Written Testimony HB 625 -TOD Deed.pdf
Uploaded by: Allison Harris
Position: FAV

HB 625
REAL PROPERTY - TRANSFER-ON-DEATH DEED - ESTABLISHMENT
HEARING BEFORE THE HOUSE JUDICIARY COMMITTEE
February 12, 2025
POSITION: SUPPORT

The Pro Bono Resource Center of Maryland ("PBRC"), an independent 501(c)(3) non-profit organization, is the statewide thought leader and clearinghouse for volunteer civil legal services in Maryland. As the designated pro bono arm of the Maryland State Bar Association, PBRC provides training, mentorship, and pro bono service opportunities to members of the private bar and offers direct legal services through free legal clinics. **PBRC supports HB 625 because it will facilitate the smooth transfer of homeownership among families who may otherwise be at risk of losing the family home due to the expense and complexity of the estate administration process.**

Over the past ten years, PBRC has assisted approximately 900 homeowners at risk of losing their homes to tax sale. For homeowners, ending up on the tax sale list is usually the result of the inability to pay one's property taxes, not an unwillingness. The clients served by our tax sale prevention clinics held in Baltimore represent some our state's most vulnerable citizens: a majority are seniors, over a third identify as disabled, at least three-quarters identify as Black, and most reported annual household incomes of less than $30,000. Through the advocacy of volunteer attorneys, many of these clients can access programs and credits that reduce their property tax burden allowing them to stay in their homes. However, most Maryland homeowners are unrepresented.

On average, our clients encountered in our tax sale clinics have owned their homes for over 25 years, and generally over 70% own their homes free of a mortgage. As lower-income homeowners, the predominant form of accumulated wealth that they have, and that they can pass on to their families, is the equity in their homes. When homeowners pass away, the heirs to their home must open an estate and complete a lengthy and sometimes complicated process to obtain proper title to the home; the requirements to transfer a deed may force an unexpected and large expense on the family, and it is not an accessible process for many low-income surviving families. As a result, many families remain unable to transfer the deed in their names for a long time, if they ever do. This "tangled title" problem frequently lands families in tax sale. **By allowing the home to pass automatically to a designated beneficiary, these heir homeowners will be better positioned to obtain title, avoid tax sale foreclosure, and keep their homes and the equity their families have worked so hard to build.**

HB 625 may protect certain Marylanders from the loss of their family home, thereby preserving homeownership and the transfer of intergenerational wealth.

For the above reasons,

PBRC urges a FAVORABLE report on HB 625.

Please contact Allison Harris, Director of PBRC's Home Preservation Project, with any questions.
aharris@probonomd.org • 443-703-3050

Statement James McKay for DC Uniform Law Commissio

Uploaded by: James McKay

Position: FAV

Government of the District of Columbia
UNIFORM LAW COMMISSION

February 11, 2025

The Honorable Scott Phillips
House Judiciary Committee
Maryland House of Delegates
Room 100 House Office Building
6 Bladen Street
Annapolis, MD 21401

BY E-MAIL

RE: HB 625, Real Property – Transfer on Death Deed – Establishment

Dear Delegate Phillips:

I am Chair of the District of Columbia Uniform Law Commission and proposed the Uniform Real Property Transfer on Death Act (URPTODA) to the Council of the District of Columbia and testified in support of the Act both for the D.C. Commission and the Executive Branch of the District Government. UPRTODA was passed by the Council unanimously on two readings and signed by the Mayor of the District of Columbia and, after laying before Congress, took effect as D.C. Law 19-230 on March 19, 2023. It is codified at D.C. Code § 16-604.01 *et seq.*

I whole-heartedly support the enactment of HB 625, which would enact URPTODA in Maryland. The Act has been in effect in the District for almost 12 years and has not created any problems. It has been endorsed by the District's Office of the Recorder of Deeds and has been implemented by that Office without incident.

Although a couple of practitioners who were members of the D.C. Land Title Association opposed URPTODA, we demonstrated that their concerns with the Act were not well founded. They argued that recordation of a transfer on death ("TOD") deed will cause uncertainly where there are multiple deeds and will cause lenders not to make a loan. However, we explained that there will be no uncertainty. D.C. Code § 19-611(a), specifically addresses the multiple deed situation. Among several inconsistent recorded TOD deeds, a later acknowledged deed revokes an earlier acknowledged deed. Lenders will make loans because their interests are protected by § 19-613(b), which provides that "[a] beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is

subject at the transferor's death." The American Bankers Association had an observer present and participating throughout the drafting of URPTODA and has had no problem with it. Lenders routinely make loans without incident in the states that have this sort of legislation in effect.

With respect to post-reverse mortgage transfers, recording a TOD deed is not a transfer and has no effect whatsoever during the transferor's lifetime. It is effective at death, the same as a will. Moreover, a suspect deed is subject to challenge by interested parties under general principles of fraud, undue influence, or similar grounds, just as any other deed transferring property.

In addition, the practitioners argued that the TOD deed enables fraud upon the elderly. We explained that this is not true. As the witness for AARP's Legal Counsel for the Elderly testified at the hearing in the District, URPTODA would help *prevent* fraud on the elderly. Experience shows that, in states that authorize TOD transfers of real property, this device is used more heavily by professional estate planners than by individuals. Similarly, the TOD deed has more protections built into it than other devices to which a person intent on defrauding might resort. These include the requirements that the property owner making a TOD deed have the same capacity as required to make a will, § 19-604.08, that the TOD deed have all of the essential elements and formalities of a properly recordable *inter vivos* deed, § 19-604.09(a), and that the TOD deed be recorded before the owner's death with the Recorder of Deeds, § 19-604.09(c).

In sum, as reflected in the District's 12 years' experience, enactment of URPTODA has proved beneficial to the residents of the District, especially low-income residents, who cannot afford the costs of estate planning attorneys. None of the concerns expressed by those who opposed the Act have materialized. Therefore, we hope that Maryland will join its neighboring jurisdictions in enacting this important legislation.

Sincerely,

James C. McKay, Jr.
Chair
D.C. Uniform Law Commission

2.10 HB 625- Real Property - Transfer-on-Death Dee

Uploaded by: Lonia Muckle

Position: FAV

HB 625 - Real Property - Transfer-on-Death Deed - Establishment
House Judiciary Committee
February 12, 2025
SUPPORT

Chair Clippinger, Vice-Chair and members of the committee thank you for the opportunity to submit testimony in support of House Bill 625. This bill provides a critical mechanism for homeowners to easily transfer real property to their heirs through the establishment of Transfer-on-Death (TOD) deeds.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Almost 4,000 of CASH's tax preparation clients earn less than $10,000 annually. More than half earn less than $20,000.**

HB 625 promotes economic security and wealth preservation for low-income Maryland families by simplifying the inheritance process. For many low-income households, homeownership is the most significant asset they own that can create generational wealth. If the proper documentation is not in place before the homeowner's death, the property will go through probate. The traditional probate process can be costly, time-consuming, and inaccessible. This leads to additional financial strain and the potential loss of generational wealth. The creation of TOD deeds under HB 625 allows property owners to designate beneficiaries, ensuring a smooth transition of ownership without the need for probate, excessive legal fees, or systematic delays.

HB 625 will help low-income families:

1. Enabling homeowners to pass on property outside of probate, this bill reduces the financial burden on surviving family members, particularly those with limited resources.
2. Reducing obstacles in retaining inherited property due to complex legal and financial barriers. TOD deeds provide a straightforward, low-cost solution.
3. Stabilizing communities by reducing property abandonment and ensuring continuity of ownership.
4. Streamlining the legal process by eliminating the need for probate court intervention, minimizing administrative delays and reducing court congestion.

By passing HB 625, Maryland will join a growing number of states that have adopted TOD deed legislation to modernize estate planning and protect family assets.

Thus, we encourage you to return a favorable report for HB 625.

Delegate Phillips HB 625 Transfer on Deed - Writte
Uploaded by: N. Scott Phillips
Position: FAV

N. Scott Phillips, Esq.
Legislative District 10
Baltimore County

Judiciary Committee

The Maryland House of Delegates
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Chairman Clippinger, Vice Chair Bartlett, and Members of the Committee,

I am Delegate N. Scott Phillips from the 10th Legislative District, and I am honored to appear before you today to request a favorable report on HB0625, the Transfer of Deed Upon Death.

