

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1328

H.P. 965

House of Representatives, March 4, 1997

An Act to Enact the Uniform Transfer on Death Security Registration Act.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative NASS of Acton.
Cosponsored by Senator CAREY of Kennebec and
Senator LIBBY of York and
Representative CARLETON of Wells.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 18-A MRSA Art. VI, Pt. 3 is enacted to read:

6 PART 3

8 UNIFORM TRANSFER ON DEATH SECURITY
REGISTRATION ACT

10 §6-301. Short title

12 This Part may be known and cited as the "Uniform Transfer on
14 Death Security Registration Act."

16 §6-302. Definitions

18 As used in this Part, unless the context otherwise
20 indicates, the following terms have the following meanings.

22 (a) "Beneficiary form" means a registration of a security
that indicates the present owner of the security and the
24 intention of the owner regarding the person who becomes the owner
of the security upon the death of the owner.

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

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

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

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

42 (f) "Property" includes both real and personal property or
any interest in real and personal property and means anything
44 that may be the subject of ownership.

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

1-201 of the Uniform Probate Code which, as revised in 1989,
includes this Act as Part 3 of Article VI.

**§6-303. 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 2 or more
with right of survivorship, rather than as tenants in common, may
obtain registration in beneficiary form. Multiple owners of a
security registered in beneficiary form hold as joint tenants
with right of survivorship, as tenants by the entireties, or as
owners of community property held in survivorship form, and not
as tenants in common.

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This section is designed to prevent co-owners from
designating any death beneficiary other than one who is to take
only upon survival of all co-owners. It coerces co-owning
registrants to signal whether they hold as joint tenants with
right of survivorship (JT TEN), as tenants by the entireties (T
ENT), or as owners of community property. Also, it imposes
survivorship on co-owners holding in a beneficiary form that
fails to specify a survivorship form of holding. Tenancy in
common and community property otherwise than in a survivorship
setting is negated for registration in beneficiary form because
persons desiring to signal independent death beneficiaries for
each individual's fractional interest in a co-owned security
normally will split their holding into separate registrations of
the number of units previously constituting their fractional
share. Once divided, each can name his or her own choice of
death beneficiary.

The term "individuals," as used in this section, limits
those who may register as owner or co-owner of a security in
beneficiary form to natural persons. However, the section does
not restrict individuals using this ownership form as to their
choice of death beneficiary. The definition of "beneficiary
form" in Section 1 [Me. cite section 6-302] 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.

§6-304. Registration in beneficiary form; applicable law

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

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UNIFORM COMMENT

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17 This section encourages registrations in beneficiary form to
18 be made whenever a state with which either of the parties to a
19 registration has contact has enacted this or a similar statute.
20 Thus, a registration in beneficiary form of X Company shares
21 might rely on an enactment of this Act in X Company's state of
22 incorporation, or in the state of incorporation of X Company's
23 transfer agent. Or, an enactment by the state of the issuer's
24 principal office, the transfer agent's principal office, or of
25 the issuer's office making the registration also would validate
26 the registration. An enactment of the state of the registering
27 owner's address at time of registration also might be used for
28 validation purposes.

28

29 The last sentence of this section is designed, as is UPC §
30 6-101 (Rev. 1989), to establish a statutory presumption that a
31 general principle of law is available to achieve a result like
32 that made possible by this Act.

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§6-305. Origination of registration in beneficiary form

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

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45 As noted above in commentary to Section 2 [Me. cite section
46 6-303], this Act places no restriction on who may be designated
47 beneficiary in a registration in beneficiary form.

