

## **CHAPTER 30.1-31 NONPROBATE TRANSFERS ON DEATH**

[Note: Previous chapter 30.1-31 was repealed and replaced by S.L. 1991, ch. 351]

### **30.1-31-01. (6-101) Nonprobate transfers on death.**

1. 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:
  - a. 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;
  - b. 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
  - c. 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.
2. Subsection 1 does not limit rights of creditors under other laws of this state.

### **30.1-31-02. (6-201) Definitions.** As used in sections 30.1-31-02 through 30.1-31-20:

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. "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 association, and credit union.
5. "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.
6. "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.
7. "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 setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

8. "P.O.D. designation" means the designation of:
  - a. 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
  - b. 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.
9. "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.
10. "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 sections 30.1-31-02 through 30.1-31-20, 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.
11. "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.
12. "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

**30.1-31-03. (6-202) Limitation on scope of sections 30.1-31-02 through 30.1-31-20.**  
Sections 30.1-31-03 through 30.1-31-20 do not apply to:

1. An account established for a partnership, joint venture, limited liability company, or other organization for a business purpose;
2. An account controlled by one or more persons as an agent or trustee for a corporation, limited liability company, unincorporated association, or charitable or civic organization; or
3. A fiduciary or trust account in which the relationship is established other than by the terms of the account.

**30.1-31-04. (6-203) Types of account - Existing accounts.**

1. 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 subsection 3 of section 30.1-31-09, either a single-party account or a multiple-party account may have a P.O.D. designation, an agency designation, or both.
2. An account established before, on, or after the effective date of sections 30.1-31-02 through 30.1-31-20, whether in the form prescribed in section 30.1-31-05 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 P.O.D. designation or an agency designation, within the meaning of sections 30.1-31-02 through 30.1-31-20, and is governed by sections 30.1-31-02 through 30.1-31-20.

**30.1-31-05. (6-204) Forms.**

1. 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 sections 30.1-31-02 through 30.1-31-20 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 P.O.D. (PAY ON DEATH)

DESIGNATION

[name one or more beneficiaries]:

\_\_\_\_\_  
At death of party, ownership passes to P.O.D. 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 P.O.D. (PAY ON DEATH) DESIGNATION

[name one or more beneficiaries]:

\_\_\_\_\_  
At death of last surviving party, ownership passes to P.O.D. 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 P.O.D. 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

2. A contract of deposit that does not contain provisions in substantially the form provided in subsection 1 is governed by sections 30.1-31-02 through 30.1-31-20 applicable to the type of account that most nearly conforms to the depositor's intent.

**30.1-31-06. (6-205) Designation of agent.**

1. 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.
2. 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.
3. Death of the sole party or last surviving party terminates the authority of an agent.

**30.1-31-07. (6-206) Applicability of sections 30.1-31-02 through 30.1-31-20.** The provisions of sections 30.1-31-08 through 30.1-31-13 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. Sections 30.1-31-14 through 30.1-31-20 govern the liability and setoff rights of financial institutions that make payments pursuant to it.

**30.1-31-08. (6-211) Ownership during lifetime.**

1. 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 deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.
2. 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.
3. A beneficiary in an account having a P.O.D. designation has no right to sums on deposit during the lifetime of any party.
4. An agent in an account with an agency designation has no beneficial right to sums on deposit.

**30.1-31-09. (6-212) Rights at death.**

1. Except as otherwise provided in this chapter, 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 30.1-31-08 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 30.1-31-08 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 30.1-31-08, and the right of survivorship continues between the surviving parties.

2. In an account with a P.O.D. designation:
  - a. On death of one of two or more parties, the rights in sums on deposit are governed by subsection 1.
  - b. 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.
3. Sums on deposit in a single-party account without a P.O.D. 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 30.1-31-08 is transferred as part of the decedent's estate. A P.O.D. 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.
4. 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.

**30.1-31-10. (6-213) Alteration of rights.**

1. Rights at death under section 30.1-31-09 are determined by the terms of the account at the death of a party. The terms of the account may be altered by written notice given by a party to the financial institution to change the terms of the 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.
2. A right of survivorship arising from the express terms of the account, section 30.1-31-09, or a P.O.D. designation, may not be altered by will.

