

UNIFORM NONPROBATE TRANSFERS ON DEATH ACT

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ON UNIFORM STATE LAWS

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*WITH PREFATORY NOTE AND COMMENTS*

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# UNIFORM NONPROBATE TRANSFERS ON DEATH ACT

## PREFATORY NOTE

This Act is a free-standing version of Article VI of the Uniform Probate Code, as revised in 1989. The numbering and structure of the Act parallels that of Article VI.

### Multiple-Person Accounts

Part 2 of this Act comprehensively covers the problems of financial institution accounts in which one or more persons have an interest.

Part 2 addresses the variety of state statutes that protect financial institutions in their dealings with joint and survivorship accounts, and resolves the doctrinal confusion in judicial decisions that uphold so-called Totten Trust accounts (which provide probate avoiding death benefits), yet invalidate functionally indistinguishable POD (payable on death) accounts. Part 2 speaks separately to (i) ownership of accounts as between multiple owners, and the existence, validity, and revocability of survivors' benefits; and (ii) financial institution protection.

Part 2 recognizes that a depositor may add another person to an account for various reasons. The depositor may intend to reflect lifetime ownership of the account by more than one person, or to pass sums on deposit at death to another person, or simply to enable account transactions by a third person as a convenience without creating any ownership or survivorship rights in the third person. The traditional "joint account" does not adequately allow the depositor to distinguish among the different functions of the multiple-person account, and the depositor's use of a joint account for one purpose may yield unwanted consequences for other purposes.

Part 2 clarifies the relationships among the various persons involved with an account. The account may be owned by a single party or by multiple parties. Either a single-party account or a multiple-party account may include a POD beneficiary designation or an agency (power of attorney) designation or both. Part 2 includes sample statutory forms that provide clear and simple instructions to both the financial institution and depositor in setting up multiple-person accounts.

Under Part 2, an account is owned by the parties during their lifetimes in accordance with each party's net contribution to the account. One party owns all if that party is the sole contributor to the account. Evidence of intention by a party to make a gift to another party might change the result, but no intention to make a present gift is imputed from opening an account in two names or from making an additional deposit to an account.

Rights at death, on the other hand, are governed by the principle that a depositor intends account balances to pass at death to the account survivors. Part 2 establishes a preference for survivorship between the parties whether or not specified in the account contract. But if the

account contract expressly negates survivorship rights or if the account is designated as a tenancy in common, the surviving parties to the account do not take by right of survivorship.

Part 2 treats accounts in Totten Trust form as POD accounts. Survivorship benefits under multiple-party or POD accounts arise at death, and benefits are conferred by force of contract law and the statute. Survivorship rights cannot be changed except by notice to the financial institution or a change in account form. Survivorship benefits, though revocable and effective on death for practical purposes, cannot be changed by will.

Part 2 also protects creditors of deceased parties. Under Part 2 a creditor may, through the personal representative of the depositor's estate, claim account balances needed to pay a debt or family allowance. The claim procedure may be initiated only on demand of the creditor and is subject to a relatively short limitation period.

Part 2 establishes that financial institutions may pay out on multiple-person accounts and be protected if the payment is made in accordance with contract terms. Part 2 covers banks, savings and loan associations, and credit unions; this feature is designed to correct existing state laws that provide variant account incidents and protections for the three types of financial institutions.

Financial institution protection is provided even though the person receiving a payment in accordance with the account contract is not the owner of the amounts received as against another party to the account or as against the estate of a deceased depositor. Ownership as between parties to accounts and financial institution protection are treated as separable and different matters.

The drafting committee believes that Part 2 is a substantial improvement of an already successful law. This part of the Uniform Probate Code is one of the most broadly accepted, having been adopted either as part of the code or independently by over half the states. Part 2 draws on improvements made by various states that have enacted the statute. Improvements over the previous version of the statute include provision for an agency designation, optional statutory account forms, treatment of community property and other types of marital property, payments to minors under the Uniform Transfers to Minors Act, and extensive terminological and drafting simplifications and standardizations. For additional detail, see the Prefatory Note to Article VI of the Uniform Probate Code, as revised in 1989.

### TOD Security Registration

The purpose of Part 3 of this 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 Part 3 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. Part 3 recognizes, in Section 302, 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 Part 3 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 Part 3 takes full account of the practical requirements for efficient transfer within the securities industry.

