UNIFORM TOD SECURITY REGISTRATION ACT

Drafted by the

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ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

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UNIFORM TOD SECURITY REGISTRATION ACT

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UNIFORM TOD SECURITY REGISTRATION ACT

PREFATORY NOTE

This Act is a free-standing version of Part 3 of Article VI of the Uniform Probate Code, as adopted by the National Conference of Commissioners on Uniform State Laws in 1989. The purpose of the Act is to allow the owner of securities to register the title in transfer-on-death (TOD) form. Mutual fund shares and accounts maintained by brokers and others to reflect a customer's holdings of securities (so-called "street accounts") are also covered. The legislation enables an issuer, transfer agent, broker, or other such intermediary to transfer the securities directly to the designated transferee on the owner's death. Thus, TOD registration achieves for securities a certain parity with existing TOD and pay-on-death (POD) facilities for bank deposits and other assets passing at death outside the probate process.

The TOD registration under this Act is designed to give the owner of securities who wishes to arrange for a nonprobate transfer at death an alternative to the frequently troublesome joint tenancy form of title. Because joint tenancy registration of securities normally entails a sharing of lifetime entitlement and control, it works satisfactorily only so long as the co-owners cooperate. Difficulties arise when co-owners fall into disagreement, or when one becomes afflicted or insolvent.

Use of the TOD registration form encouraged by this legislation has no effect on the registered owner's full control of the affected security during his or her lifetime. A TOD designation and any beneficiary interest arising under the designation ends whenever the registered asset is transferred, or whenever the owner otherwise complies with the issuer's conditions for changing the title form of the investment. The Act recognizes, in Section 2, that co-owners with right of survivorship may be registered as owners together with a TOD beneficiary designated to take if the registration remains unchanged until the beneficiary survives the joint owners. In such a case, the survivor of the joint owners has full control of the asset and may change the registration form as he or she sees fit after the other's death.

Implementation of the Act is wholly optional with issuers. The drafting committee received the benefit of considerable advice and assistance from representatives of the mutual fund and stock transfer industries during the course of its three years of preparatory work. Accordingly, it is believed that the Act takes full account of the practical requirements for efficient transfer within the securities industry.

Section 3 invites application of the legislation to locally owned securities though the statute may not have been locally enacted, so long as the Act is in force in a jurisdiction of the issuer or transfer agent. Thus, if the principal jurisdictions in which securities issuers and transfer agents are sited enact the measure, its benefits will become generally available to persons domiciled in states that do not at once enact the statute.

The legislation has been drafted as a separate Act, hence not interpolated as an expansion of the former UPC Article VI, Part 1, treating bank accounts ("multiple-party accounts"). Securities merit a distinct statutory regime, because a different principle has governed concurrent ownership of securities. By virtue either of statute or of account terms (contract), multiple-party bank accounts allow any one cotenant to consume or transfer account balances. See R. Brown, The Law of Personal Property § 65, at 217 (2d ed. 1955); Langbein, The Nonprobate Revolution and the Future of the Law of Succession, 97 Harv. L. Rev. 1108, 1112 (1984). The rule for securities, however, has been the rule that applies to real property: all cotenants must act together in transferring the securities. This difference in the legal regime reflects differences in function among the types of assets. Multiple-party bank accounts typically arise as convenience accounts, to facilitate frequent small transactions, often on an agency basis (as when spouses or relatives share an account). Securities resemble real estate in that the values are typically large and the transactions relatively infrequent, which is why the legal regime requires the concurrence of all concurrent owners for transfers affecting such assets.

Recently, of course, this distinction between bank accounts and securities has begun to crumble. Banks are offering certificates of deposit of large value under the same account forms that were devised for low-value convenience accounts. Meanwhile, brokerage houses with their so-called cash management accounts and mutual funds with their money market accounts have rendered securities subject to small recurrent transactions. In the latest developments, even the line between real estate and bank accounts is becoming indistinct, as the "home equity line of credit" creates a check-writing conduit to real estate values.

Nevertheless, even though new forms of contract have rendered the boundaries between securities and bank accounts less firm, the distinction seems intuitively correct for statutory default rules. True co-owners of securities, like owners of realty, should act together in transferring the asset.

The joint bank account and the Totten trust originated in ambiguous lifetime ownership forms, which required former UPC § 6-103 or comparable state legislation to clarify that an inter vivos transfer was not intended. In the securities field, by contrast, we start with unambiguous lifetime ownership rules. The sole purpose of the present statute is to facilitate a nonprobate TOD mechanism as an option for those owners.

