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To: Members of the Judicial Proceedings Committee
From: MLTA Legislative Committee
Date: January 30, 2023 [Hearing date: February 1, 2023]
Subject: **SB 0146** – Maryland Real Property Transfer-on-Death (TOD) Act
Position: **Unfavorable**

The Maryland Land Title Association (MLTA) asks that you find **unfavorable Senate Bill 0146** – Maryland Real Property Transfer-on-Death (TOD) Act. The bill seeks to provide for the creation, revocation, recordation, and effects of a transfer-on-death deed for real property.

Maryland already has a form of transfer with over a century of judicial interpretation that accomplishes the same type of transfer – the life estate deed with powers of alienation. In a life estate deed, an individual transfers property to others while reserving the right to occupy and use the property during the term of their natural life. The recipients of the transfer are referred to as remaindermen and, in a life estate without powers of alienation, their consent is required in order to convey or mortgage the property.

Powers of alienation allow an individual who reserves a life estate to later unilaterally sever the interests of the remaindermen named in the life estate deed without the need for their consent or involvement. It is this recognition of a right of alienation that sets Maryland apart from other states that have legislatively implemented transfer on death deeds. Often those states do not recognize a power of alienation in life estate deeds. This makes a Transfer on Death Deed unnecessary in Maryland as the bill seeks to address a need already met by an existing, well established form of instrument.

The bill also seeks to create a form deed that will allow an individual to transfer property without the need for assistance from a real estate professional. The proliferation of “self-help” deeds available on the internet has taught the title industry that completion of a form instrument does not always effectively transfer the property. “Self – help” deeds can leave other interested parties contesting the validity of the instrument and /or the capacity of the signer at a later time. Defective or improper entries on blank lines provided on the instrument can cloud the title affecting its insurability. This often leads to additional costs and attorney and/or court involvement to correct an improper conveyance or overturn a conveyance by an incapacitated individual or one obtained through undue influence.

While the intent to create a one-size-fits all form is noble, the form fits only a small percentage of the population it is meant to serve (single individual transfers) and in so doing strips out many statutory safeguards. These safeguards were put in place not as a hurdle to real property transfers, but to preserve for our posterity the integrity of Maryland’s land records system.

Real property represents for many individuals the largest single asset that they own. For that reason alone, the necessary involvement of a real property professional is important to assure that the resulting title is free of questions or concerns and therefore insurable when its owner seeks to sell or mortgage the property. In the life estate deed with powers of alienation, Maryland already has a form of instrument that, with the proper and necessary guidance of a title professional, will accomplish the objective of a transfer on death deed. To paraphrase an old adage, if it is not broken, there is no need to fix it.

For these reasons, the MLTA respectfully requests that you return an unfavorable recommendation for **Senate Bill 0146**.
