

COMMITTEE ON ECONOMIC DEVELOPMENT,
AGRICULTURE AND PLANNING

BILL NO. 31-0227

Thirty-first Legislature of the Virgin Islands

September 9, 2015

An Act amending title 9 Virgin Islands Code, chapter 23 adding subchapter VII enacting the Virgin Islands Uniform TOD Security Registration Act

PROPOSED BY: Senators Janette Millin Young , Myron D. Jackson, Sammuel Sanes
and Nereida Rivera-O'Reilly
Co-Sponsor: Marvin A. Blyden

1 *Be it enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 9 Virgin Islands Code, chapter 23 is amended by adding Subchapter
3 VII to read as follows:'

4 ***"SUBCHAPTER VIRGIN ISLANDS UNIFORM TOD SECURITY REGISTRATION***
5 ***ACT'***

6 **§ 681. Definitions.**

7 In this subchapter

8 (1) "Beneficiary form" means a registration of a security which indicates the present
9 owner of the security and the intention of the owner regarding the person who will become the
10 owner of the security upon the death of the owner.

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

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

7 (4) "Security" means a share, participation, or other interest in property, in a business,
8 or in an obligation of an enterprise or other issuer, and includes a certificated security, an
9 uncertificated security, and a security account.

10 (5) "Security account" means (i) a reinvestment account associated with a security, a
11 securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings,
12 or dividends earned or declared on a security in an account, a reinvestment account, or a
13 brokerage account, whether or not credited to the account before the owner's death, or (ii) cash
14 balance or other property held for or due to the owner of a security as a replacement for or
15 product of an account security, whether or not credited to the account before the owner's death.

16 (6) "TOD" means transfer on death.

17 **§ 682. Registration in beneficiary form; sole or joint tenancy ownership.**

18 Only individuals whose registration of a security shows sole ownership by one individual
19 or multiple ownership by two or more with right of survivorship, rather than as tenants in
20 common, may obtain registration in beneficiary form. Multiple owners of a security registered in
21 beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as
22 owners of community property held in survivorship form and not as tenants in common.

23 **§ 683. Registration in beneficiary form; applicable law.**

24 A security may be registered in beneficiary form if the form is authorized by this or a
25 similar statute of the state of organization of the issuer or registering entity, the location of the

1 registering entity's principal office, the office of its transfer agent or its office making the
2 registration, or by this or a similar statute of the law of the state listed as the owner's address at
3 the time of registration. A registration governed by the law of a jurisdiction in which this or
4 similar legislation is not in force or was not in force when a registration in beneficiary form was
5 made is nevertheless presumed to be valid and authorized as a matter of contract law.

6 **§ 684. Origination of registration in beneficiary form.**

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

10 **§685. Form of registration in beneficiary form.**

11 Registration in beneficiary form may be shown by the words "transfer on death" or the
12 abbreviation "TOD" or by the words "pay on death" or the abbreviation "POD," after the name of
13 the registered owner and before the name of a beneficiary.

14 **§686. Effect of registration in beneficiary form.**

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

19 **§687. Ownership on death of owner.**

20 On death of a sole owner or the last to die of all multiple owners, ownership of securities
21 registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners.
22 On proof of death of all owners and compliance with any applicable requirements of the
23 registering entity, a security registered in beneficiary form may be reregistered in the name of the
24 beneficiary or beneficiaries who survive the death of all owners. Until division of the security
25 after the death of all owners, multiple beneficiaries surviving the death of all owners hold their

1 interests as tenants in common. If no beneficiary survives the death of all owners, the security
2 belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple
3 owners.

4 **§688. Protection of registering entity.**

5 (a) A registering entity is not required to offer or to accept a request for security
6 registration in beneficiary form. If a registration in beneficiary form is offered by a registering
7 entity, the owner requesting registration in beneficiary assents to the protections given to the
8 registering entity by this subchapter.

9 (b) By accepting a request for registration of a security in beneficiary form, the
10 registering entity agrees that the registration will be implemented on death of the deceased owner
11 as provided in this subchapter.