For a comprehensive discussion of the issues entailed in this legislation, see Wellman, Transfer-on-Death Securities Registration: A New Title Form, 21 Ga. L. Rev. 789 (1987).

UNIFORM TOD SECURITY REGISTRATION ACT

SECTION 1. DEFINITIONS. In this [Act], 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. *Comment amended in 1997.*

"Survive" is not defined. No effort is made in this Act 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 Act, 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 Act as Part 3 of Article VI.

SECTION 2. 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 entireties, 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 entireties (T ENT), or as owners of community property. Also, it imposes survivorship on co-owners holding in a beneficiary form that fails to specify a survivorship form of holding. Tenancy in common and community property otherwise than in a survivorship setting is negated for registration in beneficiary form because persons desiring to signal independent death beneficiaries for each individual's fractional interest in a co-owned security normally will split their holding into separate registrations of the number of units previously constituting their fractional share. Once divided, each can name his or her own choice of death beneficiary.

The term "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 1 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 3. 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 UPC § 6-101 (Rev. 1989), to establish a statutory presumption that a general principle of law is available to achieve a result like that made possible by this Act.

SECTION 4. 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 2, this Act places no restriction on who may be designated beneficiary in a registration in beneficiary form.

SECTION 5. 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 6. 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 10. 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 7. 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 8 deals with whether intermediaries have any obligation to offer beneficiary registrations of any sort; Section 10 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 10, 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 1 regarding the meaning of "survive" for purposes of this

Act.

SECTION 8. 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 [Act].

(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 [Act].

(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 7 and does so in good faith reliance (i) on the registration, (ii) on this [Act], 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 [Act] 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 [Act].

(d) The protection provided by this [Act] 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. The Act 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 Act 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 9. NONTESTAMENTARY TRANSFER ON DEATH

(a) In this section, "nonprobate transfer" means a transfer described in subsection (b) by an owner whose last domicile was in this State.

(b) 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 [Act] and is not testamentary.

(c) A transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against that estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received by that transferee.

(d) Nonprobate transferees are liable for the insufficiency described in subsection (c) in the following order of priority:

(1) a transferee designated in the decedent's will or any other governing

instrument, as provided in the instrument;

(2) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received;

(3) other nonprobate transferees, in proportion to the values received.

(e) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(f) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this State, whether or not the transferee is located in this State.

(g) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(h) A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after

proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(i) Unless a written notice asserting that a decedent's estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, a trustee receiving a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to that assets received by the beneficiary.

COMMENT

In 1998, NCCUSL approved a new UPC Section, §6-102, designed to give family exemption beneficiaries and decedents' creditors remedies against recipients of nonprobate transfers at death by most forms of will substitutes. The remedy is available only when probate assets are insufficient to protect these traditional probate estate priorities. The free-standing counterpart of UPC Article VI, the Uniform Nonprobate Transfers on Death Act, was revised to keep it identical to UPC Article VI. The UPC counterpart of this act, UPC 6-309, was revised by eliminating subsection (b). The same change was made in Section 309 of the Uniform Nonprobate Transfers on Death Act. A jurisdiction having legislation similar to UPC 6-102 should enact the UPC counterpart of this section, UPC Section 6-309, or Section 309 in the Uniform Nonprobate Transfers on Death Act.

In order to bring this free-standing act into conformity with the above changes, Section 9 was revised by moving the content of what had been subsection (a) into (b) and re-casting (a) to make "nonprobate transfer" serve to link the exemption and creditor protections described in new 6-102 with this act. In result, the broad definition of "nonprobate transfer" that serves in new UPC 6-102 to cover most will substitutes has been narrowed for purposes of this act to apply only to death benefits resulting from TOD security registrations.

Subsection (d) through (i) of this section as revised in 1998 almost match up with subsections (c) through (i) of new UPC Section 6-102. The differences are that subsection (d) of this section matches (c) in 6-102, and this act has no counterpart for subsection (d) which deals with abatement of gifts at death via revocable trusts. The latter omission makes the content of subsections (e) through (h) of this section identical to subsections (e) through (h) of UPC 6-102. Subsections (i) in the two models are similar, except that Section 9(i) of this Act does not include registrar protection covered in UPC 6-102 (i)(1), that matter being thoroughly covered by other sections of this Act. The balance of this commentary if based on UPC 6-102 commentary.

1. The remedy described by this section is a duty on one receiving a non-probate transfer (defined in subsection (a) to refer only to a death benefit that is effective under (b) and Section 7 of this Act) to contribute as necessary to satisfy family exemptions and duly allowed creditors' claims remaining unpaid because of inadequate probate estate values. The maximum liability for a single non-probate transferee is the amount received. Unless other priorities described in (c) apply, two or more transferees are severally liable for proportions of the liability based on amounts received by each.

