

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 186 (Delegate Carr, *et al.*)
Health and Government Operations

Maryland Uniform Real Property Transfer-on-Death (TOD) Act

This bill establishes the Maryland Uniform Real Property Transfer-on-Death Act. The bill applies only to a transfer-on-death deed made before, on, or after the bill's October 1, 2015 effective date, by a transferor dying on or after that date.

Fiscal Summary

State Effect: General fund revenues may decrease significantly in future years due to a reduction in probate fees collected. Any offsetting increase in general fund revenues from additional land recordation fees is likely to have a negligible impact on general fund revenues. Expenditures are not materially affected.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill allows an individual to transfer property to one or more beneficiaries effective at the death of the transferor by a transfer-on-death deed. A transfer-on-death deed is revocable and nontestamentary. The capacity required to make or revoke a transfer-on-death deed is the same as the capacity required to make a will. The bill does not affect any method of transferring property otherwise allowed under the law of the State.

A transfer-on-death deed must contain the essential elements and formalities of a properly recordable *inter vivos* deed and must state that the transfer to the designated beneficiary is to occur at the death of the transferor. The deed must be recorded before the death of the

transferor in the public records in the office of the clerk for the circuit court for the county where the property is located. A transfer-on-death deed is effective without (1) notice or delivery to or acceptance by the designated beneficiary during the life of the transferor or (2) consideration.

The bill specifies:

- how a transfer-on-death deed may be revoked;
- the effect of a transfer-on-death deed during the life of a transferor, including that it does not (1) affect an interest or right of the transferor or another owner, including the right to transfer or encumber the property; (2) create a legal or equitable interest in favor of the beneficiary; or (3) subject the property to claims by a creditor of the beneficiary;
- rules that apply to the transfer of the property on the death of the transferor;
- that a beneficiary may disclaim all or part of the interest of the beneficiary; and
- rules that apply where the probate estate of the transferor is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, allowing for the estate to enforce the liability against property transferred by a transfer-on-death deed.

The bill also contains a statutory form transfer-on-death deed and a revocation of transfer-on-death deed.

Current Law: Maryland law allows for transfer-on-death multiple-party accounts in a financial institution and transfer-on-death securities.

Background: The bill is a version of the Uniform Real Property Transfer on Death Act drafted by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission). The uniform act was completed in 2009 and has been enacted in 12 states and the District of Columbia. The prefatory note to the act states that one of the main innovations in property law of the twentieth century has been asset-specific mechanisms allowing an owner to designate beneficiaries to receive the property at the owner's death without waiting for probate and without the beneficiary designation needing to comply with the witnessing requirements of wills. The note indicates that the trend has largely focused on assets that are personal property, but 13 states had enacted statutes authorizing transfer-on-death deeds leading up to the completion of the uniform act.

State Fiscal Effect: In spite of a potential minimal increase in general fund revenues from land recordation fees, general fund revenues are likely to decrease significantly in future years due to a reduction in probate fees collected by registers of wills. Registers of wills collect probate fees for performance of the registers' duties in relation to a probate estate. The amount of the probate fee for an estate is based on the value of the estate, ranging from \$50 for an estate of less than \$5,000 to more than \$2,500 for an estate of more than \$5.0 million. Probate fees and inheritance taxes collected by the registers of wills that are not used for salaries and expenses of the registers of wills are deposited in the general fund. In fiscal 2014, \$6.5 million in probate fees were collected by the registers of wills. Of that \$6.5 million, approximately \$2.02 million of excess fees of office reverted to the general fund. The Comptroller advises that it estimates approximately \$1.21 million and \$1.23 million of excess fees of the office will revert to the general fund in fiscal 2015 and 2016, respectively.

Probate fee revenues are affected to the extent that real property is transferred through a transfer-on-death deed rather than being distributed from a probate estate. The registers of wills indicate that real property makes up a significant portion of the value of probate estates.

Additional Information

Prior Introductions: HB 59 of 2014 received an unfavorable report from the House Judiciary Committee. HB 946 of 2013, a similar bill, received a hearing in the House Judiciary Committee but was subsequently withdrawn.

Cross File: SB 101 (Senator Manno) - Judicial Proceedings.

Information Source(s): State Department of Assessments and Taxation, Comptroller's Office, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Securities Division), Register of Wills, Department of Legislative Services

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