12 (c) A registering entity is discharged from all claims to a security by the estate,
13 creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in
14 accordance with Section 687 and does so in good faith reliance (i) on the registration, (ii) on this
15 subchapter, (iii) on information provided to it by affidavit of the personal representative of the
16 deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives
17 or other information available to the registering entity. The protections of this subchapter do not
18 extend to a reregistration or payment made after a registering entity has received written notice
19 from any claimant to any interest in the security objecting to implementation of a registration in
20 beneficiary form. No other notice or other information available to the registering entity affects
21 its right to protection under this subchapter.

22 (d) The protection provided by this subchapter to the registering entity of a security
23 does not affect the rights of beneficiaries in disputes between themselves and other claimants to
24 ownership of the security transferred or its value or proceeds.

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1 **§689. Nontestamentary transfer on death.**

2 A transfer on death resulting from a registration in beneficiary form is effective by reason
3 of the contract regarding the registration between the owner and the registering entity and this
4 subchapter and is not testamentary.

5 **§690. Terms, conditions, and forms for registration.**

6 (a) A registering entity offering to accept registrations in beneficiary form may
7 establish the terms and conditions under which it will receive requests (i) for registrations in
8 beneficiary form, and (ii) for implementation of registrations in beneficiary form, including
9 requests for cancellation of previously registered TOD beneficiary designations and requests for
10 reregistration to effect a change of beneficiary. The terms and conditions so established may
11 provide for proving death, avoiding or resolving any problems concerning fractional shares,
12 designating primary and contingent beneficiaries, and substituting a named beneficiary's
13 descendants to take in the place of the named beneficiary in the event of the beneficiary's death.
14 Substitution may be indicated by appending to the name of the primary beneficiary the letters
15 LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased
16 beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the
17 descendants to be identified and to share in accordance with the law of the beneficiary's domicile
18 at the owner's death governing inheritance by descendants of an intestate. Other forms of
19 identifying beneficiaries, who are to take on one or more contingencies, and rules for providing
20 proofs and assurances needed to satisfy reasonable concerns by registering entities regarding
21 conditions and identities relevant to accurate implementation of registrations in beneficiary form,
22 may be contained in a registering entity's terms and conditions.

23 (b) The following are illustrations of registrations in beneficiary form which a
24 registering entity may authorize:

1
2 This proposed act clearly provides that the control of an investment registered in TOD
3 beneficiary form, including the right to change or cancel the death beneficiary, lies solely with
4 the owner. As is so with securities registered in two names with right of survivorship, the
5 transfer of ownership at an owner's death to a survivor designated in the title form results from
6 the registration form and occurs outside the probate process and without reference to any will.
7 Proof of death and survivorship necessary to effect a re-registration or liquidation after the
8 owner's death will be handled as survivorship claims of surviving joint tenants are handled
9 today; i.e., by submission of a death certificate and an application for liquidation or re-
10 registration in the beneficiary's name.

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12 As the Uniform Law Commission's summary of the act further explains, the statute
13 proposes nothing that is new, untried or untested. There are a number of financial arrangements
14 that by-pass the probate scenario to get to the beneficiaries after the benefactor's death. For
15 example, beneficiary form registrations of U.S. Savings Bonds have been available under federal
16 law for more than half a century. Bank accounts and c.d.'s in an owner's sole name and payable
17 on death to a named beneficiary are available in a number of states under p.o.d. account rules
18 found in many banking codes. It is well-known and widely established that life insurance and
19 retirement benefit accounts also by-pass probate en route to death beneficiaries designated in
20 controlling paperwork.

21
22 The bill will provide a way to avoid probate without the risk of problems caused by joint
23 and survivor security titles that are especially hard on the elderly or account title. The sole
24 purpose of this bill is probate avoidance. TOD security registration merely permits realization of
25 the probate avoidance benefits of a joint registration but avoids the loss of sole control for the
26 owner. In time, the TOD registration form should replace joint and survivor titling of
27 investments.

28
29 The Uniform Law Commission explains that this simple bill is very important because it
30 responds directly and efficiently to serious problems having a unique impact on the elderly that
31 attend joint and survivor titling of investments. It also sanctions a title form that would enable
32 probate-avoiding transfers at death in favor of any death beneficiary, possibly including
33 recognized charitable organizations or a trust company that could not be listed as a co-owner
34 with survivorship under conventional joint tenancy rules. It entails no unwanted costs for
35 anyone, meets a strong need of the elderly, and is without downside risks to any but those very
36 few who continue to feed on assets passing through probate.

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38 **BR15-0022-4/June 30, 2015/YLT**

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