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§6-306. Form of registration in beneficiary form

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

16 UNIFORM COMMENT

18 Even though multiple owners holding in the beneficiary form
20 here authorized hold with right of survivorship, no survivorship
22 rights attend the positions of multiple beneficiaries who become
24 entitled to securities by reason of having survived the sole
26 owner or the last to die of multiple owners. Issuers (and
28 registering entities) who decide to accept registrations in
30 beneficiary form involving more than one primary beneficiary also
32 should provide by rule whether fractional shares will be
34 registered in the names of surviving beneficiaries where the
36 number of shares held by the deceased owner does not divide
38 without remnant among the survivors. If fractional shares are
not desired, the issuer may wish to provide for sale of odd
shares and division of proceeds, for an uneven distribution with
the first or last named to receive the odd share, or for other
resolution. Section 8 [Me. cite section 6-309] deals with
whether intermediaries have any obligation to offer beneficiary
registrations of any sort; Section 10 [Me. cite section 6-311]
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.

40 The reference to surviving, multiple TOD beneficiaries as
42 tenants in common is not intended to suggest that a registration
44 form specifying unequal shares, such as "TOD A (20%), B (30%), C
46 (50%)," would be improper. Though not included in the
48 beneficiary forms described for illustrative purposes in Section
50 10 [Me. cite section 6-311], 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

2 beneficiaries survive the owner. For example, the terms might
3 direct the share of the predeceased beneficiary to the survivors
4 in the proportion that their original shares bore to each other.
5 Unless unequal shares are specified in a registration in
6 beneficiary form designating multiple beneficiaries, the shares
of the beneficiaries would, of course, be equal.

8 The statement that a security registered in beneficiary form
9 is in the deceased owner's estate when no beneficiary survives
10 the owner is not intended to prevent application of any
11 anti-lapse statute that might direct a nonprobate transfer on
12 death to the surviving issue of a beneficiary who failed to
13 survive the owner. Rather, the statement is intended only to
14 indicate that the registering entity involved should transfer or
15 reregister the security as directed by the decedent's personal
16 representative.

18 See the Comment to Section 1 [Me. cite section 6-302]
19 regarding the meaning of "survive" for purposes of this Act.
20

22 §6-309. Protection of registering entity

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

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

35
36 (c) A registering entity is discharged from all claims to a
37 security by the estate, creditors, heirs, or devisees of a
38 deceased owner if it registers a transfer of the security in
39 accordance with section 6-308 and does so in good faith reliance
40 on the registration, on this Part and on information provided to
41 it by affidavit of the personal representative of the deceased
42 owner or by the surviving beneficiary or by the surviving
43 beneficiary's representatives or other information available to
44 the registering entity. The protections of this Part do not
45 extend to a reregistration or payment made after a registering
46 entity has received written notice from any claimant to any
47 interest in the security objecting to implementation of a
48 registration in beneficiary form. No other notice or other
49 information available to the registering entity affects its right
50 to protection under this Part.

2 U.C.C. § 8-308(6) (1978). In the case of an uncertificated
security, 'appropriate person' means the 'registered owner.' Id.
4 § 8-308(7). The survivor of owners listed as joint tenants with
right of survivorship is specifically defined as an authorized
6 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)
8 that would include a TOD beneficiary as an 'appropriate person'
when the beneficiary has survived the owner.

10 "No U.C.C. addition would be necessary if a TOD beneficiary
12 designation were viewed as a contingent order for transfer at the
owner's death that may be safely implemented as a direction from
14 the owner as an 'authorized person.' The owner's death before
completion of the transfer would not pose U.C.C. problems because
16 section 8-308(10) provides: 'Whether the person signing is
appropriate is determined as of the date of signing and an
18 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.'

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

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

38
40 **§6-310. Nontestamentary transfer on death**

42 (a) A transfer on death resulting from a registration in
44 beneficiary form is effective by reason of the contract regarding
the registration between the owner and the registering entity and
46 this Part and is not testamentary.

48 (b) This Part does not limit the rights of creditors of
security owners against beneficiaries and other transferees under
50 other laws of this State.

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Subsection (a) is comparable to UPC § 6-214 (Rev. 1989).
Subsection (b) is similar to UPC § 6-101(b) (Rev. 1989).

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.

§6-311. 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 receives requests for registrations in beneficiary form and 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 that a registering entity may authorize:

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

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