HB0625 is commonsense legislation that provides Maryland property owners with a simple, straightforward option to pass on their homes and other real property to their loved ones or beneficiaries without the need for a will. The Transfer of Deed is a short, notarized document filed with the Recorder of Deeds that includes identifying information about the property owner, a description of the property, and the designated beneficiaries. This simple form is already in use in the District of Columbia, Virginia, and over thirty additional jurisdictions, where it has proven to be an effective means of transferring title upon the death of the property owner without going through probate.

This legislation will provide a vehicle for passing on property to beneficiaries without the burdensome process of probate. Why is that important in Maryland?

1. **Preserving Intergenerational Wealth:** Homeownership is a critical way to build wealth, particularly across generations. In areas with increasing property values, a home can capture years of appreciated value. For many multi-generational households, the majority of the family's wealth is tied up in the home. If the property is part of an estate with multiple heirs, it may take years to gain clear title. Until a tangled title is resolved, access to that wealth is restricted, and residents cannot fully leverage the home's value or protect it for future generations. Without a deed, they cannot sell the home or create an estate plan to pass it on.
2. **Reducing Legal and Financial Barriers:** Property heirs may not understand the probate process required by law and often cannot afford an attorney to guide them through it. Failure to go through probate can create additional problems. Heirs may live in a property for years without transferring title, incurring property taxes and liens on unpaid taxes of the deceased owner. When discovered, these debts may be insurmountable, making it difficult to qualify for a mortgage or loan, often resulting in foreclosure.
3. **Protecting Against Predatory Practices:** Where there are multiple heirs, one heir can sell their fractional interest to an investor, who can then petition the court for a partition sale of the property—a tactic used by investors to acquire property at a fraction of its value.

4. **Preventing Loss Due to Tax Liens:** Tax liens are a common reason families lose their property. If heirs are unaware of property tax obligations or utility liens, they can quickly fall into delinquency, leading to foreclosure. In Maryland, when property taxes go unpaid, a lien can be sold to a third party. The lienholder can demand repayment with high interest, fees, and costs, which many heirs cannot afford. If unpaid, the lienholder can foreclose on the property, stripping the heirs of their accumulated equity.

In short, each of these outcomes causes heirs to lose their family home and strips families of intergenerational wealth, setting them back financially. The Pew Charitable Trust published a study in August 2021 highlighting the prevalence of tangled titles in Philadelphia and the harsh consequences for heirs inheriting homes without a will. The study found that more than 10,000 residential properties, collectively worth over $1 billion, were affected by tangled titles. The neighborhoods most impacted were those with lower housing values, lower incomes, and higher poverty rates.

Some argue that Maryland does not need a mechanism like Transfer on Death Deeds because other mechanisms exist to transfer title without probate, such as life estates or revocable living trusts. While these options are effective, they are complex legal instruments that typically require an attorney knowledgeable in estate law, which can be costly and inaccessible for many families.

Transfer on Death Deeds have been adopted by 32 states and the District of Columbia, providing residents with a simple, efficient, and cost-effective method for directing their inheritance. This legislation will primarily benefit individuals and families with simple estates, offering them a straightforward option to secure their beneficiaries' inheritance without unnecessary legal costs. Maryland remains the only jurisdiction in the DMV without this simple, widely used mechanism. The District of Columbia passed similar legislation in 2013 and has recorded over 250 Transfer on Death deeds since the beginning of 2025.

Let’s give Maryland property owners the same advantage and a valuable tool to help preserve intergenerational wealth.

Respectfully submitted,

N. Scott Phillips

Written Testimony HB0625 TODD February 12th 2025 P
Uploaded by: Aisha Snead
Position: FWA

MARYLAND VOLUNTEER LAWYERS SERVICE

JUSTICE FOR ALL

MARYLAND HOUSE JUDICIARY COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE IN SUPPORT WITH AMENDMENTS OF HB0625: Real Property – Transfer on Death Deed – Establishment
WEDNESDAY, February 12, 2025

Chair Clippinger and distinguished members of the Committee, thank you for the opportunity to testify in support of House Bill 0625, with sponsor amendments.

My name is Aisha Snead, and I am the Advance Planning Coordinator at the Maryland Volunteer Lawyers Service (MVLS). MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. MVLS was founded in 1981 by a group of concerned Maryland lawyers, legal services providers, and leadership of the Maryland State Bar Association. Since then, 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. Two of the areas MVLS provides legal services for are housing and estate planning and administration. As part of our Advance Planning Project and My Home, My Deed, My Legacy Project, we encounter numerous clients facing economic barriers, such as probate fees, which make it difficult to transfer property. Many low-income Baltimoreans are homeowners living in a family-owned home and often the home is their greatest, and only, asset. A lack of affordable access to estate planning, or tools to legally transfer the deed after the owner dies is one of the largest vectors of housing loss. For the reasons explained below, we respectfully request a favorable report on House Bill 0625 with sponsor amendments.

Our clients often face heirs' property issues, an increased vulnerability to housing loss and family instability, our communities, by systemic policies face what often becomes vacant and blighted properties. In Baltimore City alone we have over 15,000 vacant properties, some lost to property tax sales, others to the innumerous cost of probate, some misclassified because it has an heir's property issue, and it is assumed that no one has taken ownership. One of the best approaches to avoiding these barriers is through estate planning. Residential property owners having affordable tools and streamlined processes to protect their property and legally transfer it to their named heirs is prevention of the former. Having a statutory Transfer on Death Deed is that tool. HB0625 will allow homeowners to protect the future of their property, and the proposed amendments will mitigate the risks of financial abuse from use of TODD.

Residents living on a fixed income often struggle to meet the financial burdens of homeownership such as mortgage payments, property taxes, utility bills, insurance, and home repairs. Many of these homes have been passed down for multiple generations, without an estate being opened or a new deed recorded. Without transfer of the deed after death, the house remains in the name of the initial family member that may have even died 20 years ago or more. Most residents have no idea they need to open an estate to transfer the property and never do. Most residents will not have access to free legal services, and many cannot afford legal representation to make an estate plan to transfer ownership of their property upon death. Creation of a statutory transfer on death deed will provide real property owners a standardized and affordable method to plan for the disposition of their property.

When property transfer has not happened, subsequent heirs occupying a property cannot access critical resources to help make maintaining the home affordable, and it exacerbates their vulnerability to housing loss. MVLS, found by research in partnership with The SOS Fund and Baltimore Neighborhood Indicators Alliance, isolating a period of ten years between 2009 and 2019 in Baltimore City, that approximately 3,300 homes have potential heirs' property issues. It is suspected that we will find this repeated several times over. These estates become more complex and more difficult to unravel with the passing of each generation. For a great many of our tangled title clients if they had an accessible TODD just one generation ago, it would have cleared an immediate path to homeownership, stability and wealth retention. HB 0625 represents a meaningful step toward reducing the number of heirs' properties in the state and areas that are vulnerable to housing loss, property tax sale and vacant properties.

MVLS supports HB0625 with sponsor amendments because it is a critical piece of legislation that seeks to empower Maryland homeowners with a simple and accessible tool for estate planning: the Transfer-on-Death Deed (TODD). HB0625 will help preserve generational wealth, stabilize communities, and reduce systemic inequities that impact historically disinvested neighborhoods. Chair Clippinger and members of the Committee, thank you again for the opportunity to testify.

Maryland URPTODA Written Testimony.pdf
Uploaded by: Jane Sternecky
Position: FWA

Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

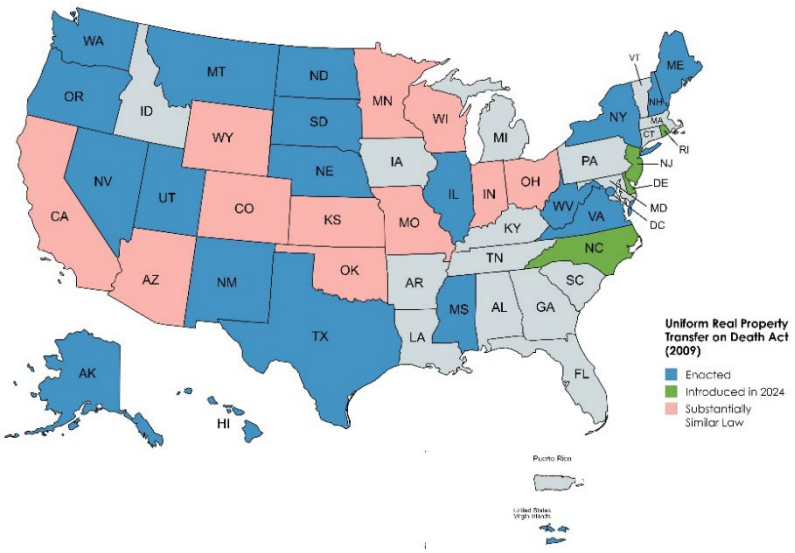
Statement of Jane Sternecky, Legislative Counsel for the Uniform Law Commission, to the Maryland House Judiciary Committee in Support of HB 625, Establishing Real Property Transfer-on-Death Deeds

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

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.

