

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-411
SENATE BILL 290**

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY
REGISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by rewriting the title of Chapter 41 of the General Statutes to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"§ 41-40. Definitions.

In this Article, unless the context otherwise requires:

- (1) 'Beneficiary form' means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
- (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 Chapter 29 of the General Statutes or the statutes of intestate succession of other states to take the property of a decedent by intestate succession.
- (4) 'Person' means an individual, a corporation, an organization, or other legal entity.
- (5) 'Personal representative' includes executor, administrator, collector, 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 in real or personal property 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, a business, or an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, a security account, and a security entitlement as defined in G.S. 25-8-102.
- (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.

"§ 41-41. 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 individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"§ 41-42. 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.

"§ 41-43. 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.

"§ 41-44. 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 or owners and before the name of a beneficiary.

"§ 41-45. Effect of registration in beneficiary form.

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

"§ 41-46. 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 survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"§ 41-47. 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 Article.

(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 Article.

(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 a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, 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 Article 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 Article.

(d) The protection provided by this Article 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.

"§ 41-48. 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 Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy

the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) This Article does not repeal or modify any provision of law relating to estate taxes.

"§ 41-49. 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 established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary or contingent beneficiaries. 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 WROS TOD John S. Brown, Jr.'
- (3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr. SUB BENE Peter O. Brown'.

"§ 41-50. Short title; rules of construction.

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2. G.S. 41-2.2 applies in determining whether a right of survivorship exists among multiple owners of a security.

"§ 41-51. Application of Article.

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

SECTION 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

- (1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.
- (2) Gifts causa mortis made by the ~~decedent;~~ decedent.
- (3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.
- (4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

SECTION 3. G.S. 41-2.2 reads as rewritten:

"§ 41-2.2. Joint ownership of ~~corporate stock and investment securities.~~

(a) In addition to other forms of ownership, ~~shares of corporate stock or investment securities~~ may be owned by any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in ~~shares of corporate stock or investment securities~~ as provided by this section shall exist when such ~~shares or securities~~ indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either party the interest of the decedent shall pass to the surviving party.

(2) Such a joint tenancy may also exist when a broker or custodian holds the ~~shares or securities~~ for the joint tenants and by book entry or otherwise indicates (i) that the ~~shares or securities~~ are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either party, the interest of the decedent shall pass to the surviving party. Money in the hands of such broker or custodian derived from the sale of, or held for the purpose of, such ~~shares or securities~~ shall be treated in the same manner as such ~~shares or securities~~.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9) and includes "security account" as that term is defined in G.S. 41-40(10)."

SECTION 4. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:22 p.m. this 20th day of September, 2005