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**To:** Judicial Proceedings Committee (Senate)

**From:** Legislative Committee of the Real Property Section Counsel

**Date:** January 31, 2023 [Hearing Date February 1, 2023]

**Subject:** **SB 146 – Maryland Real Property Transfer–on–Death (TOD) Act**

**Position:** **Technical Comments**

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The Real Property Section Counsel of the Maryland State Bar Association (MSBA) offers **technical comments to Senate Bill 146 – Maryland Real Property Transfer–on–Death (TOD) Act.**

We do not believe the proposed legislation is the best approach to creating a method to transfer title to real property upon the death of the vested owner without resorting to probate. The proposed legislation overly complicates matters and, in the end, in order for the “beneficiary” to convey the title, most likely, a title insurer would require all interested persons to consent to the transfer. Instead of creating a complicated statutory scheme for a TOD, we propose creating a statutory form life estate deed with powers that could be used by the title holder. Life estate deeds have been utilized in Maryland as a method to avoid probate for many years as they are a product of the common law, and thus, a well-known, recognized, and effective method of estate planning.

However, should the committee decide to proceed with the legislation, we offer the following comments.

1. Page 2, lines 28 through 33. E&T §1-402(A) and (B) substantially overlap. They should be combined for clarity.
2. It is unclear whether an intake sheet will or will not be required when a TOD deed is presented for recordation. See page 4, line 7 and page 4, lines 12-15. See also page 10, lines 14-16.
3. Page 4, lines 21-27. How would the assessment office know when the transferor (shouldn't this term be “grantor”?) of a TOD deed has died and the transferee (shouldn't this term be “grantee”?) should be noted as the owner of the property?
4. Page 8, lines 7-9. Shouldn't the requirement of a certificate of preparation be applicable to TOD deeds? The law already allows a party to the instrument to sign the certificate.

5. Page 12, lines 13-15. This permits a TOD deed to be transferred to a beneficiary, in the singular. Cannot a property owner leave the property to more than one beneficiary? And this is inconsistent with the portion of the bill that allows for alternative beneficiaries, see page 15, lines 15-20, or multiple beneficiaries (see page 16, line 5).

6. Page 15, line 28. Add “deeds of trust.”

7. Page 18, line 21. After “Probate is not required” add “if this is your only asset.”

The Real Property Section Counsel of the MSBA believes there is a much simpler, and in the end, more effective, method to transfer title to real property upon death and avoid probate and urges to the committee to consider it in its deliberations. If the legislature wants to help people transfer their only real property asset in a way to avoid probate, and it follows our advice that a Transfer on Death Deed is not the best way to do that, we can easily draft and provide a form of life estate deed to make that method of transfer readily accessible. Thank you for your consideration.