HB0625_FWA_MVLS_MeganGood.pdf
Uploaded by: Megan Good
Position: FWA

MARYLAND VOLUNTEER LAWYERS SERVICE

JUSTICE FOR ALL

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

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.

HB625.pdf
Uploaded by: Nneka Nnamdi
Position: FWA

HB 625 – Real Property – Transfer–on–Death Deed – Establishment

Judiciary

Date: February 12, 2025

Time: 1:00pm

Position: SUPPORTS WITH AMENDMENTS

Fight Blight Bmore (FBB), an economic, environmental, and social justice organization dedicated to addressing systemic inequities that perpetuate blight in Baltimore, FBB supports this bill with the suggested amendments.HB 625 is a critical piece of legislation that seeks to empower Maryland homeowners with a simple and accessible tool for estate planning: the Transfer-on-Death Deed (TODD). This bill will:

1. **Provide Clarity and Accessibility**: By creating a statutory form homeowners will have access to a clear and standardized method for planning the disposition of their real property.
2. **Expand Estate Planning Access**: TODDs offer a cost-effective alternative to other estate planning mechanisms, which can be prohibitively expensive for many families. By lowering the financial barriers to estate planning, HB 625 will enable more Maryland families to preserve and transfer their most valuable tangible asset—their home—to the next generation.
3. **Combat Blight and Preserve Communities**: By facilitating the seamless transfer of property ownership upon the death of the homeowner, this bill will reduce the likelihood of properties becoming vacant, falling into disrepair, or being subject to tax sale or ground rent foreclosure—key vectors for blight. This legislation represents a meaningful step toward reducing the number of heirs' properties in the state, which are particularly vulnerable to these issues.

By enabling homeowners to plan for the disposition of their property using a simple statutory form, HB 625 will help preserve generational wealth, stabilize communities, and reduce systemic inequities that disproportionately impact historically disinvested neighborhoods. It is a commonsense measure that will bring tangible benefits to families across Maryland.

We respectfully urge the committee to adopt the following amendments to further strengthen the bill:

For the above reasons,

Fight Blight Bmore urges a favorable report.

Please contact Nneka Nnamdi, Founder, with any questions nneka@fightblightbmore.com
443.468.6041

- Require that homeowners receive notification of TODD filings via mail, including information about the process for revocation.
- Prohibit individuals with fiduciary powers of attorney from filing or changing TODDs.
- Require listing “TODD” next to the owner's name on property records, similar to “LIFE” for life estate deeds.

With these amendments, HB 625 will become an even more powerful tool for advancing equity, preserving wealth, and mitigating the root causes of blight in Maryland.

Thank you for your time and consideration. We urge a favorable report on HB 625 with the proposed amendments.

For the above reasons,

Fight Blight Bmore urges a favorable report.

Please contact Nneka Nnamdi, Founder, with any questions nneka@fightblightbmore.com
443.468.6041

HB 625 Clerk testimony.pdf
Uploaded by: Dawne Lindsey
Position: UNF

Maryland Circuit Court Clerks' Association

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 counites 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.

MLTA HB625 testimony (unfavorable).pdf
Uploaded by: Jeffrey Thompson
Position: UNF

Maryland Land Title Association

1783 Forest Drive, Suite 305, Annapolis, MD 21401 | (443) 620-4408 ph. | (443) 458-9437 fax

To: Members of the House Judiciary Committee

From: MLTA Legislative Committee

Date: February 10, 2025 [Hearing date: February 12, 2025]

Subject: **HB 0625** – Real Property – Transfer-on-Death Deed – Establishment

Position: **Unfavorable**

The Maryland Land Title Association (MLTA) is a professional organization working on behalf of title industry service providers and consumers and is comprised of agents, abstractors, attorneys, and underwriters. **MLTA asks that you return an unfavorable recommendation for House Bill 625 – Real – Property – Transfer of Death Deed - Establishment**. The bill seeks to provide for the creation, revocation, recordation, and effects of a transfer-on-death deed for real property.

Maryland already has a form of transfer with over a century of judicial interpretation that accomplishes the same type of transfer – the life estate deed with powers of alienation. In a life estate deed, an individual transfers property to others while reserving the right to occupy and use the property during the term of their natural life. The recipients of the transfer are referred to as remaindermen and, in a life estate without powers of alienation, their consent is required in order to convey or mortgage the property. Most states that have enacted Transfer of Death Deed statutes have only this form of life estate.

Powers of alienation allow an individual who reserves a life estate to later unilaterally sever the interests of the remaindermen named in the life estate deed without the need for their consent or involvement. It is this recognition of a right of alienation that sets Maryland apart from other states that have legislatively implemented transfer on death deeds. Often those states do not recognize a power of alienation in life estate deeds. This makes a Transfer on Death Deed unnecessary in Maryland as the bill seeks to address a need already met by an existing, well established form of instrument.

The bill also seeks to create a form deed that will allow an individual to transfer property without the need for assistance from a real estate professional. The proliferation of "self-help" deeds available on the internet has taught the title industry that completion of a form instrument does not always effectively transfer the property. "Self – help" deeds can leave other interested parties contesting the validity of the instrument and /or the capacity of the signer at a later time. Defective or improper entries on blank lines provided on the instrument can cloud the title affecting its insurability. This often leads to additional costs and attorney and/or court involvement to correct an improper conveyance or overturn a conveyance by an incapacitated individual or one obtained though undue influence.

While the intent to create a one-size-fits all form is noble, the form benefits only a small percentage of the population it is meant to serve (transfers to only one person) and, even to accomplish this, strips out many statutory safeguards. These safeguards were put in place not as a hurdle to real property transfers, but to preserve for our posterity the integrity of Maryland's land records system.

Real property represents for many individuals the largest single asset that they own. For that reason alone, the necessary involvement of a real property professional is important to assure that the resulting title is free of questions or concerns and therefore insurable when its owner seeks to sell or mortgage the property. In the life estate deed with powers of alienation, Maryland already has a form of instrument that, with the proper and necessary guidance of a title professional, will accomplish the objective of a transfer on death deed. To paraphrase an old adage, if it is not broken, there is no need to fix it.

For these reasons, the MLTA respectfully requests that you return an unfavorable recommendation for House Bill 0625.

hb625.pdf
Uploaded by: Will Vormelker
Position: UNF

HON. STACY A. MAYER
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

2025 HB 625 TODD [2.10.25].pdf
Uploaded by: William O'Connell
Position: UNF

Real Property Section

To: Judiciary Committee (House)

From: MSBA Real Property Section

Date: February 10, 2025 [Hearing Date February 12, 2025]

Subject: **HB 625 – Real Property - Transfer-on-Death Deed – Establishment**

Position: **Unfavorable**

The Real Property Section of the Maryland State Bar Association (MSBA) offers **comments to House Bill 625 – 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, 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. The below is not intended to be an exhaustive list of the issues with the proposed bill, but an example of the most obvious.

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. It is unclear whether a certificate of preparation is required. 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 14, lines 17-19. 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, lines 5-8. When does recording occur? At the time the deed is mailed, dropped off, or otherwise delivered to the clerk, or when it is indexed or on line with the State Archives. In most jurisdictions recoding it not instantaneous with delivery.

7. Page 16, lines 17-22. These provisions appear to be a trap for the unwary.

8. Page 20, lines 23-24. After "Probate is not required" add "if this is your only asset."

9. Page 21 lines 29-30. This is inconsistent with the provisions of the proposed code in that the code does not require an express revocation when the revocation occurs by inter vivos deed. See page 16 lines 11-13.

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, and thus, issue an **unfavorable** report. 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.