**30.1-31-11. (6-214) Accounts and transfers nontestamentary.** Except as provided in chapter 30.1-05 or as a consequence of, and to the extent directed by, section 30.1-31-12, a transfer resulting from the application of section 30.1-31-09 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to chapters 30.1-01 through 30.1-25.

**30.1-31-12. (6-215) Rights of creditors and others.**

1. If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or P.O.D. designation under sections 30.1-31-02 through 30.1-31-20 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.

2. 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 30.1-31-08, to the extent necessary to discharge the claims and allowances described in subsection 1 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.
3. 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.
4. 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 30.1-31-19 for a financial institution that makes payment in accordance with the terms of the account.

**30.1-31-13. (6-216) Community property and tenancy by the entireties.**

1. 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 30.1-31-09 may not be altered by will.
2. Sections 30.1-31-02 through 30.1-31-20 do not affect the law governing tenancy by the entireties.

**30.1-31-14. (6-221) 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 P.O.D. 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.

**30.1-31-15. (6-222) 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 30.1-31-09.

**30.1-31-16. (6-223) Payment on P.O.D. designation.** A financial institution, on request, may pay sums on deposit in an account with a P.O.D. 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.

**30.1-31-17. (6-224) 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.

**30.1-31-18. (6-225) Payment to minor.** If a financial institution is required or permitted to make payment pursuant to sections 30.1-31-02 through 30.1-31-20 to a minor designated as a beneficiary, payment may be made pursuant to chapter 47-24.1.

**30.1-31-19. (6-226) Discharge.**

1. Payment made pursuant to sections 30.1-31-02 through 30.1-31-20 in accordance with the terms of the 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.
2. 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.
3. 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.
4. 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.

**30.1-31-20. (6-227) Setoff.** Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled under section 30.1-31-08 or, in the absence of proof of that proportion, an equal share with all parties.

**30.1-31-21. (6-301) Definitions.** As used in sections 30.1-31-21 through 30.1-31-30:

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. "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.
3. "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.
4. "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.
5. "Security account" means a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, 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; an investment management or custody account with a trust company or a trust division of a bank, credit union, or any other financial institution with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or 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.

**30.1-31-22. (6-302) 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 entireties, or as owners of community property held in survivorship form, and not as tenants in common.

**30.1-31-23. (6-303) 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.

**30.1-31-24. (6-304) 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.

**30.1-31-25. (6-305) Form of registration in beneficiary form.** Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "T.O.D.", or by the words "pay on death" or the abbreviation "P.O.D.", after the name of the registered owner and before the name of a beneficiary.

**30.1-31-26. (6-306) Effect of registration in beneficiary form.** The designation of a T.O.D. 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.

**30.1-31-27. (6-307) 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.

**30.1-31-28. (6-308) Protection of registering entity.**

1. 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 sections 30.1-31-21 through 30.1-31-30.
2. 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 sections 30.1-31-21 through 30.1-31-30.
3. 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 30.1-31-27 and does so in good faith reliance on the registration, on sections 30.1-31-21 through 30.1-31-30, and 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 sections 30.1-31-21 through 30.1-31-30 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 sections 30.1-31-21 through 30.1-31-30.
4. The protection provided by sections 30.1-31-21 through 30.1-31-30 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.

**30.1-31-29. (6-309) Nontestamentary transfer on death.**

1. 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 sections 30.1-31-21 through 30.1-31-30 and is not testamentary.
2. Sections 30.1-31-21 through 30.1-31-30 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

**30.1-31-30. (6-310) Terms, conditions, and forms for registration.**

1. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registrations in beneficiary form and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered T.O.D. 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 L.D.P.S., 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.

2. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:
  - a. Sole owner - sole beneficiary: John S. Brown T.O.D. (or P.O.D.) John S. Brown Jr.
  - b. Multiple owners - sole beneficiary: John S. Brown Mary B. Brown JT. TEN. T.O.D. John S. Brown Jr.
  - c. Multiple owners - primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT. TEN. T.O.D. John S. Brown Jr. SUB. BENE. Peter Q. Brown or John S. Brown Mary B. Brown JT. TEN. T.O.D. John S. Brown Jr. L.D.P.S.