Section 303 invites application of the legislation to locally owned securities though the statute may not have been locally enacted, so long as Part 3 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 part, hence not interpolated as an expansion of Part 2, 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 Section 214 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 NONPROBATE TRANSFERS ON DEATH ACT

PART 1. PROVISIONS RELATING TO EFFECT OF DEATH

SECTION 101. NONPROBATE TRANSFERS ON DEATH.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this State.

COMMENT

This section is a revised version of former Section 6-201 of the original Uniform Probate Code, which authorized a variety of contractual arrangements that had sometimes been treated as testamentary in prior law. For example, most courts treated as testamentary a provision in a promissory note that if the payee died before making payment, the note should be paid to another named person; or a provision in a land contract that if the seller died before completing payment, the balance should be canceled and the property should belong to the vendee. These provisions often occurred in family arrangements. The result of holding such provisions testamentary was usually to invalidate them because not executed in accordance with the statute of wills. On the other hand, the same courts for years upheld beneficiary designations in life insurance contracts. The drafters of the original Uniform Probate Code declared in the Comment that they were unable to identify policy reasons for continuing to treat these varied arrangements as testamentary. The drafters said that the benign experience with such familiar will substitutes as the revocable inter vivos trust, the multiple-party bank account, and United States government bonds payable on death to named beneficiaries all demonstrated that the evils envisioned if the statute of wills were not rigidly enforced simply do not materialize. The Comment also observed that because these provisions often are part of a business transaction and are evidenced by a writing, the danger of fraud is largely eliminated.

Because the modes of transfer authorized by an instrument under this section are declared to be nontestamentary, the instrument does not have to be executed in compliance with the formalities for wills; nor does the instrument have to be probated, nor does the personal representative have any power or duty with respect to the assets.

The sole purpose of this section is to prevent the transfers authorized here from being treated as testamentary. This section does not invalidate other arrangements by negative implication. Thus, this section does not speak to the phenomenon of the oral trust to hold property at death for named persons, an arrangement already generally enforceable under trust law.

The reference to a "marital property agreement" in the introductory portion of subsection (a) of Section 101 includes an agreement made during marriage as well as a premarital contract.

The term "or other written instrument of a similar nature" in the introductory portion of subsection (a) replaces the former language "or any other written instrument effective as a contract, gift, conveyance or trust" in the original Section 6-201. The Supreme Court of Washington read that language to relieve against the delivery requirement of the law of deeds, a result that was not intended. Estate of O'Brien v. Woodhouse, 109 Wash. 2d 913, 749 P.2d 154 (1988). The point was correctly decided in First National Bank in Minot v. Bloom, 264 N.W.2d 208, 212 (N.D. 1978), in which the Supreme Court of North Dakota held that "nothing in [former Section 6-201] of the Uniform Probate Code . . . eliminates the necessity of delivery of a deed to effectuate a conveyance from one living person to another."

SECTION 102. LIABILITY OF NONPROBATE TRANSFEREES FOR CREDITOR  
CLAIMS AND STATUTORY ALLOWANCES.

(a) In this section, “nonprobate transfer” means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this State to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor’s probate estate.

(b) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent’s probate 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 or controlled by that transferee.

(c) Nonprobate transferees are liable for the insufficiency described in subsection (b) 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 or controlled;

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

(d) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

(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 probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(2) A trustee receiving or controlling 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 assets received by the beneficiary.

#### **COMMENT**

1. Added to the Code in 1998, this section extends protections for family exemption beneficiaries and creditors of decedents to new categories of non-probate transferees of decedents. However, unlike conventional and cumbersome probate protections, the remedy contemplated by this section is to enforce a duty placed on nonprobate transferees 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 nonprobate transferee is the value of the transfer. Values are determined under (b) as of the time when the benefits are "received or controlled by the transferee." This would be the date of the decedent's death for nonprobate transfers via a revocable trust, and date of receipt for other nonprobate transfers. Two or more transferees are severally liable for proportions of the liability based on the value of transfers received by each.

Original UPC included section 6-107 and its 1989 sequel, 6-215. Both were designed to extend probate protections for exemption beneficiaries and unsecured creditors of insolvent estates to values in multiple-name accounts in financial institutions passing outside probate at death. Assets passing at death by revocable trust or TOD asset registration agreements were not covered. Original 6-201(b) and 6-101(b) as revised in 1989 mentioned creditors rights against nonprobate transfers at death, but provided only against invalidation of other possible remedies by implication from UPC's failure to deal with the problem.