202308_Property-Tax-Foreclosures-on-Heirs-Property
Uploaded by: Vanessa Clark Brooks
Position: INFO

National Consumer Law Center
Fighting Together for Economic Justice

ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state governments and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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ABOUT THE AUTHORS

Andrea Bopp Stark is a senior attorney at the National Consumer Law Center Boston office focusing on writing and teaching about fair debt collection practices and mortgage servicing issues. Andrea is also involved in advocating for foreclosure prevention and fair debt collection policies on the state and federal level. Andrea is a contributing author to NCLC's Fair Debt Collection, Home Foreclosures, and Mortgage Servicing and Loan Modifications legal manuals. Previously, Andrea was a partner at Molleur Law Office in Biddeford, ME, and worked as an attorney for Northeast Legal Aid in Lawrence, Massachusetts where she was one of NCLC's first recipients of the John G. Brooks fellowship. Andrea holds a B.A. from the University of Vermont and obtained her JD and Masters of Social Work from Boston College. She is admitted to practice law in Massachusetts, Maine, and New Hampshire.

Odette Williamson has been an attorney at NCLC since July, 1999. Prior to this she was an Assistant Attorney General in the Massachusetts Office of the Attorney General where she concentrated on civil enforcement actions against individuals and businesses for violation of consumer protection and other laws. As an AAG she also served on the Elder Law Advocates Strike Force to combat unfair and deceptive acts against elderly citizens. She attended Tufts University and Boston College Law School where she was a staff writer and editor for the Uniform Commercial Code Reporter-Digest. She is also admitted to the Massachusetts bar. She is co-author of NCLC's Home Foreclosures and Mortgage Servicing and Loan Modifications.

ACKNOWLEDGMENTS

The authors would like to thank NCLC Senior Attorney John Rao, NCLC Co-Director of Advocacy Sarah Bolling Mancini, and NCLC Deputy Director Carolyn Carter for editing this report. Thank you to NCLC Intern Myron Minn-Thu-Aye for footnote editing and review. And thank you to Ella Halpine for layout and design.

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PROPERTY TAX FORECLOSURES ON HEIRS PROPERTY

THE DEVASTATING CONSEQUENCES AND RECOMMENDATIONS FOR PREVENTION

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1. INTRODUCTION

While millions of homeowners fell behind on mortgage payments and were at risk of losing their homes to mortgage foreclosures during the COVID-19 pandemic, many others were facing another foreclosure crisis- the loss of their homes due to property tax lien foreclosures. This strict and often rapid tax lien foreclosure process has created a lesser-known plight faced by homeowners who have fallen behind on their property taxes. The impact of property tax liens are especially harsh for heirs who inherit property without a will or who have not yet gone through probate. The heirs of the deceased owner may now own the home, but if their names are not on the deed, they are not the record owners of the property. This creates what is known as heirs property, or a “tangled title” situation.

If the names of the heirs of the deceased owner are not on the deed, they are not record owners of the property. This is commonly known as heirs property or "tangled title."

Heirs property owners may be unable to obtain loans or grants for home repairs, get homeowner’s insurance, or access utility or property tax assistance programs because they are not record owners. It is not uncommon for years to pass after the death of the original owner of the home without the property taxes being paid. Heirs may not receive notice of amounts due for property taxes because they are not the record owners of the property. By the time heirs realize the amounts due for property taxes, it is often soon before a tax sale, or after the sale has happened, and options are limited. The amounts owed are usually too high to pay in one lump sum to stop the sale or redeem the property. If one heir is able to pay the amounts due, they may not want to take on the burden alone without other heirs contributing. Selling the property before a tax sale for a reasonable amount to cover the tax debt might be difficult if there is not clear title or if there are heirs who do not agree on selling. The upcoming tax sale is also usually advertised in public records, and investors may try to take advantage of family members by offering to purchase a partial interest in the property quickly for less than fair market value.

While most states offer tax exemption and relief programs, they are usually limited to the record owner of the property. Heirs who inherit a home intestate will face difficulty accessing these programs because their names are not on the deed. By requiring this, many states exclude legal heirs from property tax relief options that could lower their tax burden and help them save the home. Further, establishing formal ownership of the home is difficult, costly, and time consuming and often requires the retention of an attorney.

This report will discuss the process used to place a lien on a home when a homeowner falls behind on property taxes and eventually foreclose on that property if the homeowner cannot pay the amounts in a certain period of time. We then discuss the unique issues heirs face when the record title owner passes away and leaves an overdue property tax bill. We review five sample states–Florida, Mississippi, Michigan, Texas, and Pennsylvania–and the policies they have, or do not have, to assist heirs with property tax bills, focusing on homestead exemptions. The report concludes with recommendations for protections states can implement to prevent property tax foreclosures and preserve homeownership.

2. THE TAX LIEN PROCESS

All states have laws that allow local governments to place a lien on a homeowner's property for failure to pay property taxes. Many also impose liens for other municipal charges, such as a water bill or unpaid fines for property code violations.[1] If the lien is not paid within a certain period of time, the city or town can auction off the lien or the property, typically for the amount of the taxes and fees owed. The procedures involved with tax lien foreclosures are complicated and are rarely updated to ensure that the process provides sufficient protections to prevent the unnecessary loss of homes.

While each state has unique laws regarding unpaid property taxes, most states first provide a homeowner with some type of notice of delinquency regarding tax amounts. If the taxes are not paid within a certain period of time, a tax lien is placed on the property. This generally occurs by operation of a state statute. Tax liens almost always have priority over all other liens, including mortgages, regardless of when the tax lien is placed on the property. If the tax lien remains unpaid, the tax deed or tax lien certificate is sold or assigned to a third party, or the property is taken by the local municipality.

Tax Deed Sale

In jurisdictions where the property itself is sold at the auction, the purchaser receives a tax deed, providing full title in the property, subject to any redemption period. This is a tax deed sale. The tax deed is sold at auction to the highest bidder, and the proceeds are used to pay off the tax debt along with all fees, interest, penalties, and costs owed to the municipality. There is generally never a surplus because the bidding process at auction is not competitive.

Unlike at a traditional home auction, purchasers typically bid on the amount of taxes owed, not on the value of the property.[2] The tax deed purchaser can then sell the property at fair market value if the owner does not redeem by paying the taxes plus interest, fees, costs,

and penalties within a certain period of time. Any surplus from the sale is usually kept by the purchaser. Examples of states with tax deed sales include Alaska, California, Delaware, Georgia and Hawaii.[3]

Tax Lien Certificate Sale

In other jurisdictions, a tax certificate is sold to a third party who pays the tax debt and receives the right to collect on the tax debt with interest, costs, penalties, and fees. Examples of states with a tax lien certificate method of tax sale include Illinois, Maryland, the District of Columbia, Florida, and Indiana.[4] If the tax debt is not paid within a certain period of time, the purchaser can then initiate a court action or administrative process to obtain full title to the property, stripping the homeowner of all interest in the home. Investors are particularly interested in tax lien certificates because they make a profit by charging high interest rates on the outstanding amounts due or selling the property for fair market value after only paying the amount of the tax debt.

Taking Without Sale - Strict Foreclosure

In some states, there is no sale at all, or it may not occur until after the property is transferred. The taxing authority or local municipality simply executes on its lien by taking the property. This is similar to the process no longer permitted in most states that is referred to as “strict foreclosure” of mortgages. After the owner is given notice of the tax lien and a period to redeem, the local municipality takes the property free and clear of all liens if the owner does not redeem. Once the property is taken, state law generally provides a procedure for final disposition of the property. In Michigan, for example, the property is initially forfeited to the county treasurer for unpaid taxes and fees and then sold at public auction to the highest bidder.[5] In Minnesota, the property is initially forfeited to the state for unpaid taxes and fees and then sold at public auction to the highest bidder for not less than the appraised value.[6] However, the Supreme Court recently struck down the Minnesota tax foreclosure process as unconstitutional. Any state with a strict foreclosure process faces a likelihood of having that statute struck down.[7] As a result, many states are rewriting their tax foreclosure laws now.

Redemption Periods

Regardless of the jurisdiction's property tax foreclosure process, before the final stages of a tax foreclosure, many jurisdictions give a homeowner a redemption period to either cure the outstanding amounts owed before a foreclosure or reclaim the home by paying off the amounts owed after the foreclosure. Particularly in jurisdictions that allow tax lien certificate

sales, the right to redeem can be so onerous as to be illusory. Some of these jurisdictions allow the tax lien certificate purchaser to charge excessive interest rates on the taxes owed that can be as high as 50 percent, depending on the jurisdiction, in addition to penalties, costs, and fees. This makes it extremely difficult for many lower-income homeowners to pay the amount owed within the prescribed time. If the homeowner does not pay the inflated amounts, the tax lien purchaser can then sell the home and usually keeps all of the proceeds of the sale, even when the tax amount owed is a fraction of the value of the home. The homeowner faces a devastating loss of home equity as compared with other auction sales such as a home mortgage foreclosure auction that requires that the homeowner receive any excess funds after the liens, fees, and costs are paid.

