

MARYLAND HOUSE JUDICIARY COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
**IN SUPPORT WITH AMENDMENTS OF HB 625: REAL PROPERTY -
TRANSFER-ON-DEATH DEED – ESTABLISHMENT**

WEDNESDAY, FEBRUARY 12, 2025

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Chair Clippinger and distinguished members of the Committee, thank you for the opportunity to testify in support of House Bill 625 with amendments.

My name is Megan Good, and I am a Tangled Title Staff Attorney at Maryland Volunteer Lawyers Service (MVLS). MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. Since MVLS's founding in 1981, our statewide panel of over 1,700 volunteers has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. In FY24, MVLS volunteers and staff lawyers provided legal services to 2,950 people across the state.

Our Tangled Title team is committed to helping low-income families preserve and pass on their family home. Clouded or tangled titles prove to be a significant barrier for homeowners.

I am asking for your Support with Amendments of House Bill 625 because the Transfer on Death Deed (TODD) is an important tool for enabling homeowners to successfully plan for and pass legal title to their home.

Right now, thousands of families across Maryland are at a heightened risk of losing their family home because the current homeowner's name is not on the deed. In other words, they have a "tangled title." Tangled titles increase the risk of housing loss because many programs designed to support low-income homeowners – such as property tax credits and programs to support major home repairs – are only accessible to individuals when their name is on the deed to the home.

Tangled titles are preventable, and the TODD fills an unmet need for many homeowners since it functions differently from a Will or a Life Estate Deed. It offers attorneys and homeowners alike a new tool for addressing a property owner's interests, and its accessibility and ease of use are important for removing barriers for homeowners to pass their property when they cannot access legal services.

For the TODD to have its intended impact in Maryland, it must be available to co-owners in addition to sole property owners. This bill's current limitation to only sole owners is contrary to the Uniform Real Property Transfer on Death

Act, and property owners who should be able to utilize this deed will not be able to do so. I support an amendment broadening the use of the instrument to properties with multiple owners.

For example, when co-owners hold property as Tenants in Common, an individual co-owner's share will NOT pass automatically to the other co-owners when one dies. When co-owners do not have a will, and their property interests pass through intestacy, the title to the property quickly fractures. We commonly work with clients whose homes are partially owned by six, to eighteen, to 56 people. If a co-owner can record a TODD to provide for the clean passage of their share, it can prevent titles from becoming tangled, or at least minimize the complexity of ownership interests while a homeowner works to clear the title.

We are currently working with a client, Ms. S, who is helping her great Aunt preserve the family home. Ms. S's Aunt is in her mid-80s, on a fixed income and has lived in her family home for decades, but because her name was not on the deed, she has not been able to take advantage of the Homeowners Property Tax Credit or access resources to help repair her roof. When we started working with Ms. S, the names of three deceased family members were on the deed to Aunt's home. Two of the deceased co-owners still remain on the deed because the process to untangle the deed is too complicated, time consuming, and expensive for Ms. S to address all at once. Fortunately, when Ms. S arrived at our door, Aunt held a one-third legal interest in the home because one of the co-owners left it to her in their will in 2016. But, the deed transferring the property to her was never executed. If that family member could have used a TODD, Aunt could have accessed supports to maintain her home years ago.

Aunt's title remains tangled today as we work through the likely multi-year process to probate the estates of the other co-owners on the deed and their heirs to transfer property interests that are split across several different relatives. Aunt's home would be better protected if she had access to a TODD to make sure *her* property interest passed automatically upon her death. But under the current language of this bill, she would not have access to this TODD. Allowing co-owners to use a TODD is essential for this legislation to meet its stated objectives.

In contrast to properties held by Tenants in Common, there are two types of co-ownership where a co-owner's share passes automatically to the other owner(s) at death – Tenants by the Entirety (available only to married couples) and Joint Tenants with Rights of Survivorship. Similar to how the TODD is implemented in other states, these co-owners should also be able to pass their ownership through a TODD after their deaths.

There are some circumstances where these types of ownership would control how property passes instead of a TODD, or all co-owners would have to sign the TODD for it to be effective. This bill's proposed language largely addresses these circumstances by including language about which other portions of the Maryland Code limit the operation of the TODD.

However, House Bill 625 should be amended to directly address the effectiveness of a

TODD when property is held by Joint Tenants with Rights of Survivorship and one of the joint tenants records a TODD, naming a third party as the transferee. It is our position that the TODD should control, and it should sever the joint tenancy only when it becomes effective. The reasons for this proposal are as follows:

- A joint tenant may unilaterally sever a joint tenancy by making a transfer of their share in the property while they are alive;
- The act of recording a TODD after a joint tenancy is established is a manifestation of an intent to sever the joint tenancy;
- The TODD is revocable and does not become effective until the Transferor dies, so its recordation should not sever the joint tenancy prior to its effectiveness; and,
- TODDs are designated by law to be “non-testamentary,” so they should be treated as a lifetime transfer of property.

We understand the Bill’s limitation of the TODD to sole owners may have been included in an attempt to simplify the deed’s implementation, but it is our position that complexities and complications will still arise, and that the attempt to simplify does a disservice to Maryland homeowners and communities by failing to offer this important tool to the property owners who have the greatest barriers to achieving or maintaining a clear title.

Properties that have clouded or tangled titles usually have some form of co-ownership, so to exclude those owners from accessing this tool would be a significant oversight. Additionally, the law as written would not promote racial equity as effectively as if all ownership types were included. Black homeowners in Maryland experience Tangled Titles at higher rates than White homeowners. Excluding properties with co-owners from accessing the TODD means excluding Black homeowners from this tool at disproportionate rates.

Therefore, we urge you to amend and support HB 625. Chair and members of the Committee, thank you again for the opportunity to testify.