If there are no probate assets, 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. It works well in practice inasmuch as Article III procedures for opening estates, satisfying probate exemptions, and presenting claims are extremely efficient.

2. New 6-102 replaces 6-215 with coverage designed to extend the principle of 6-215 to transfers at death by revocable trust, TOD security registration agreements and similar death benefits not insulated from decedents' creditors by other legislation. The initial clause of (b), "Unless otherwise provided by statute," is designed to prevent the section from colliding with existing legislation protecting death benefits in life insurance, retirement plans and IRAs from claims by creditors.

If applicable provisions in a state's insurance code do not exempt or protect a particular insurance death benefit, the insured's creditors would not be able to establish a "nonprobate transfer" under (a) except to the extent of any cash surrender value generated by premiums paid by the insured that the insured could have obtained immediately before death. Note, also, that (i)(1) would protect a life insurance company that paid a death benefit before receiving written notice from the decedent's personal representative even though some portion of the sum paid might involve a limited, contingent liability for the recipient.

3. The definition of "nonprobate transfer" in Section 1-102 reaches revocable transfers by a decedent; it does not apply to a transfer at death incident to a decedent's exercise or non-exercise of a presently exercisable general power of appointment created by another person. The drafters decided against creating a remedy for exemption beneficiaries and decedents' creditors based on the idea that a presently exercisable general power of appointment is the equivalent of ownership even though that concept is accepted in the Code's augmented estate provisions dealing with intentional disinheritance of a surviving spouse. Spousal protection against disinheritance by the other spouse supports the institution of marriage; creditors are better able to fend for themselves than financially disadvantaged mates of person inclined to disinherit their spouse. In addition, a presently exercisable general power of appointment created by another person is commonly viewed as a provision in the trust creator's instrument designed to provide flexibility in the estate plan rather than as a gift to the donee. Also, creditors of a deceased donee of such a power are likely to confront spendthrift trust provisions protecting trust benefits from creditors of beneficiaries, meaning that they may be without recourse whether or not a general power is viewed as ownership for purposes of creditors' rights.

4. The required ability to revoke or otherwise prevent a nonprobate transfer at death that is vital to application of (a)(1) is described as a "power," a word intended by the drafters to signify legal authority rather than capacity or practical ability. This corresponds to the definition in Code Section 2-201(6).

5. The exclusion of "a survivorship interest in a joint tenancy of real estate" from (a)'s definition of "nonprobate transfer" ignores that some states (e.g., South Dakota) presently enable an insolvent decedent's creditors to reach the share the decedent could have received prior to death by unilateral severance of the joint tenancy. The law in most other states is to the contrary, meaning that title examiners and others would be affected if the new section were enacted without the exclusion. Moreover, real estate joint tenancies have served for generations to keep the share of a couple's real estate owned by the first to die out of probate and away from estate creditors. This familiar arrangement needs not be disturbed incident to expanding protections of decedents' creditors against newly recognized nonprobate transfers at death.

No view is expressed as to whether a survivorship interest in personal or intangible property registered in two or more names as joint tenants with right of survivorship would come within 6-102(a). The outcome might depend on who originated the registration and whether severance by any co-owner acting alone was possible immediately preceding a co-owner's death.

6. A feature of replaced Section 6-215 that was clarified by 1991 technical amendment protects a survivor beneficiary of a joint account from liability to the probate estate of a deceased co-depositor for funds in the account owned by the survivor prior to decedent's death. The proposed replacement section continues this protection by language in (a)(1), i.e., "valid transfer effective at death ... by a transferor ... [who] had power, acting alone, to prevent the transfer by revocation or withdrawal and instead use the property for the benefit of the transferor ..." Section 6-211 and related sections of the Code make it clear that parties to a joint and survivor account separately own values in the account in proportion to net contributions. Hence, a surviving joint account depositor who had contributed to the balance on deposit prior to the death of the other party is subject to the remedies described in this section only to the extent of new account values gained through survival of the decedent.