Deborah Foss, a retired grandmother, and her wife and sister in Bedford, Massachusetts, were evicted and removed from their home in the middle of winter as she was suffering from COVID. She had nowhere to go and ended up living in her car. She had lost everything. Tallage, the investor that bought her tax lien, paid $9,516 for the lien and later sold the home for $242,000.[8]

Deborah Foss, a retired grandmother, and her wife and sister in Bedford, Massachusetts, were evicted and removed from their home in the middle of winter as she was suffering from COVID. She had nowhere to go and ended up living in her car. She had lost everything. Tallage, the investor that bought her tax lien, paid $9,516 for the lien and later sold the home for $242,000.

The equity in the property could represent a homeowner's entire net worth and sole savings and security for retirement, as it did for Deborah Foss. Losing the home means the loss of a safe place to live and any meaningful opportunity to build wealth and financial security.

Disproportionate Impact on Communities of Color

Property tax foreclosure sales are often concentrated in low-income communities with large populations of Black and Latino residents. Residents of these communities are more likely to have suffered from economic shocks that made it harder to pay property taxes, but did not access or qualify for property tax relief.[9] High rates of tax delinquency and foreclosure have been linked to vacant and abandoned properties, disinvestment and lower property values in affected communities, and adverse effects on the health of residents.[10]

Black and Latino property owners also pay higher taxes than similarly situated white property owners due to inequities in the tax assessment and appeals process. Assessed values are significantly higher for properties located in neighborhoods with lower valued homes and a high proportion of households of color.[11] One study found that for Black and Latino residents in aggregate, the assessment gap was 9.8 percent.[12] Nationally, Black residents had a nearly 13 percent higher property tax burden than white households in the same jurisdiction.[13] The higher effective tax rate for homeowners of color translated into an extra $300- $390 more per year in taxes. Similar patterns of over-assessment have been noted in news articles or research on Chicago, New Orleans, Detroit, New York, and other cities.[14]

The unequal property tax burden means Black and Latino households cannot build home wealth at the same rate as white households and face a greater risk of tax foreclosure.

These findings build on a history of intentionally discriminatory tax assessment practices against Black property owners in the Jim Crow Era. Black property owners, especially those who played key roles in the Civil Rights Movement, were often taxed at higher effective rates than similarly situated white property owners while simultaneously being denied access to the resources and institutions supported by their tax dollars.[15] Discriminatory assessments and other practices forced Black owners of valuable property into delinquency and foreclosure and contributed to the loss of land and homes, especially in the South.[16]

The unequal property tax burden means Black and Latino households cannot build home wealth at the same rate as white households and face a greater risk of tax foreclosure. Property taxes also add significantly to the cost of owning a home. Nearly a quarter of the disparity in homeownership costs for Black households as compared to white households is due to local property tax assessments.[17] For families living on the financial edge, higher property taxes combined with other property-related fees and costs increase the risk of foreclosure, displacement, and loss of generational wealth.

Tax foreclosure sales also affect the larger community. The purchase of tax liens and properties by institutional investors in gentrifying communities, for example, often transforms a portion of the housing stock into high-end properties crowding out lower-income residents and the elderly from once-affordable neighborhoods.[18] Homeowners who remain may see their tax bills increase significantly with the rise in property values. In other communities with lower valued homes, large-scale property tax foreclosures further depress property values and increase blight.

3. TAX LIENS AND HEIRS PROPERTY

The consequences of tax foreclosure sales are especially dire for heirs who inherit the property without a will. Homeownership is an important way to build wealth, particularly across multiple generations. In areas with increasing property values, the home can capture years of appreciated value. For many multi-generational households, a majority of the family's wealth is tied up in the home. Until a tangled title is resolved, access to that wealth is restricted, and residents cannot take full advantage of the home's value or protect that value for future generations. Without a deed, they cannot sell the home nor can they create an estate plan to pass it on to other generations.

For many multi-generational households, a majority of the family's wealth is tied up in the home. Until a tangled title is resolved, access to that wealth is restricted, and residents cannot take full advantage of the home's value or protect that value for future generations.

Complications with Heirs Property

Heirs can live in the home for years after the death of the original owner without realizing they must go through the probate process to establish record ownership of the property. They often realize this predicament when they face issues with setting up utilities and negotiating past due utility bills; obtaining homeowner's insurance; qualifying for financial assistance to fund repairs; negotiating with a mortgage company; or accessing available property tax relief assistance. Many times, heirs learn of the tangled title issue when they are at their most desperate point financially and cannot access financial assistance due to the lack of record ownership. Heirs who face challenges in paying for maintenance of the property and property taxes find it difficult to access payment relief programs because they are not on the deed. Heirs who are not on the deed also cannot access the equity in the home to pay these expenses because they cannot borrow against the home without clear title.

When a homeowner dies intestate and there are several surviving heirs, there is also a risk that one of the heirs will seek to partition the property. A partition action is a court-ordered process where one property owner forces a sale or division of the property. In an urban context, division of the property is usually not feasible, so partition involves a sale. This allows people who own real estate together to take their share of the equity and go their separate ways. However, this may not always be desirable for all heirs, especially if the

heirs living in the home want to retain the home. This situation is also ripe for investors who will offer to buy out the interest of one of the heirs in the property for a small price and then force the sale of the home to collect their share of the equity. In states which have passed it, the Uniform Partition of Heirs Property Act (UPHPA) gives heirs who do not want to sell the home the opportunity to buy out the other interests in the property for fair market value, preserving their ownership of the property.[19] If the heirs who want to keep the property cannot buy out the remaining heirs, a court can order an in-kind partition; a physical division of the property amongst the heirs, where practicable. While this can help some heirs who do not want the property sold, it can be a timely, costly, and emotional process. Further, the UPHPA has only been enacted in 22 states.

Even if there are no apparent disputes over the property, some heirs may be difficult to locate or they may not know of their ownership interest in the property, making it challenging for the other heirs to move forward. Lenders will not provide loans for fractional interests in a property and title insurance companies require clear title before a loan can be finalized. If one heir wants to buy out the other heirs, they will have have to qualify for a mortgage loan, which can be very difficult for low-income heirs.

It is easy to see how heirs property owners can lose their homes to property tax foreclosures. Particularly in a tax lien certificate sale jurisdiction, when the taxes are not paid, a lien is placed on the property which can then be sold to a lien purchaser. The lien purchaser then demands the lien amount plus high interest, fees, and costs, which are extremely difficult for many heirs to pay. Tax lien purchasers typically do not offer repayment plans or other foreclosure avoidance tools as some local governments do. If it is not paid, then the lien purchaser can seek to foreclose on and sell the property, stripping the heirs of all the equity that had accumulated. In all jurisdictions, before a lien is placed on the property or a sale occurs, if there are multiple heirs who own the property, a single heir can sell their fractional interest to an investor, who can then petition the court for a partition sale of the property. Each of these outcomes causes heirs to lose their family home and strips families of accumulated intergenerational wealth, putting them back at the starting line financially.

Probating the Estate

Most property that only has a deceased homeowner's name on the title must go through the probate process. Proof of ownership of a home or any other property cannot be obtained before probate is complete.[20] The probate process can be complicated, time consuming, and expensive, particularly when there is no will governing the conveyance of the home. There are a number of fees involved, and an heir will most likely have to retain an attorney to navigate the process. For example, in Philadelphia the cost of remedying a tangled title

is about $9,200 for a home valued at the median of $88,800.[21] After probate is complete, a new deed is drafted and must be recorded on the local registry of deeds. The entire process can take a year or more to complete. In the meantime, the heirs occupying the property have limited access to relief programs to help with utilities, mortgage payments, and property tax payments available only to record owners of the home.

The Scope of the Problem

The Pew Charitable Trusts released a report[22] in August 2021 about the prevalence of tangled title in Philadelphia and the harsh consequences to heirs who inherit a home without will. The study found that more than 10,000 of the city's residential properties, collectively worth over $1 billion, were affected by tangled title and that the neighborhoods most affected tend to be those with relatively low housing values, low incomes, and high poverty rates. Many heirs do not realize that there is an issue and do not realize the importance of filing probate after the death of their family member.