If there are no probate assets, or if no probate proceeding has been initiated, a creditor or other person seeking to use this section would need to secure appointment of a personal representative to invoke Code procedures for establishing a creditor's claim as "allowed." The use of regular probate proceedings as a prerequisite to gaining rights for creditors against nonprobate transferees has been a feature of UPC Article VI since original promulgation in 1969. The arrangement works well in practice if procedures for opening estates, satisfying probate exemptions, and presenting claims, approximate UPC procedures.

2. Trusts and non-trust recipients of TOD registration death benefits incur liability in the order described in (d). Note that either a revocable or an irrevocable trust might be designated devisee of a pour-over provision that would make the trust the "principal non-probate instrument in the decedent's estate plan", and, so, liable under (d)(2) ahead of other nonprobate transferees to the extent of values acquired as TOD registration death benefit. Note, too, that nothing would pass to the receptacle trust by the pour-over devise if all probate estate assets are used to discharge exemptions and claims. Still, the fact that the trust was designated to receive a pour-over devise signals that the trust probably includes the equivalent of a residuary clause measuring benefits by available assets and signaling probable intention of the settlor that residuary benefits should abate before other trust gifts if necessary because of settlor's debts.

3. Subsection (e) recognizes that a number of separate instruments and transactions, executed at different times and with or without internal references linking them to other documents, may constitute the paperwork describing succession to a decedent's assets by probate and nonprobate methods. By authorizing control of abatement among gifts made by various transfers at death by the last executed instrument, the subsection permits a simple, last-minute override of earlier directions concerning a decedent's wishes regarding priorities among successors. Thus, a will or trust amendment can correct or avoid liquidity and abatement problems discovered prior to death. The expression "block buster will" was coined by estate planners in the mid-70's to refer to proposed legislation enabling a later will to override death benefits by any nonprobate transfer device. This subsection meets some of the goals of advocates of this legislation.

4. Subsection (f) is based on the principle employed in UPC's Augmented Estate Elective Share remedy (UPC §§2-201 - 2-214) in relation to nonprobate transfers made to persons in other states, possibly by transactions governed by laws of other states. The underlying principle is that the law of a decedent's last domicile should be controlling as to rules of public policy that override the decedent's power to devise a probate estate to anyone he or she chooses.

The principle is implemented by subjecting donee recipients of a decedent's largesse to liability under the decedent's domiciliary law, with the belief that judgments recovered in that state following appropriate due process notice to defendants in other states will be accorded full faith and credit by courts in other states should interstate collection proceedings be necessary.

5. The first and third sentences of subsection (g) are identical to sentences in what originally appeared as Section 15 of the Uniform Multiple Person Accounts Act, upon which this section was based. The second sentence is new. It reflects sensitivity for the dilemma confronting a probate fiduciary who, acting as required of a fiduciary, concludes that the costs and risks associated with a possible recovery from a nonprobate transferee outweigh the probable advantages to the estate and its claimants. A creditor whose claim has been allowed but remains unsatisfied and whose demand for a proceeding has been turned down by the estate fiduciary may proceed at personal risk in efforts to enforce the estate claim against the nonprobate beneficiary. This is so because the last two sentences of (g) shift the risk of unrecoverable costs from the decedent's estate to the claimant who undertakes collection efforts on behalf of the decedent's estate. Any recovery of costs should be used to reimburse the claimant who bore the risk of loss for the proceeding. A personal representative considering declination a demand for a proceeding should note that the "good faith" standard of this section must be determined in light of the representative's general responsibility as a fiduciary.

6. Subparagraph (h) meshes with time limits in UPC sections governing allowance and disallowance of claims. See UPC Sections 3-804 and 3-806.

7. Subsection (i) is designed to enable trustees handling nonprobate transfers to distribute trust assets in accordance with trust terms if no warning of probable estate insolvency has been received. Beneficiaries receiving distribution from a trustee take subject to personal liability in the amount and priority of the trustee based on the value distributed.

SECTION 10. 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 <u>or</u> 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 the Act 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 7.

SECTION 11. SHORT TITLE; RULES OF CONSTRUCTION.

(1) This [Act] shall be known as and may be cited as the Uniform TOD Security Registration Act.

(2) This [Act] shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this [Act] among states enacting it.

(3) Unless displaced by the particular provisions of this [Act], the principles of law and equity supplement its provisions.

SECTION 12. APPLICATION OF ACT. This [Act] applies to registrations of securities in beneficiary form made before or after [effective date], by decedents dying on or after [effective date].