7. Transferees of nonprobate transfers subject to the possible liability described in (b) include trustees of revocable trusts to the extent of assets transferred to the trust before death that were subject to the decedent's sole power to revoke. Such assets would be valued as of the date of death when the trustee gains full control. The trustee of an irrevocable trust, or of a trust that may be revoked only by the settlor and another person or otherwise fails to meet the conditions prescribe by (a)(1), might receive a transfer at death by TOD registration. Such a transfer would involve a possibility of trust liability based on the value of the TOD transfer as of the time of receipt as provided in (b). Liability under this section incurred by a trustee is a trust liability for which the trustee incurs no personal liability other than as provided by UPC §3-808(b).

8. Trusts and non-trust recipients of nonprobate transfers incur liability in the order described in (c). 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 (c)(2) ahead of other nonprobate transferees to the extent of values acquired by a transfer at death as described in (a)(1); i.e., a TOD registration benefit payable to the trust in the case of an irrevocable trust. 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.

9. The abatement order among classes of beneficiaries of trusts specified by (d) applies to all trusts subject to liability to the extent of nonprobate transfers received or administered whether or not the trust instrument is the principal nonprobate instrument in the decedent's estate plan. The drafters decided against use in (d) of a reference to UPC's abatement section, 3-902, in part because that section deals with intestate and partially intestate estates as well as estates governed by wills. Note, too, that trusts for successive beneficiaries also will be governed by income and principal accounting rules that will serve to resolve some abatement problems.

10. 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 interest in 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.

11. Subsection (f) builds 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 the estate to anyone he or she chooses. The principle is implemented by subjecting donee recipients of the 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 collection proceedings be necessary.

12. The first and third sentences of subsection (g) are identical to sentences now appearing in UPC 6-215. 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 p.r. tempted to decline a demand for a proceeding should note that the "good faith" standard of this section must be determined in light of the fiduciary responsibility imposed by UPC 3-703.

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

14. Subsection (i)(1) is designed to protect issuers of TOD security registrations who make payments or delivery to designated death beneficiaries before receiving notice from the decedent's probate estate of a probable insolvency. These entities are not "transferees" subject to liability under (b), but they might be subjected to criticism or legal expense if invited to pass values along to beneficiaries in spite of warning notices from estate fiduciaries.

Subsection (i)(2) 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 distributions from a trustee take subject to personal liability in the amount and priority of the trustee based on the value distributed.

## PART 2. MULTIPLE-PERSON ACCOUNTS

### SUBPART 1. DEFINITIONS AND GENERAL PROVISIONS

#### SECTION 201. DEFINITIONS. In this part:

(1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Devisee" means any person designated in a will to receive a testamentary disposition of real or personal property.

(5) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(6) "Heirs" means those persons, including surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(7) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(8) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(9) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a set-off, reduction, or other disposition of all or part of an account pursuant to a pledge.

(10) "Person" means an individual, a corporation, an organization, or other legal entity.

(11) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(12) "POD designation" means the designation of (i) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(13) "Receive," as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(14) "Request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of this part, if terms of the account condition payment on

advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(15) "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.

(16) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will or otherwise.

(17) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(18) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

#### COMMENT

This and the sections that follow are designed to reduce certain questions concerning many forms of multiple-person accounts (including the so-called Totten trust account). A "payable on death" designation and an "agency" designation are also authorized for both single-party and multiple-party accounts. The POD designation is a more direct means of achieving the same purpose as a Totten trust account; this part therefore discourages creation of a Totten trust account and treats existing Totten trust accounts as POD designations.

An agent (paragraph (2)) may not be a party. The agency designation must be signed by all parties, and the agent is the agent of all parties. See Section 205 (designation of agent).

A "beneficiary" of a party (paragraph (3)) may be either a POD beneficiary or the beneficiary of a Totten trust; the two types of designations in an account serve the same function and are treated the same under this part. See paragraph (12) ("POD designation" defined). The definition of "beneficiary" refers to a "person," who may be an individual, corporation, organization, or other legal entity. Paragraph (10). Thus a church, trust company, family corporation, or other entity, as well as any individual, may be designated as a beneficiary.

The term "multiple-party account" (paragraph (7)) is used in this part in a broad sense to include any account having more than one owner with a present interest in the account. Thus an account may be a "multiple-party account" within the meaning of this part regardless of whether the terms of the account refer to it as "joint tenancy" or as "tenancy in common," regardless of whether the parties named are coupled by "or" or "and," and regardless of whether any reference is made to survivorship rights, whether expressly or by abbreviation such as JTWRORS or JT TEN. Survivorship rights in a multiple-party account are determined by the terms of the account and by statute, and survivorship is not a necessary incident of a multiple-party account. See Section 212 (rights at death).