A 10-county study in Georgia using Computer Assisted Mass Appraisal (CAMA) data found an average of between 14-19 percent of all parcels were potential heirs property, totaling approximately $2.1 billion in assessed value.[23] The study found that higher levels of heirs property were found in communities of color and communities with lower educational levels and higher poverty levels. Dougherty County, with a 71 percent Black or African American population,[24] had the highest percentage of heirs property at 24.8 percent, representing potential property values totaling $648,643,199. The staggering amount of wealth tied up in heirs properties cannot be utilized to produce intergenerational wealth "because owners cannot leverage these assets to access capital or qualify for government funding assistance"[25] due to the lack of record title to the land.

4. PROPERTY TAX RELIEF OPTIONS IN CERTAIN STATES AND ACCESSIBILITY TO HEIRS

Property Tax Exemptions and Abatements

Every state has enacted property tax exemptions or abatements for some homeowners who live in the home that help relieve at least a portion of their property tax by virtue of age, disability, income level, or personal status. These exemptions can provide significant relief for homeowners. For example, in Alaska, the principal residence of a resident who is (a) 65 or older, (b) a disabled person, or (c) a resident at least 60 years old who is the widow or widower of either is exempt from local property taxes on the first $150,000 of the assessed value of the real property.[26] In Idaho, up to $175,000 of a primary residence in which the

owner resides or intends to reside is exempt from taxation.[27] In Florida, an owner who resides in a primary residence can receive a tax exemption of up to $50,000 of the value of the property.[28]

The benefits, however, are not automatic. Most programs require the homeowner to apply for and submit proof of eligibility for an abatement or an exemption usually within a short period after the issuance of the tax bill. If an application is not timely made, the right to the relief will be lost. Often homeowners who stand to benefit most are not even aware of these programs and end up paying more than necessary or not being able to pay the property tax bill. This is particularly true for heirs who inherit the property intestate. State and local property tax relief programs for homeowners routinely exclude homeowners who have tangled titles. Most programs require record proof of ownership: the heir's name on a recorded deed to the property. If the original owner was approved for an exemption, this exemption does not automatically apply to the heirs. Heirs of the property must apply anew for the exemption. If they do not, and continue to pay the exempt amount assessed to the original owner, they could face significant costs and penalties. This exclusion from certain property tax exemptions and abatements increases the likelihood of a tax foreclosure and perpetuates housing instability and loss of generational wealth.

The application of the homestead property tax exemption laws in Florida by some county appraisers highlights these dire consequences by imposing an egregious penalty on an heir who does not immediately provide notice of the owner's death to the county appraiser and file a new exemption application. The next section will examine the law in Florida, particularly how it is being wrongfully applied to heirs, and compare it with four other states that provide a penalty for the willful and wrongful claim to a property tax exemption but do not impose such a penalty on a surviving heir.

Florida

The Florida Constitution provides homestead property tax exemption benefits to the owner-occupant of real property if the property is their primary residence. A homeowner must submit an application for a homestead exemption with the county property appraiser, which in most counties is automatically renewed annually. Once the application is approved, the homeowner is exempt from property taxes on $25,000 of the value of the property plus an additional $25,000 exemption

for property valued greater than $50,000.[29] In addition, under the Save Our Homes (SOH) Amendment, after the first year that a home receives a homestead exemption and the property appraiser assesses it at just value, the increase in annual assessment on the property shall not exceed the lower of either 3 percent of the assessment for the prior year or the percentage of change to the Consumer Price Index.[30] If the property protected under the SOH cap changes ownership, the property will lose the SOH benefit and will be subject to assessment at just value on the following January 1.[31]

Under the SOH law, a change of ownership is defined as any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person.[32] When a change of ownership occurs, the homestead exemption terminates and the property is reassessed at the current market value.

A "change of ownership" occurs upon the death of an owner except in limited circumstances including but not limited to when there is a surviving spouse, minor child or children, or a permanent resident who is legally or naturally dependent upon the owner.[33] Heirs who do not fall into one of the exceptions, which may include adult children, grandchildren, and parents living in their child's home, are required to file a new homestead application together with a deed showing they are the record owner of the property upon the death of the original owner. If they do not, and continue paying at the homestead rate in place through the deceased owner, they not only will be responsible for the difference between the old homestead tax amount and the current tax amount, but also some taxing authorities incorrectly interpret the statute to include the imposition of egregious penalties on the heir of 15 percent interest per annum and a penalty of 50 percent of the taxes exempted.[34] Also, for this same group, when the property is reassessed, the value undoubtedly will increase, causing the property taxes to increase even if a new homestead exemption is put in place. We explain below how this penalty is calculated, followed by an explanation of why the homestead penalty should not be assessed against heirs in this situation.

In a simplified example, assume that a homeowner who has a tax bill of $1,000 per year based on an assessment of the home originally done many years earlier dies intestate, and her adult son remains in the home. The son continues to live in the home but does not file a new homestead application because he does not know he should. He continues to pay the $1,000 per year in taxes. When the county appraiser realizes this three years later, a new appraisal is done and the taxes rise to $3,000 per year. If the local appraiser imposes the homestead penalty lien, the son will face a lien for:

Total penalty and taxes:

$2,000 (difference in the taxes owed vs. taxes paid) x 3 years =	**$ 6,000**
plus 15% interest each year = $300 x 3 =	**$ 900**
plus 50% of the $6,000 difference =	**$ 3,000**
for a total of:	**$ 9,900**

In addition, he must continue to pay the $3,000 bill each year.[35] The son can apply for the homestead exemption going forward to limit his tax increase each year and to receive an exemption of taxes on up to $50,000 of the home's value, but this will only affect future tax bills, and he risks losing the home if he cannot pay the existing $9,900 tax bill.

The creation of an astronomical penalty

In 1979, when Darnell Simon was 9 years old, he moved to his mother's modest three-bedroom home in Jacksonville, Florida, with his mother and brother. His mother worked as a custodian to pay the mortgage; she wanted the boys to have a safe place to call their own. Darnell moved out when he was 18 but moved back in to take care of his mother in 2010 when she was diagnosed with cancer. Darnell's two daughters also lived with him at times as did his paternal aunt. His mother passed away in 2013. In 2014 Darnell suffered kidney failure, and he has been on dialysis ever since. When his mother died, Darnell believed his maternal aunt was organizing the estate and paying the property taxes. It was not until he received a notice of tax sale in 2019 that he realized the taxes had not been paid. He also did not know that he should apply for a property tax homestead exemption. From 2013 to 2017, the taxable value of the property was $25,000 on an assessed value of around $60,000, resulting in annual property taxes owed of about $750. By 2018, the exemption had been removed, and the assessed and taxable values jumped to $84,000, with the resulting annual property taxes totaling around $1,750. In addition, the city added homestead penalties for 2014 through 2017 totaling over $10,000. Darnell borrowed money to pay some of the past due taxes and was provided a grant to pay through 2022, but he is terrified that he will not be able to pay the $10,000 in penalties on his fixed disability income. His paternal aunt lives with him and is also on a fixed disability income because of her COPD and reliance on oxygen therapy. If the city forecloses on the home, Darnell says they will have nowhere to go. This home is his mother's legacy, and he hopes to be able to preserve it for his daughters and grandchildren.

Timing and Process for Heirs Accessing the Florida Homestead Property Tax Exemption

There are questions regarding whether an heir can apply for the homestead exemption in their own right before having a final probate deed in their name. The statute states that before an exemption may be granted, "the deed or instrument shall be recorded in the official records of the county in which the property is located."[36] However, the statute also provides that a person who, on January 1, "has the legal title or beneficial title in equity" to the real property and makes the home his or her permanent residence is entitled to the exemption. It is arguable that the "deed or instrument" required to be recorded could include an affidavit of descent or heirship as allowed in other states discussed below, in order to give meaning to the first sentence, allowing the owner of the beneficial or equitable interest to apply for the exemption. The statute seems to contemplate this by permitting the property appraiser to "request the applicant to provide additional ownership documents to establish title."

