

AG's A2J COVID -19 TASK FORCE RECOMMENDATION SUBMISSION FORM

*Please submit separate forms for each recommendation

1. Committee submitting the recommendation:

Life and Health Planning

2. L&HP Recommendation No. 6:

Ease ability to transfer family home outside of Probate Court.

Consider enacting legislation that creates a statutory form Transfer on Death Deed Such a deed would allow real property to transfer to the beneficiary automatically upon death, and avoid the time and cost of probate.

3. Describe the civil justice problem related to COVID-19 the proposal is solving.

The family home is usually the most valuable asset that an individual owns. In many cases, the home is a shelter for multiple generations or expanded members of a family. When the owner of the home dies, the family members who remain living in the home must file for probate in order to transfer the home to the decedent's heirs. For some family members, the complications and cost of probate are overwhelming and so probate is never commenced. For families who struggle financially some of these homes will go to tax sale for nonpayment of real property taxes and the family members may face homelessness. These problems likely have been exacerbated because of deaths related to the COVID-19 pandemic.

3a. Add context and detail about how this issue directly affects Marylanders; what are the implications of not acting. (This will be helpful in explaining the real-world impact of these issues in the task force's report.)

The proposal would allow the transfer of home ownership from the decedent to an heir without the expense or delay of going through probate. Failure to act would continue the status quo, in which families for whom probate is overly complicated or expensive remain living in a home they do not own, increasing the risk that they incur the expense of paying the mortgage, maintenance and other associated expenses of the property without having any ownership in the property.

3b. Please identify, if possible, contacts at organizations (mix of 3 - grassroots, social services and legal services) working on these issues who could provide more detailed information about the impacts on average Marylanders to our report writer.

Margaret Henn, Director of Program Management, Maryland Volunteer Lawyers Service, mhenn@mvlsvlaw.com

Timothy Chance, Tangled Title Staff Attorney, Maryland Volunteer Lawyers Service, tchance@mvlsvlaw.com

Rexanah Wyse, Chief of Staff, United States Interagency Council on Homelessness

4. Detail how race/ethnicity/national origin disparities are addressed in the proposal and include any context (i.e., identify existing disparities before COVID-19 and exacerbated post COVID-19; refer to racial equity assessment questions).

This proposal intends to immediately decrease the wealth disparity between black and white families. As of 2017, homeownership is at 47% in Baltimore, while black homeownership is only at 42%.¹ This can be tied, in part to the historical overassessment of black owned homes. Nationwide, black families pay 13% more in property taxes than white families.² As a result, black families that are earning half as much as their white counterparts, are forced to pay higher property taxes and the home is more at risk of being taken from the family.³ Post COVID, this risk has been exacerbated as black families are generally more financially vulnerable and COVID caused unemployment will only make the situation more dire.⁴ Removing the lien certificate requirement, while it does not address the root issue of overassessment, lessens the impact that an existing property tax balance will have on black homeownership.

5. Detail disparities of other types and how the proposal aims to be inclusive and accessible to vulnerable persons, including those with disabilities, language differences and technology barriers.

This proposal provides a simplified mechanism to pass property and avoid probate. The goal of this proposal is to avoid the costly and extremely complex process of probate, with regard to the family home. This recommendation will provide a statutory deed to effect the transfer of property. This statutory form, coupled with pro bono assistance, and the possibility of avoiding the lien sheet requirement will provide another simplified avenue for passing real property. As

¹ Sally J. Scott & Seema Iyer, *Overcoming Barriers to Homeownership in Baltimore City* 3 (2020).

² Andrew Van Dam, *Black families pay significantly higher property taxes than white families, new analysis shows*, Wash. Post (July 2, 2020), <https://www.washingtonpost.com/business/2020/07/02/black-property-tax/>.

³ Sally J. Scott & Seema Iyer, *Overcoming Barriers to Homeownership in Baltimore City* 6 (2020).

⁴ Kelly Glass, *Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting.*, N.Y. Times (June 29, 2020), <https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html>.

with other proposals the Committee recommends, Transfer on Death Deeds can serve as an extremely beneficial tool for a large portion of Maryland's families.

6. Indicate what action is needed to implement the proposal (e.g., court rule change; legislative (local, state or federal) or regulatory change, MOU, MSBA or other agency or organization action).

State legislative action.

7. Provide any additional background that provides context and support for the Proposal.

Several articles have shown the importance of estate planning to the protection of generational wealth, including the proper transferring of homeownership.⁵ Transfer on death deeds will assist with not only preserving generational wealth and the clear transfer of title to future generations, but will also aid in facilitating low-cost estate planning and avoiding probate.

8. Identify any known objections or obstacles to the proposal (e.g., opponents' arguments, cost, short time frame to act; previous attempts to accomplish failed).

Some attorneys in the Maryland State Bar Association's Estates and Trusts Section oppose a Maryland Form Statutory Transfer on Death Deed, as they are concerned that it could be used by unscrupulous operators to persuade vulnerable or elderly adults to sign over their most valuable asset. Also, as Maryland allows for life estate deeds, which also allow the transfer of property upon death to a beneficiary without probate, some attorneys feel that transfer on death deeds are not needed. These attorneys likely will oppose the legislation on his basis.

9. Share how the proposal compares to other states' laws, policies, or actions (e.g., would the proposal make Maryland a leader in this area or bring Maryland in line with most other states).

As of 2020, twenty-eight jurisdictions (twenty-seven states and Washington D.C.) have some form of transfer on death deed; thirteen of these jurisdictions have adopted the Uniform Real Property Transfer on Death Act. These states have changed various sections of uniform act to fit their needs, but their modifications still follow the Uniform Law Commission's standardized scheme. The uniform act lays out the basic requirements for a TODD, the first of which, is that the deed must follow the jurisdiction's laws regarding other deeds. With regard to the twenty-eight jurisdictions with transfer on death deeds, nineteen provide a statutory form

⁵ See, e.g., ShelterForce: Can Estate Planning be Used to Help Preserve Economic Assets in Low-Income Communities? *avail at*: <https://shelterforce.org/2019/03/01/can-estate-planning-preserve-economic-assets-in-low-income-communities/> (last visited Oct. 2, 2020).

transfer on death deed. This proposal would bring Maryland in line with the nearly forty percent of jurisdictions that provide a statutory form transfer on death deed.