Under paragraph (8), a "party" is a person with a present right to payment from an account. Therefore, present owners of a multiple-party account are parties, as is the present owner of an account with a POD designation. The beneficiary of an account with a POD designation is not a party, but is entitled to payment only on the death of all parties. The trustee of a Totten trust is a party but the beneficiary is not. An agent with the right of withdrawal on behalf of a party is not itself a party. A person claiming on behalf of a party such as a guardian or conservator, or claiming the interest of a party such as a creditor, is not itself a party, and the right of such a person to payment is governed by general law other than this part.

Various signature requirements may be involved in order to meet the payment requirements of the account. A "request" (paragraph (14)) involves compliance with these requirements. A party is one to whom an account is presently payable without regard to whose signature may be required for a "request."

#### SECTION 202. SCOPE OF PART.

(a) This part applies to accounts in this State.

(b) This part does not apply to (i) an account established for a partnership, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

#### COMMENT

Subsection (a) is drawn from Uniform Probate Code § 1-301(4).

The reference to a fiduciary or trust account in item (iii) of subsection (b) includes a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, and a fiduciary account arising from a fiduciary relation such as attorney-client.

### SECTION 203. TYPES OF ACCOUNT; EXISTING ACCOUNTS.

(a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to Section 212(c), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established before, on, or after the effective date of this [Act], whether in the form prescribed in Section 204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of this part, and is governed by this part.

### COMMENT

In the case of an account established before (or after) the effective date of this Act that is not in substantially the form provided in Section 204, the account is governed by the provisions of this part applicable to the type of account that most nearly conforms to the depositor's intent. See Section 204 (forms).

Thus, a tenancy in common account established before or after the effective date of this Act would be classified as a "multiple-party account" for purposes of this part. See Section 201(5) ("multiple-party account" defined). On death of a party there would not be a right of survivorship since the tenancy in common title would be treated as a multiple-party account without right of survivorship. See Section 212(c). It should be noted that a POD designation may not be made in a multiple-party account without right of survivorship. See Sections 201(8) ("POD designation" defined), 204 (forms), and 212 (rights at death).

Under this section, a Totten trust account established before, on, or after the effective date of this Act is governed by the provisions of this part applicable to an account with a POD designation. See Section 201(8) ("POD designation" defined) and the Comment to Section 201.

It should be noted that this section is subject to Section 405 (effective date and transitional provisions).

SECTION 204. FORMS.

(a) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this part applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

\_\_\_\_\_

OWNERSHIP [Select One And Initial]:

\_\_\_\_\_ SINGLE-PARTY ACCOUNT

\_\_\_\_\_ MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One And Initial]:

\_\_\_\_\_ SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

\_\_\_\_\_ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH)

DESIGNATION

[Name One Or More Beneficiaries]:

\_\_\_\_\_ At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

\_\_\_\_\_ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

\_\_\_\_\_ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One Or More Beneficiaries]:

\_\_\_\_\_ At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

\_\_\_\_\_ MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation To Account, Name One Or More Agents]:

\_\_\_\_\_  
[Select One And Initial]:

\_\_\_\_\_ AGENCY DESIGNATION SURVIVES DISABILITY OR  
INCAPACITY OF PARTIES

\_\_\_\_\_ AGENCY DESIGNATION TERMINATES ON DISABILITY OR  
INCAPACITY OF PARTIES

(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) is governed by the provisions of this part applicable to the type of account that most nearly conforms to the depositor's intent.

COMMENT

This section provides short forms for single- and multiple-person accounts which, if used, bring the accounts within the terms of this part. A financial institution that uses the statutory form language in its accounts is protected in acting in reliance on the form of the account. See also Section 226 (discharge).

The forms provided in this section enable a person establishing a multiple-party account to state expressly in the account whether there are to be survivorship rights between the parties. The account forms permit greater flexibility than traditional account designations. It should be noted that no separate form is provided for a Totten trust account, since the POD designation serves the same function.

An account that is not substantially in the form provided in this section is nonetheless governed by this part. See Section 203 (types of account; existing accounts).

SECTION 205. DESIGNATION OF AGENT.

