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CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

TO: House Judiciary Committee
House Ways and Means Committee
FROM: Legislative Committee
Suzanne Pelz, Esq.
410-260-1523
RE: House Bill 625
Real Property – Transfer-on-Death Deed - Establishment
DATE: January 29, 2025
(2/12)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 625. The bill would create a new instrument for transferring real property. A transfer-on-death deed (TODD) would permit a grantor to transfer real property to a beneficiary effective on the transferor's death. Property transmitted by a TODD would not be subject to probate. The bill would require the TODD to be recorded in the land records of the county where the property is located. The TODD would be effective without notice or delivery to or acceptance by a designated beneficiary during the transferor's life, and without consideration. The beneficiary would take the property transferred subject to all security agreements to which the property is subject at the transferor's death. The bill would permit a beneficiary to disclaim all or part of the beneficiary's interest.

This bill raises several issues. First, this bill requires the Administrative Office of the Court (AOC) to provide informational documents about deeds. Providing this information arguably asks the Judiciary to provide legal advice since use of such deeds can have a number of advantages or disadvantages depending on someone's circumstances. Because of this, this requirement raises significant ethical issues for the Judiciary.

In addition, there are several implementation concerns for the clerk's offices. First, it is unclear how the local tax offices and local municipalities that require approval prior to recording will be notified that a transfer has commenced given that the TODD has already been recorded at that point. The tax office would not have knowledge of the TODD, nor would any local municipality or financial institution that may have a lien on the property. Properties could potentially end up in foreclosure or in a tax sale. It is also unclear how, without an endorsement regarding taxes, relevant agencies will know when the TODD takes effect to update their records with the information from the TODD registry. Further, there is no notice provision to the beneficiary so the beneficiary may be unaware of any financial obligation linked to the property. When real property is transferred through probate, the probate process affords notice to heirs, creditors, lienholders, and taxing authorities, and avoids the notice problems described above.

Additionally, forms described in the bill make it optional to include the beneficiary's mailing address. If no address is listed and the beneficiary is unaware of ownership, title searchers will not be able to locate the owner of the property. It is unclear how title searchers will also know if someone is deceased and the TODD has transferred the property.

The language defining legal description in this bill is also vague. The transfer-on-death deed legal description must include Liber and Folio of the deed that is being transferred and the legal description of the property, which does not mean the physical address.

cc. Hon. N. Scott Phillips
Judicial Council
Legislative Committee
Kelley O'Connor