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## Maryland Circuit Court Clerks' Association

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*"Where there is unity, there is strength"*

**HB 625 Maryland Real Property Transfer-on-Death Deed Establishment TOD) Act**  
**Judiciary and Ways and Means**  
**Sponsor: Delegates Phillips, Hill and Woods**  
**Position: Unfavorable**

### **Written Position of Dawne Lindsey, member of Maryland Circuit Court Clerk's Association**

My name is Dawne Lindsey, the Clerk of Court for Allegany County. I'm providing this on behalf of the Maryland Circuit Court Clerk's Association, which represents the elected Clerks of the Circuit Court in Maryland. I'm providing for your consideration our opposition to HB 625 on behalf of our Association.

Our Clerk's Association submitted an unfavorable report in 2023, when this same bill was submitted as HB1270 and HB 986 in previous years, because we had major concerns, and those concerns still exist.

This legislation could have far reaching effects on what is usually the largest asset in a person's estate – their house and other real property. The bill as written still leaves many questions regarding notification to beneficiaries, creditors, and tax authorities, which could generate unintended consequences for those whom the bill is trying to help. For instance, the bill

allows anyone to be named as a beneficiary, not just family members, so this could negatively impact the generational transfer of family assets and potentially open an avenue for increased theft from the elderly. Also, the bill appears to allow transfer of the property immediately upon the death of the transferor regardless of whether there are liens or property taxes/municipal bills on the property. The last few years the clerk's office has seen dramatic increase in fraudulent transfers of property. Now is not the time to make it even easier for criminals to use TOD forms to commit illegal transfers. In addition, there has been a comparison that a TOD Deed would be like the way the MVA transfers a car title. However, car titles are not public record and are not transferred to the beneficiary without a release of lien and the death certificate.

**Specific sections in the bill that we have concerns are:**

**Section 3-104, Page 4, Line 5** - why are we allowing individual to transfer their property without a certification that they are current on their property taxes/municipal bills?

**Section 3-104, Page 4, Line 8** – legislation would omit requirement of endorsement of assessment office, which keeps a vital agency out of the loop of property ownership.

**Section 3-104, Page 4, Line 21** – Upon the death of the owner, how does the assessment office ever know the designated beneficiary is the new owner.

**Section 14-1006, Page 15, Line 12:** No notice to beneficiary is required. How will the beneficiary ever know they own the property, let alone that they are responsible for any outstanding debt?

**Section 14-1006, Page 15, line 12:** No consideration, which means lost revenue for the counties and the state.

**Section 14-1007, Page 15, line 21:** Beneficiary subject to all encumbrances, liens, mortgages, etc. Debt may go unpaid due to the beneficiary not knowing they now own the property. Financial institutions will not have a clue there is a new owner to bill.

**Section 14-1009, Page 18 line 2:** Delivery of Deed occurs at transferors' death. How will anyone know the death occurred to transfer ownership? There will be no record of death in the land records office of the date of the death for chain of title ownership records.

**Section 14-1011, Page 16, Line 14:** requires the Administrative Office of the Courts to provide information about TOD which could lead the Judiciary to providing legal advice on a process that can have several advantages and disadvantages depending on someone's circumstances, which could raise ethical issues for the Judiciary.

**Section 14-1012, page 19, Line 13:** Mailing address says, "if available." How will anyone be able to contact the beneficiary with no contact information? Also, on the revocation the address appears to not be optional.

**Section 14-1012, page 18, Line 22:** This says this form MAY be used to create a Transfer on Death Deed. The word may open the door to the land records office receiving a transfer on a post it notes. The proposed legislation does state any requirements for content.

**Section 14-1012, page 19, Line 7:** Legal description must be the Liber and Folio. It cannot be the responsibility of the clerk's office to determine the correct deed for the transfer on death. Legal description is not the address, we must have Liber and Folio provided by transferor to ensure correct transfer of property and thereby avoid litigation for parties to clean up a cloudy title. On advice provided by the Attorney General's office, the Clerks of Court would not record a blanket disclaimer without a property description.

**Section 14-1012, page 20, Line 2:** The form has a section for acknowledgment of a notary. The proposed legislation does not require a notary signature. The proposed legislation also does not require the use of any form, this creates scenarios where Transfer on Death Deeds will be submitted without a notary seal.

**Section 14-1013, Page 22, Line 11:** Same issue as the designating a beneficiary form. No requirement to use the form and the proposed legislation does not list any requirements, such as legal description, which must be provided or acknowledged by a notary.

**Section 14-1013, Page 22, Line 23:** Legal description must be Liber and Folio. Physical address is not a legal description. Land Records office staff cannot be responsible for determining the correct property reference. We must be provided that by the owner making the transfer. If wrong reference is made, the beneficiary will have to file a civil lawsuit to clean up the title chain.

**Section 14-1013, Page 23, Line 5:** Proposed Legislation does not require notary signature.

**Page 22, Line 1:** on the instruction form it says, ***"Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud."*** This is the main problem with the bill that the clerks are concerned about. No one, including the

beneficiary or State Department of Assessment and Taxation offices will know there is a new owner. The opportunity for fraud is very high with this bill.

In closing we can see the good intention the proposed legislation has with this bill. However, we have experienced firsthand how a poorly executed deed can not only cause a financial burden but be extremely stressful for parties to clear up. We suggest that the Register of Wills would be a much better location to record a Transfer on Death Deed than the clerk's office.