(a) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and



incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(c) Death of the sole party or last surviving party terminates the authority of an agent.

#### COMMENT

An agent has no beneficial interest in the account. See Section 211 (ownership during lifetime). The agency relationship is governed by the general law of agency of the state, except to the extent this part provides express rules, including the rule that the agency survives the disability or incapacity of a party.

A financial institution may make payments at the direction of an agent notwithstanding disability, incapacity, or death of the party, subject to receipt of a stop notice. Section 226 (discharge); see also Section 224 (payment to designated agent).

The rule of subsection (b) applies to agency designations on all types of accounts, including nonsurvivorship as well as survivorship forms of multiple-party accounts.

SECTION 206. APPLICABILITY OF PART. The provisions of Subpart 2 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the right of those persons to payment as determined by the terms of the account. Subpart 3 governs the liability and set-off rights of financial institutions that make payments pursuant to it.

#### SUBPART 2. OWNERSHIP AS BETWEEN PARTIES AND OTHERS

##### SECTION 211. OWNERSHIP DURING LIFETIME.

(a) In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party

which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes any deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(b) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(c) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.

#### COMMENT

This section reflects the assumption that a person who deposits funds in an account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, the person usually intends no present change of beneficial ownership. The section permits parties to accounts to be as definite, or as indefinite, as they wish in respect to the matter of how beneficial ownership should be apportioned between them.

The assumption that no present change of beneficial ownership is intended may be disproved by showing that a gift was intended. For example, under subsection (c) it is presumed that the beneficiary of a POD designation has no present ownership interest during lifetime. However, it is possible that in the case of a POD designation in trust form an irrevocable gift was intended.

It is important to note that the section is limited to ownership of an account while parties are alive. Section 212 prescribes what happens to beneficial ownership on the death of a party.

The section does not undertake to describe the situation between parties if one party withdraws more than that party is then entitled to as against the other party. Sections 221 and 226 protect a financial institution in that circumstance without reference to whether a withdrawing party may be entitled to less than that party withdraws as against another party. Rights between parties in this situation are governed by general law other than this part.

"Net contribution" as defined by subsection (a) has no application to the financial institution-depositor relationship. Rather, it is relevant only to controversies that may arise between parties to a multiple-party account.

The last sentence of subsection (b) provides a clear rule concerning the amount of "net contribution" in a case where the actual amount cannot be established as between spouses. This part otherwise contains no provision dealing with a failure of proof. The omission is deliberate. The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals, and not equal and undivided ownership that would be an incident of joint tenancy.

In a state that recognizes tenancy by the entireties for personal property, this section would not change the rule that parties who are married to each other own their combined net contributions to an account as tenants by the entireties. See Section 216 (community property and tenancy by the entireties).

## SECTION 212. RIGHTS AT DEATH.

(a) Except as otherwise provided in this part, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 211 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 211 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under Section 211, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a).

(2) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under Section 211 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

#### COMMENT

The effect of subsection (a) is to make an account payable to one or more of two or more parties a survivorship arrangement unless a nonsurvivorship arrangement is specified in the terms

of the account. This rule applies to community property as well as other forms of marital property. See Section 216 (community property and tenancy by the entireties). The section also applies to various forms of multiple-party accounts that may be in use at the effective date of the legislation. See Sections 203 (type of account; existing accounts) and 204 (forms).

By technical amendment effective August 5, 1991, the word "part" was substituted for "section" in the first sentence of subsection (a). The amendment clarified the original purpose of the drafters and Commissioners to permit a court to implement the intentions of parties to a joint account governed by Section 204(b) if it finds that the account was opened solely for the convenience of a party who supplied all funds reflected by the account and intended no present gift or death benefit for the other party. In short, the account characteristics described in this section must be determined by reference to the form of the account and the impact of Sections 203 and 204 on the admissibility of extrinsic evidence tending to confirm or contradict intention as signalled by the form.

Subsection (b) applies to both POD and Totten trust beneficiaries. See Section 201(8) ("POD designation" defined). It accepts the New York view that an account opened by "A" in A's name as "trustee for B" usually is intended by A to be an informal will of any balance remaining on deposit at A's death.

#### SECTION 213. ALTERATION OF RIGHTS.

(a) Rights at death under Section 212 are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(b) A right of survivorship arising from the express terms of the account, Section 212, or a POD designation, may not be altered by will.

