 304. ORIGINATION OF REGISTRATION IN BENEFICIARY FORM. 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

As noted above in commentary to Section 302, this part places no restriction on who may be designated beneficiary in a registration in beneficiary form.

SECTION 305. FORM OF REGISTRATION IN BENEFICIARY FORM. 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

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 committee 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 nonprobate death benefit or transfer on death.

SECTION 306. EFFECT OF REGISTRATION IN BENEFICIARY FORM. 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

This 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 310. 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.

SECTION 307. OWNERSHIP ON DEATH OF OWNER. 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

Even though multiple owners holding in the beneficiary form here authorized 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 also 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 308 deals with whether intermediaries have any obligation to offer beneficiary registrations of any sort; Section 310 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 reference to surviving, multiple TOD beneficiaries as tenants in common is not intended to suggest that a registration form specifying unequal shares, such as "TOD A (20%), B (30%), C (50%)," would be improper. Though not included in the beneficiary forms described for illustrative purposes in Section 310, the Act enables a registering entity to accept and implement a TOD beneficiary designation like the one just suggested. If offered, such a registration form should be implemented by registering entity terms and conditions providing for disposition of the share of a beneficiary who predeceases the owner when two or more of a group of multiple beneficiaries survive the owner. For example, the terms might direct the share of the predeceased beneficiary to the survivors in the proportion that their original shares bore to each other. Unless unequal shares are specified in a registration in beneficiary form designating multiple beneficiaries, the shares of the beneficiaries would, of course, be equal.

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 nonprobate 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 301 regarding the meaning of "survive" for purposes of this part.

#### SECTION 308. PROTECTION OF REGISTERING ENTITY.

(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 307 and does so in good faith reliance (i) on the registration, (ii) on this part, and (iii) 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

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 subsection (c) would qualify as a notice under UCC § 8-403.

“Good faith” as used in this section is intended to mean “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade,” as specified in UCC § 2-103(1)(b).

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. Because persons interested in this part may wish to be reminded of relevant UCC provisions, a brief summary follows.

“U.C.C. § 8-403, ‘Issuer’s Duty as to Adverse Claims’ contains detailed provisions regarding duties of inquiry by an issuer of a certificated or uncertificated security who is requested to effect a transfer, and the availability and use of 30 day notices to force adverse claimants to start litigation if further delay in transfer is desired. U.C.C. § 8-201's definition of ‘issuer’ for purposes of ‘registration of transfer...’ is simply ‘a person on whose behalf transfer books are maintained’. U.C.C. § 8-403 is among the sections dealing with registration of transfers.

“U.C.C. sections 8-308 and 8-404(1) appear to exonerate an issuer who acts in response to transfer directions signalled by the ‘necessary indorsement’ on or with a certificated security or in response to ‘an instruction originated by an appropriate person’ in the case of an uncertificated security. Section 8-308 describes the meaning of ‘appropriate person’ in the case of a certificated security as ‘the person specified by the certificated security . . . to be entitled to the security.’ U.C.C. § 8-308(6) (1978). In the case of an uncertificated security, ‘appropriate person’ means the ‘registered owner.’ *Id.* § 8-308(7). The survivor of owners listed as joint tenants with right of survivorship is specifically defined as an authorized person. *Id.* § 8-308(8)(d). The U.C.C. aspect of the problem could be met by an additional sub-paragraph to section 8-308(8) that would include a TOD beneficiary as an ‘appropriate person’ when the beneficiary has survived the

owner.

“No U.C.C. addition would be necessary if a TOD beneficiary designation were viewed as a contingent order for transfer at the owner’s death that may be safely implemented as a direction from the owner as an ‘authorized person.’ The owner’s death before completion of the transfer would not pose U.C.C. problems because section 8-308(10) provides: ‘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 does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.’

“It might be questioned whether a TOD direction, which may be revoked before it is carried into effect and is also contingent on the beneficiary’s survival of the registrant, is within the transfer directions contemplated by the U.C.C. framers for purposes of issuer protection. However, since section 8-202 explicitly protects issuers against problems arising because of restrictions or conditions on transfers, only the novelty of revocable directions for transfer on death gives pause.

“In general, article 8 of the U.C.C. reflects a careful attempt to protect implementation of a wide range of transfer instructions so long as the signatures are genuine and are those of owners acting in conformity with duly imposed rules of the issuer organization. . . . Hence, existing U.C.C. protections should be adequate, . . .” Wellman, *Transfer-On-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 823 n.90 (1987).

#### SECTION 309. NONTESTAMENTARY TRANSFER ON DEATH.

(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.

~~(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

Subsection (a) is comparable to Section 214. Subsection (b) is similar to Section 101(b).

Consideration should be given to the desirability of adapting the section as necessary to fit local principles regarding the rights of a surviving spouse to protection against disinheritance by nonprobate transfers effective at death.

Incident to adoption of new Section 102 by NCCUSL in 1998, former subsection (b) was deleted and the text of former subsection (a) became the entire text of the section. New 102 describes remedies against recipients of nonprobate transfers at death available to a decedent's probate exemption beneficiaries and creditors if the decedent's probate estate is inadequate to discharge these claims.

#### SECTION 310. TERMS, CONDITIONS, AND FORMS FOR REGISTRATION.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) 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

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 predeceased primary beneficiary survives the owner, the security passes as a part of the owner’s estate as provided in Section 307.



## APPENDIX

### UNIFORM TOD SECURITY REGISTRATION ACT (Government Code Sections 5500 - 5512)

#### § 5500.

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.

#### § 5501.

5501. For purposes of this part:

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

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

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

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

(e) (1) “Security account” means any of the following:

(A) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, 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.

(B) An investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, the cash balance in the account, and cash equivalents, and interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner’s death.

(C) 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.

(2) For the purposes of this subdivision, “cash equivalent” means an investment that is easily converted into cash, including, treasury bills, treasury notes, money market funds, savings bonds, short-term instruments, and short-term obligations.

(f) This section may not be construed to govern cash equivalents in multiple-party accounts that are governed by the California Multiple-Party Accounts Law, Part 2 (commencing with Section 5100).

**§ 5502.**

5502. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals 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.

**§ 5503.**

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.

**§ 5504.**

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.

**§ 5505.**

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.

**§ 5506.**

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.

**§ 5507.**

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.

**§ 5508.**

5508. (a) A registering entity is not required 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 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.

**§ 5509.**

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.

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

**§ 5510.**

5510. (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for (1) registrations in beneficiary form, and (2) 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.

(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 that 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.

**§ 5511.**

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 of Division 5.

**§ 5512.**

5512. This part applies to registrations of securities in beneficiary form made before, on, or after January 1, 1999, by decedents dying on or after January 1, 1999.