The question of whether an heir can apply for the exemption without a final probate court deed is important because there is no specific grace period in the statute between when a family member dies and when an heir would be required to apply for the exemption in their own name. Completing the probate of an estate in order to obtain a probate deed can take nine months or more in Duval County. Except in limited circumstances, a property must go through the probate process before a new deed is drafted and recorded. A property tax exemption application must be filed by March 1, with a late deadline of September 18, for anyone who has title to the property as of January 1. After September 18 of that year, no homestead tax exemption applications are allowed for that year. This does not provide much time to probate an estate, have a new deed drafted and recorded, and file for the exemption. Thus, if a deed were required, many heirs would incur a penalty (or at a minimum, lose the homestead exemption for a period of time) even if they started the probate process right away. During this time, penalties may accrue and property taxes can increase, creating difficult financial repercussions for low-income heirs.

The Florida statute that imposes homestead penalties when a homestead exemption remains in place beyond the applicant's tenure should not be interpreted to apply to an heir like Darnell Simon who remains residing in the home after the death of a relative. The statute reads:

> ***The owner*** of any property granted an exemption who is not required to file an annual application or statement **shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes** so as to change the exempt status of the property. **If any *property owner* fails to so notify the property appraiser and the property appraiser** determines that for any year within the prior 10 years the owner was not entitled to receive such exemption, ***the owner* of the property is subject to the taxes exempted** as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county **a notice of tax lien against any property *owned by that person*** or entity in the county, and such property must be identified in the notice of tax lien. **Such property is subject to the payment of all taxes and penalties**. Such lien when filed **shall attach to any property**, identified in the notice of tax lien, **owned by the person who illegally or improperly received the exemption**. *(emphasis added)*

This penalty is clearly meant to apply to the property owner who applied for and obtained the homestead exemption. The first time the owner is mentioned, it says the "owner of any property granted an exemption." That property owner, who was granted the exemption, has a duty to inform the appraiser if there is a change in the exempt status. It is this affirmative notice obligation that determines whether or not the owner incurs a penalty. If the owner fails to provide the notice, that same owner - “the owner of the property”- is subject to the penalty and a tax lien is placed on “any property owned by that person” - not on “the property” in question.

The interest and penalties imposed by section 196.011(9)(a) of the statute cannot reasonably be applied to an heir of a deceased owner.

1. “Owner” refers to “the owner of any property granted an exemption.”

2. The provision places an affirmative obligation on “the owner” to notify the appraiser promptly if the “use of the property or the status or condition of the owner changes so as to change the exempt status of the property.” This notification obligation is on the owner who was granted the exemption, not the heir of a deceased owner.

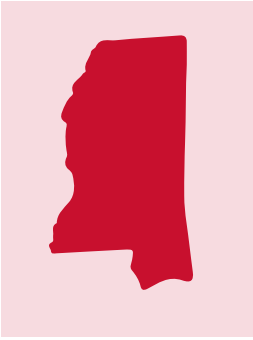
3. If the same owner fails to provide this notification to the appraiser and the appraiser determines the owner was not entitled to the exemption for a period of time yet continues to claim it, that owner is "subject to the taxes exempted as a result of such failure" plus interest and a penalty.

4. **The interest and penalty are directly tied to the failure of the owner who originally received the exemption to provide the required notification to the property appraiser.** As such, the interest and penalty are imposed on the owner who received the exemption in the first place, and only based on wrongful conduct up until that owner's death.[37]

The purpose of that section of the statute is to penalize living homeowners who were granted an exemption and who abuse the homestead exemption scheme by failing to notify the tax assessor if they later move out of the home, for example to use it as an investment property or vacation home. Penalty statutes should be narrowly construed where there is any ambiguity.[38] They should not be applied harshly against innocent residents.[39]

In *Vega v. Robbins*, even though the Court did not apply the exemption retroactively, it did not impose a penalty on an adult son who filed for the homestead tax exemption over a year after his mother's death.[40] In *Kelly v. Spain*, the court held that "[n]o matter the form, the goal of homestead has remained stable: to protect the family."[41] The penalty language in the statute in 9(a) was not intended to apply to heirs who remain in the home and, but for having to complete probate and file their own application, were in fact entitled to the homestead exemption. The penalty should only be imposed on a person who requests and receives an exemption and then intentionally or willfully does not notify the appraiser of a change in use of the property for their own financial gain. Florida county assessors should adjust their collection practices and stop imposing this penalty against heirs.

Mississippi



In Mississippi, under the Homestead Exemption Law of 1946, all homeowners are entitled to an exemption from all ad valorem taxes on their homestead up to a maximum of the first $7,500 of the property's assessed value, limited to $300 of actual exempted tax dollars.[42] For seniors, though, the dollar amount is not capped. In addition, veterans with a service-connected total disability and who have been honorably discharged (and their unremarried surviving spouses) are exempt from all ad valorem taxes on the assessed value of the homestead.[43]

An eligible heir can qualify for the same homestead exemption of up to a maximum of the first $7,500 of the property's assessed value through an "affidavit, court record, or such other evidence as may be required by the [Tax] [C]ommission."[44] The Affidavit of heirship is a sworn statement provided by one or more family members and at least two unrelated parties that identifies the decedent's legal heirs. The affidavit establishes an heir's interest in the property and also, after a certain number of years have passed, provides an insurable title for sale of the property. When there are multiple heirs, the heirs of an undivided estate can elect to file for one homestead exemption on the entire undivided estate. The requirements for homestead exemption eligibility must be met. All the heirs must sign an affidavit authorizing the filing of the one homestead exemption.[45] Otherwise, if an heir files for the homestead exemption individually, they are entitled to the exemption only on their inherited portion of the property.[46] This requirement is especially burdensome for heirs who have inherited the property over multiple generations and do not know the names or contact information for all of the heirs.

Eligible residents must apply for the homestead exemption. Once it is granted, the resident does not need to file again unless there has been a change in the property description, ownership, or occupancy.[47] A person who willfully fails to notify the tax assessor of changes in the status of the homestead when required to do so can be found guilty of a felony and, upon conviction, may be punished by a fine of not more than $5,000 or by imprisonment, or both. As in the Florida statute, the penalty is assessed against the person who claimed the homestead exemption and then willfully failed to notify the taxing authority of a change in ownership, not an heir who inherited and occupied the property.

Michigan

In Michigan, homestead exemptions are provided for residents meeting certain income guidelines.[48] A homestead is eligible for exemption from taxation in whole or in part, based on guidelines developed by the local assessing unit.[49] Local guidelines may not set income limitations below the federal poverty line.[50] Certain seniors, disabled residents, and veterans and their surviving spouses who meet the income guidelines are provided additional exemptions.

A property owner must file a Principal Residence Exemption Affidavit form with the tax assessor to obtain the exemptions. With the form, the owner certifies under penalty of perjury that "I own and occupy as a principal residence on the date stated [ ] and that I have

not claimed a substantially similar exemption/deduction/credit in property in another state, and that the information contained on this document is true and correct to the best of my knowledge." Michigan considers an "owner" for purposes of the tax exemption to be "[a] person who owns property as a result of being a beneficiary of a will or trust or as a result of intestate succession."[51] An heir is therefore considered an owner of the property upon the death of the original owner and can apply immediately for the exemption.

A homeowner has 90 days after exempted property is no longer used as a principal residence by the owner claiming an exemption to file a notice of rescission of the exemption with the local tax authority. A penalty of up to $200 is imposed on an owner who fails to file the notice of rescission.[52] In addition, a person who fails to rescind the exemption with the intent to wrongfully obtain an exemption is guilty of a misdemeanor and may be punished by a fine of up to $5,000 or public service.[53] If a person claims an exemption in Michigan and a substantially similar exemption in another state, that person is subject to a penalty of $500.[54] As with the Florida and Mississippi statutes, the penalty is placed on the owner who intentionally failed to notify the taxing authority of the change in status of the property.

Texas

Texas does not impose any penalty for a delay in filing a homestead exemption application and also allows a look-back period for the new exemption once obtained. In Texas, a family or individual is entitled to a tax exemption of $3,000 of the assessed value of their primary residence or $40,000 in a school district.[55] An additional $10,000 exemption is provided for an adult who is 65 years or older or disabled. Local tax authorities can offer an optional additional exemption of up to 20 percent of the value of the property and no less than $5,000. The resident must apply with the local appraisal office. Most exemptions, once allowed, do not require subsequent applications.[56] The exemption applies to the property until ownership changes or the person's qualification for the exemption changes, at which time the original owner must notify the appraiser's office of such change.

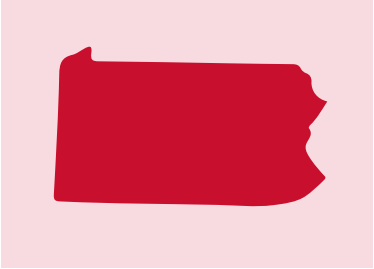
If the appraiser discovers that an exemption has been erroneously allowed within the preceding five years, the taxing authority is entitled to impose taxes on the value that escaped taxation.[57] There is no other penalty imposed on the owner.

