

## AARP Virgin Islands Testimony on Bill No: 31-0227

Good Morning Chairman Jeanette Millin Young, members of the Economic Development, Agriculture and Planning Committee, other senators present, other testifiers, and other members of the viewing and listening audience.

My name is Archie Jennings, and I am a practicing attorney, and State President of AARP Virgin Islands. On behalf of the staff and members of AARP, I wish to thank you for inviting AARP Virgin Islands to participate in a public discussion concerning the adoption of the Uniform Transfer on Death Security Registration Act.

The Uniform Real Property Transfer on Death Act (URPTODA) is important legislation that can provide the "average person" with an alternative to sometimes costly estate planning. URPTODA will provide low and middle income families with a streamlined option to the probate process, which will be straightforward, inexpensive and reliable means. Upon reviewing Bill 31-0227, it is clear that such legislation will assist those who are recipients or have funds invested through retirement, pension plans, employee's stock options plans, 401k plans or 403 plans to have a clear designation of the beneficiary and have those benefits paid to their intended recipients upon their death.

Although this legislation only affects the securities established by employee stock option plans or other retirement or pension plans, it certainly could in the future be reviewed to make sure it also covers bank accounts, certificates of deposit, and other financial transactions.

Some of the many protections that URPTODA provides include:

- The TOD designation is not subjected to the process involving a will, but instead allows for direct title transfer to the named beneficiary without probate.
- The TOD must be signed by the owner and properly recorded during the owner's lifetime.
- Like with the creation of a Will, the creation of a TOD requires the same level of "capacity".
- The deed may be revoked without the consent of the intended beneficiary.
- Being named as a beneficiary in a TOD designation does NOT subject the future beneficiary to any of the current owner's creditors.

Many of the average persons who have such accounts are not educated to understand the complexity of the rules under the Employee Retirement Income Security Act of 1974 (ERISA) as well as the Plan Administration and its interplay with the various jurisdictional laws throughout the United States. As a result, beneficiary designation cases have led to not being accurately reflective of the participant's intent. This can result in disputes regarding who is entitled to the Plans' benefits following the death of the participants.

I would like to give you a few examples that illustrate where such disputes commonly arise:

Example #1 focuses a participant without the proper education regarding his or her employee option plan. This plan may have mutual funds in the plan, but the participant failed to either designate a beneficiary or change the beneficiary to reflect their life events. The most common and frequently contentious disputes occur when participants marry, re-marry, or divorce but fail to update their beneficiary designation to reflect this change of status before their death. In these cases, failure to act results in disputes between the participant's spouse, ex-spouse and other potential beneficiaries including parents, children or other siblings.

The second example focuses on the issue of simultaneous deaths of the participant and the designated beneficiary. Many times this leaves the question open as to who will receive the funds under such circumstances.

Another situation may occur where the participant has lost the beneficiary designation paperwork because of a change in service providers, change in plan administrators, or other reasons. In this case, the benefits under the plan may not flow to the intended beneficiary.

Lastly, there is also the issue when the elected beneficiary designation is somehow impermissible under the terms of the plan as set forth by the Administrator. Thereby questions may arise as to whom the benefit be paid under the terms of the plan especially when it conflicts with jurisdictional laws.

In addition to the concerns over proper disposition of benefits, beneficiary designations may present a unique administrative challenge. Because of legal requirements and historical practices, the beneficiary designation for retirement and other plans, including insurance plans, is one of the few employee benefit transactions that remains almost entirely based on paper records. This creates significant challenges for both plan sponsors and service providers who focus on meeting the needs of the participant.

Hopefully, by instituting a procedure as outlined in the legislation, the participant on behalf of the intended beneficiary does not have to solely rely on the Administrator of a plan, but can directly register with the holder of the securities or broker, a form that indicates their intended beneficiary and therefore make it clear, not only with the plan but with the custodian of the securities.

