



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Statement of Jane Sternecky, Legislative Counsel for the Uniform Law Commission, to the Maryland House Judiciary Committee in Support of HB 625, Establishing Real Property Transfer-on-Death Deeds

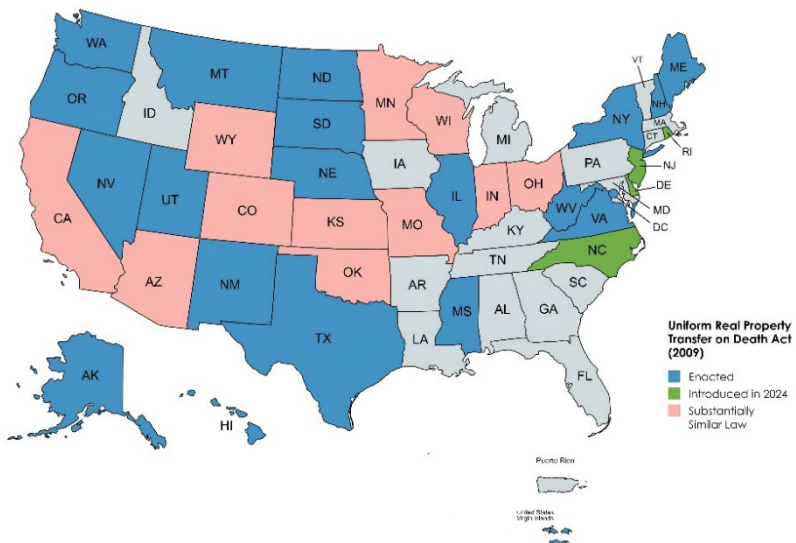
Chair Clippinger, Vice-Chair Bartlett, and Members of the Committee:

Thank you for the opportunity to testify in favor of HB 625 to enact the Uniform Real Property Transfer on Death Act. HB 625 is based off of a uniform act drafted by the Uniform Law Commission. There are some minor amendments that are needed before we can fully support this bill and consider it to be a uniform enactment, but we have discussed this matter with Delegate Phillips and believe the appropriate amendments will be made.

Over the past thirty years, there has been a significant increase in the use of various mechanisms to transfer personal property at death without requiring probate. Some common examples of personal property that can be transferred at death to a named beneficiary include proceeds from life insurance policies and pension plans, securities registered in in transfer on death form, and funds held in payable on death bank accounts. Marylanders routinely take advantage of this modern legal trend to pass financial assets to a named beneficiary outside of probate, but there is currently no such mechanism for real estate. To address this gap in the law, HB 625 would allow Marylanders to transfer real estate to a named beneficiary at the time of the owner's death and outside of the probate process.

The Uniform Real Property Transfer on Death Act (URPTODA) was completed by the ULC and recommended to the states in 2009. Today, 30 states, including Nebraska, South Dakota, Missouri, Minnesota, Wisconsin, and Illinois, along with the District of Columbia, and the United States Virgin Islands, permit transfer on death (TOD) deeds, and more states are expected to follow suit.

URPTODA is not a substitute for estate planning, and for property owners with very large or complex estates, it is likely not the best solution. However, for many smaller estates in which a home is the largest asset to be transferred at death, a TOD deed is a



The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

simple, effective tool that can be easily used by estate planning attorneys and other advisors. Let me use an example to illustrate how a TOD deed works.

Katharine owns a house in Maryland worth \$350,000, and she has only one child, David, to whom she would like to leave the house with as little bother and expense as possible. She has very few other assets to deal with, and no creditors. Under present law, Katharine has these options:

1. Leave the house to David in a Last Will and Testament. This will require a full probate proceeding to transfer the title.
2. Leave the house to David by means of a living trust. This would avoid probate, but requires drafting a trust, and transferring the title of the house to the trust. This is a flexible and effective solution, but it is a relatively complex and expensive method of transferring the property.
3. Deed the house now to David and herself as joint owners with survivorship rights. David will inherit title at Katharine's death, but there are other potential problems. For example, if Katharine needs to sell the house to pay for an assisted living facility, David now must agree to the terms of the sale. The house is also exposed to David's creditors, one of whom could try to obtain payment by forcing a partition sale.

If you enact this legislation, Katharine has a fourth, and much better option. She can execute a TOD deed naming David as the beneficiary. The deed must be recorded in public land records before Katharine's death to be valid. While she is alive, Katharine retains 100% ownership of her house, with full power to sell or mortgage the property, to name a new beneficiary, or to cancel the TOD deed. If Katharine dies and the deed is still in effect, the property is automatically transferred to her beneficiary, David, without a probate hearing.

URPTODA was developed with the assistance of the estate planning, real property, title insurance, banking, and senior legal communities. The act has strong support nationally from the American Bar Association's Real Property Trust and Estate Section, the ABA Commission on Law and Aging, the American College of Real Estate Lawyers, and AARP. In the states that have enacted URPTODA, the questions we hear most often are "what took you so long" and "why didn't we have this available earlier?" Those are good questions.

In summary, HB 625 provides a simple and effective method to transfer real property at death – the TOD deed. This bill would not prevent estate planners from using any of the other methods now available when appropriate, but it would provide a new, affordable, and highly flexible tool, and thus potentially save Marylanders hundreds of thousands of dollars, if not millions, in legal fees and probate expenses.

We urge you to advance this bill to enact the Uniform Real Property Transfer of Death Act, and we thank you for your consideration.

Key Provisions of HB 625

The Uniform Real Property Transfer on Death Act

Non-probate transfer: The TOD deed is not subject to the statute of wills and instead passes title to real property directly to the named beneficiary without probate.

A familiar recording procedure: The TOD deed must contain all the essential elements and formalities of a properly recordable deed, including a legally sufficient description of the property to be transferred. The TOD deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located.

Almost anyone can have a TOD deed: The capacity required to execute a TOD deed is the same as the capacity to make a will.

The transferor can change his or her mind: A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a new instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary. If the transferor sells the property while alive, the TOD deed is ineffective.

No effect on property rights until the transferor dies: Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The transferor retains full power to sell or mortgage the property or to revoke the deed. The beneficiary has no legal or equitable interest that could be subject to creditor's claims. The deed does not affect either the transferor's or the beneficiary's eligibility for public assistance and it does not trigger mortgage acceleration clauses or property tax reassessments.

No obligation for the beneficiary: A designated beneficiary may disclaim all or part of the transferred interest in the same manner as any other inherited property.