#### COMMENT

Under this section, rights of parties and beneficiaries are determined by the type of account at the time of death. It is to be noted that only a "party" may give notice blocking the provisions of Section 212 (rights at death). "Party" is defined by Section 201(6). Thus if there is an account with a POD designation in the name of A and B with C as beneficiary, C cannot

change the right of survivorship because C has no present right to payment and hence is not a party.

SECTION 214. ACCOUNTS AND TRANSFERS NONTESTAMENTARY. Except [as provided in the statutes governing augmented estates or] as a consequence of, and to the extent directed by, Section 215, a transfer resulting from the application of Section 212 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to estate administration.

#### COMMENT

The purpose of classifying the transactions contemplated by this part as nontestamentary is to bolster the explicit statement that their validity as effective modes of transfers on death is not to be determined by the requirements for wills. The section is consistent with Part 1 (Section 101) (provisions relating to effect of death).

#### ~~SECTION 215. RIGHTS OF CREDITORS AND OTHERS.~~

~~(a) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under this part is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.~~

~~(b) A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under Section 211, to the extent necessary to discharge the claims and allowances described in subsection (a) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal~~

~~representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.~~

~~(c) A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent.~~

~~(d) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in Section 226 for a financial institution that makes payment in accordance with the terms of the account.~~

~~(e) In this section:~~

~~(1) "Child" includes any individual entitled to take as a child by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.~~

~~(2) "Claims," in respect to the estate of a decedent, includes liabilities of the decedent whether arising in contract, tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate.~~

#### COMMENT

The sections of this subpart authorize transfers on death that reduce the estate to which the surviving spouse, creditors, and minor children normally must look for protection against a decedent's gifts by will. Accordingly, this section provides a remedy to these classes of persons that assures them that multiple-person accounts cannot be used to reduce the essential protection

~~they would be entitled to if such accounts were deemed to permit a special form of specific devise. This section provides a remedy for collection of amounts necessary to pay tax obligations incurred by the decedent during life, but not for death taxes. See subsection (c)(2) ("claims" defined). Apportionment and allocation of death taxes, and their collection, is governed by law other than this section.~~

~~Under this section a surviving spouse is automatically assured of some protection against a multiple-person account if the probate estate is insolvent; rights are limited, however, to sums needed for statutory allowances. The phrase "statutory allowances" includes homestead allowance, family allowance, and allowance needed to make up the deficiency in exempt property.~~

~~By technical amendment effective August 5, 1991, the language referring to amounts the decedent owned beneficially immediately before death was added to make clear that the liability of a surviving party or beneficiary to account to the decedent's personal representative extends only to a proportionate share of funds transferred on death of the decedent, and not to funds already owned by the survivor or beneficiary. See subsection (a) (transfer not effective against estate). This is not a change in, but is a clarification of, the section. See also original UPC Section 6-107 (liability to account for amounts decedent owned beneficially immediately before death).~~

Adoption of new Section 102 tracking 6-102 in UPC was attended by deletion of this section as no longer necessary. Comment #5 to new 102 points out that the substance of the 1991 technical amendment to now deleted 215 has been preserved. Accordingly, the portion of a joint account owned by a co-depositor before the other co-depositor's death is not subject to claims against the deceased depositor's estate; only the portion passing at death to the surviving depositor is at risk if the decedent's probate estate is insolvent.

## SECTION 216. COMMUNITY PROPERTY AND TENANCY BY THE ENTIRETIES.

(a) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or Section 212 may not be altered by will.

(b) This part does not affect the law governing tenancy by the entireties.

### COMMENT

Section 216 does not affect or limit the right of the financial institution to make payments pursuant to Subpart 3 (protection of financial institutions) and the deposit agreement. See



Section 206 (applicability of part). For this reason, Section 216 does not affect the definiteness and certainty that the financial institution must have in order to be induced to make payments from the account and, at the same time, the section preserves the rights of the parties, creditors, and successors that arise out of the nature of the funds in the account -- community or separate, or tenancy by the entirety.

### SUBPART 3. PROTECTION OF FINANCIAL INSTITUTIONS

SECTION 221. AUTHORITY OF FINANCIAL INSTITUTION. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

#### COMMENT

The provisions of this subpart relate only to protection of a financial institution that makes payment as provided in the subpart. Nothing in this subpart affects the beneficial rights of persons to sums on deposit or paid out. Ownership as between parties, and others, is governed by Subpart 2. See Section 206 (applicability of part).