This may resolve the greatest challenge of all which is to educate the participant on the importance of acknowledging their intent by completing the form. Additionally, the broker can make the participant aware of the need to consider changing their beneficiary designations or take the steps necessary to assure that what they intend will become effective after their death. This is an area where participant's education is most grossly needed.

The underlying approach under direct registration is again another method of showing the average person that what they intend upon their death is carried out and that intent is expressed to as many holders of accounts or securities as possible in order to avoid probate. The purpose of this Bill is to give the intended beneficiaries a clear path to resolve possible disputes to avoid difficult and costly transfer for the intended beneficiary.

Today the Uniform TOD (Transfer on Death) Security Registration Act receives strong support from national organizations such as the American Bar Association's Real Property Trust and Estate Section (ABA-RPTE), the ABA Commission on Law and Aging, the American College of Real Estate Lawyers (ACREL) and AARP.

As an aside, I would like to point out that the Department of Labor in the year 2012, issued a report from the Advisory Council on Employee Welfare and Pension Benefit Plan, which focused on occurring challenges and best practices concerning beneficiary designations, retirement and life insurance plans.

In summary, after the Council heard a wide variety of testimony covering a wide range of issues affecting beneficiary designations and the payment of benefits following the death of the participant, it came up with several recommendations that would assist participants to assure that their intended beneficiaries are the recipients of their assets.

Number one on their list of recommendations was to educate the participants in plans on the importance of completing beneficiary designation forms and giving the education to the participants to completely assure their understanding of the beneficiary designations that they are completing.

The second recommendation was to advise participants about the need to reconsider beneficiaries when a change in life circumstances occurs. There should be a reminder from the plan administrators or broker to have the participants review or update their designations to reflect their current intentions.

Some of the testimony given at that particular Council review before the Department of Labor, indicated that there should be a clear understanding on behalf of the Plan Administrators to adequately maintain electronic records of executed beneficiary designations and the records should be part of the standard communications to the participants if they have discovered that some plan descriptions did not at that time include information about beneficiary designations.

Hopefully, with the change of the law in the Virgin Islands this will renew an effort on behalf of all Plan Administrators to take the initiative and effort to re-contact all participants who have within their plans securities and educate them about not only the security registration law being implemented, but also take the opportunity to educate the participants on assuring their plans are up to date and that their beneficiaries are clearly designated or their whole attempt to transfer property upon their death to their intended beneficiary may be obscured and may only be resolve through the probate court.

This is also an opportune time for estate planners, family and estate lawyers and personal financial planners to play a role in communicating this new law as well as updating information to participants about estate planning and provide an opportunity to clarify some of the issues brought forth today as to what may cause confusion if there is no designated beneficiary or lack of registration of securities.

In this fast paced financial world, everyone who has employee stock option plans, retirement plans or any other fiscal plans where securities are part of their assets, should take note since AARP Virgin Islands have been a long advocate for estate planning.

However, AARP Virgin Islands recognizes that this process can be very expensive, time consuming and troublesome for some families. It is one of those unfortunate necessities of life for many persons who have taken the time to set aside assets for their love ones and want assurance that their intent is carried on after their passage.

In closing we feel that Bill No. 31-0227 amending Title 9 Virgin Islands Code, Chapter 23 and adding Chapter VII enacting the Virgin Islands Uniform Transfer on Death Security Registration

Act provides a simple and effective method to allow the transfer of securities upon the death of the participant. This legislation will not preclude other forms of estate planning to use when desired and appropriate, but it creates a new affordable highly flexible tool for Virgin Islands residents which will save thousands of dollars in legal fees, probate fees as well as most importantly expedited time required to successfully transfer securities to the proper beneficiaries.

On behalf of AARP Virgin Islands and its membership, we urge the Legislature to enact the Virgin Islands Uniform Transfer on Death Security Registration Act and assure that not only for securities but other payable and death accounts receive the same treatment that this auspices body had the foresight to venture and assure a clear path for Virgin Islands that their hard earned funds and assets are transferred to their intended loves ones and beneficiaries after their death.

Thank You.