SECTION 222. PAYMENT ON MULTIPLE-PARTY ACCOUNT. A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under Section 212.

#### COMMENT

A financial institution that makes payment on proper request under this section is protected unless the financial institution has received written notice not to. Section 226 (discharge). Paragraph (1) applies to both a multiple-party account with right of survivorship and a multiple-party account without right of survivorship (including an account in tenancy in common form). Paragraph (2) is limited to a multiple-party account with right of survivorship; payment to the personal representative or heirs or devisees of a deceased party to an account without right of survivorship is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

SECTION 223. PAYMENT ON POD DESIGNATION. A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

#### COMMENT

A financial institution that makes payment on proper request under this section is protected unless the financial institution has received written notice not to. Section 226 (discharge). Payment to the personal representative or heirs or devisees of a deceased beneficiary who would be entitled to payment under paragraph (2) is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

SECTION 224. PAYMENT TO DESIGNATED AGENT. A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on

deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

#### COMMENT

This section is intended to protect a financial institution that makes a payment pursuant to an account with an agency designation even though the agency may have terminated at the time of the payment due to disability, incapacity, or death of the principal. The protection does not apply if the financial institution has received notice under Section 226 not to make payment or that the agency has terminated. This section applies whether or not the agency survives the party's disability or incapacity under Section 205 (designation of agent).

SECTION 225. PAYMENT TO MINOR. If a financial institution is required or permitted to make payment pursuant to this part to a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to Minors Act.

#### COMMENT

Section 225 is intended to avoid the need for a guardianship or other protective proceeding in situations where the Uniform Transfers to Minors Act may be used.

#### SECTION 226. DISCHARGE.

(a) Payment made pursuant to this part in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative,

surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

#### COMMENT

The provision of subsection (a) protecting a financial institution for payments made after the death, disability, or incapacity of a party is a specific elaboration of the general protective provisions of this section and is drawn from Uniform Commercial Code Section 4-405.

Knowledge of disability, incapacity, or death of a party does not affect payment on request of an agent, whether or not the agent's authority survives disability or incapacity. See Section 224 (payment to designated agent). But under subsection (b), the financial institution may not make payments on request of an agent after it has received written notice not to, whether because the agency has terminated or otherwise.

SECTION 227. SET-OFF. Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party is indebted to a financial institution, the

financial institution has a right to set-off against the account. The amount of the account subject to set-off is the proportion to which the party is, or immediately before death was, beneficially entitled under Section 211 or, in the absence of proof of that proportion, an equal share with all parties.

### 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.

PART 4. SHORT TITLE, CONSTRUCTION,  
TRANSITIONAL PROVISIONS

SECTION 401. SHORT TITLE. This [Act] may be cited as the Uniform Nonprobate Transfers on Death Act.

SECTION 402. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

COMMENT

This Act is a free-standing version of Article VI of the Uniform Probate Code as revised in 1989. To facilitate correlation with corresponding provisions of the Uniform Probate Code, the numbering of this Act generally follows that of the Uniform Probate Code.

SECTION 403. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of this [Act], the principles of law and equity supplement its provisions.

SECTION 404. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 405. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

(a) This [Act] takes effect .....

(b) On the effective date of this [Act]:

(1) An act done before the effective date and any accrued right is not impaired by this [Act]. If a right is acquired, extinguished, or barred on the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right.

(2) Any rule of construction or presumption provided in Part 2 applies to accounts established before the effective date unless there is a clear indication of a contrary intent.

[(c) The rights of a party, beneficiary, or creditor in an account established before the effective date of this [Act] are governed by the law applicable before the effective date for a period of one year after the effective date and thereafter are governed by Part 2.]

(d) Part 3 applies to registrations of securities in beneficiary form made before or after the effective date, by decedents dying on or after the effective date.

#### COMMENT

Subsection (b) is drawn from Uniform Probate Code § 8-101. Subsection (b) is an exception to the general rule stated in Section 203 (existing accounts). Depending on the extent to which this Act affects rights in multiple-person accounts, a state may wish to provide delayed application in the form offered in optional subsection (c), during which parties to the account may make any changes in the form of the account that appear appropriate.