An application for a residence homestead exemption may be filed after the deadline for filing has passed if filed no later than two years after the delinquency date,[58] which is usually February 1 because property taxes are due January 31. A resident will receive a deduction on taxes owed if not yet paid or a refund on taxes paid.

Heirs who inherit property intestate in Texas have options to obtain the homestead exemption without having to produce a deed with their name. As of 2019, Texas allows an heir to submit an affidavit of heirship to establish ownership of the home for purposes of the homestead exemption application. The heir must provide an affidavit establishing their property ownership interest, a copy of the death certificate of the prior owner, a recent utility bill, and citation to any court record relating to the heir's ownership of the property. A recorded instrument is not required, however. Each heir with an interest in the property who occupies the property as the owner's principal residence, other than the applicant, must provide an affidavit that authorizes the submission of the application.[59] The applicant heir is entitled to 100 percent of the homestead exemption.[60]

This procedure allows an affidavit of heirship to be used when a decedent leaves behind real property without a will or other legal documents transferring title. The affidavit can also be used within four years of the deceased's death if there was a will but it was not probated.

Pennsylvania



In Pennsylvania, the Taxpayer Relief Act provides for property tax reduction allocations to be distributed by the State to each school district. Property tax reduction is provided through a homestead or farmstead exemption Most owner-occupied primary residence homes and farms are eligible for property tax reduction.

Local governments can provide a tax exemption of a fixed dollar amount of the assessed value of each homestead property that is not in excess of one-half of the median assessed value of homestead property in the area.[61] The owner of real property must apply for the homestead exemption and generally will not have to reapply each year. The application form requires the applicant to assert that they are the owner of the property and they can face penalties and criminal prosecution for knowingly providing false information.[62] If there are multiple owners, not all need to apply.

If there is a change of use of the property, the owner must notify the assessor within 45 days of the change. Failure to notify the assessor results in penalties to the owner who failed to provide the notice. The penalties consist of payment of the taxes which would have been

due but for the false application plus interest, a penalty of 10 percent of the unpaid taxes, and if convicted of a misdemeanor, a payment of up to $2,500.[63] Again, the penalty is on the original owner who knowingly failed to notify the assessor.

Philadelphia has enacted additional protections for homeowners and allows a homestead exemption of $80,000 (in 2023) of the assessed value of the property for residents who own and live in the property. Philadelphia allows heirs who inherit a property intestate to qualify for a conditional homestead exemption for three years. If the heir does not record a deed in their name within three years, the exemption is revoked going forward, not retroactively.[64] To apply for a conditional homestead exemption, an heir must submit an application, which includes a Homestead Affidavit certifying ownership of and primary residency at the property. The city also has a "Tangled Title Fund" through its Division of Housing and Community Development "to help preserve affordable housing, prevent homelessness, and strengthen communities."[65] Grants are provided to help heirs probate the estate and clear legal title to the property.

Homestead Property Tax Exemptions	Owner of property must notify assessor upon change of ownership or entitlement to the exemption	If no notification, owner who obtained the exemption is penalized, not a successive owner or heir	An heir can submit an affidavit as proof of ownership instead of a deed	Exemption is allowed retroactively for a period of time
Florida	✓	✗ In some jurisdictions, statute is misinterpreted to impose severe penalty on heirs	✗ Statute has been misinterpreted as requiring deed	✗
Mississippi	✓	✓	✓	✗
Michigan	✓	✓	✓	✓ Pending Bill would make poverty exemption retroactive
Texas	✓	✓ No penalty imposed	✓	✓
Philadelphia	✓	✓	✓	✓

5. RECOMMENDATIONS

Owners of heirs property face a substantial risk of an excessive property tax burden, lack of information about relief programs, and property tax foreclosure. Our initial recommendations to remediate these risks are as follows:

- Recognize that heirs are the owners of an inherited property immediately upon death of the decedent and should be eligible for the property tax homestead exemption and other homeowner relief options. Allow heirs to apply for the homestead exemption upon the filing of an affidavit of heirship certifying their ownership of the property.

- Make it clear that penalties for failure to report a change regarding the property cannot be imposed on heirs who inherit a property intestate, or by will that is not yet probated, and intend to make the property their primary residence, and otherwise are eligible for the homestead exemption.

- Provide the homestead exemption retroactively for a certain period of time if the heir can attest to living in the property and otherwise qualifying for the exemption during that time period.

- Require that, upon the death of any homeowner as determined through death records, the tax authority shall provide notification to the heirs of the necessity to notify the tax assessor and the process by which they can and should apply for the homestead tax exemption.

Heirs property owners face an elevated risk of losing their home to property tax foreclosure or to investors who capitalize on property tax default situations. The problems highlighted in this report can be remedied through intentional actions by state and local governments to increase access to the homestead exemption and other tax relief policies. Given the prevalence of heirs property on communities of color, taking these steps is a crucial piece of an overall strategy to reduce the racial wealth gap by stopping the erosion of homeownership in these communities that has been taking place for decades. The time is now to enact meaningful changes to preserve intergenerational wealth.

ENDNOTES

1 Ben Wieder, Shirsho Dasgupta & Sheridan Wall, *Families Lose Homes After Florida Cities Turbocharge Code Enforcement Foreclosures*, Mia. Herald (Mar. 20, 2023), https://news.yahoo.com/families-lose-homes-florida-cities-110000395.html.

2 *See* John Rao, The Other Foreclosure Crisis: Property Tax Lien Sales 14 (2012), https://www.nclc.org/wp-content/uploads/2022/09/tax-lien-sales-report.pdf.

3 Alaska Stat. § 29.45.450; Cal. Rev. & Tax. Code §§ 3351 to 3972, 4101 to 4379, 4501 to 4505 (West); Del. Code Ann. tit. 9, §§ 8701 to 8779; Ga. Code Ann. §§ 48-3-2 to 48-3-28, 48-4-1 to 48-4-7; Haw. Rev. Stat. §§ 231-61 to 231-70.

4 35 Ill. Comp. Stat. §§ 200/21-5 to 200/21-445, 200/22-5 to 200/22-95; Md. Code Ann., Tax-Prop. §§ 14-808 to 14-854 (West); D.C. Code §§ 47-1330 to 47-1385; Fla. Stat. §§ 197.102 to 197.602; Ind. Code § 6-1.1-24-9.

5 Mich. Comp. Laws § 211.78m.

6 Minn. Stat. §§ 282.01(6), 282.01(7), 282.01(13), 281.17.

7 Tyler v. Hennepin County, Minnesota, 143 S.Ct. 1369 (2023).

8 Grace Ferguson, *'Home Equity Theft' — In New Bedford and Across Massachusetts*, New Bedford Light (Jan. 30, 2023), https://newbedfordlight.org/home-equity-theft-in-new-bedford-and-across-massachusetts/.

9 *See* New York City Comptroller, The New York City Tax Lien Sale: History and Impact 7-8 (2012); City Council of Philadelphia, Putting Philadelphians First: An Equitable Growth Plan for Our City 5 (2018) (88% of all property tax foreclosure filings on homeowners in 2016 are located within predominantly minority census tracts).

10 *See* Naseem Miller, *Death and Taxes: Research Links Neighborhood Race, Tax Delinquency and Life Expectancy*, Journalist's Resource (Aug. 3, 2021), https://journalistsresource.org/home/tax-delinquency-premature-death/.

11 *See* Carlos Avenancio-Leon & Troup Howard, *The Assessment Gap: Racial Inequalities in Property Taxation 25* (Wash. Ctr. for Equitable Growth, Working Paper, 2020), https://equitablegrowth.org/working-papers/the-assessment-gap-racial-inequalities-in-property-taxation/; Christopher R. Berry, *Reassessing the Property Tax* 4 (Mar. 24, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3800536 (comparing a property's selling price with assessed value at the time of sale).

12 Avenancio-Leon & Howard, *supra* note 3, at 20.

13 *Id.*

14 *See generally* Berry, *supra* note 3; Bernadette Atuahene, *Predatory Cities*, 108 Calif. L. Rev. 107 (2020); Jason Grotto, *Tribune Watchdog: The Tax Divide*, Chi. Trib. (June 10, 2017), https://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/assessments.html (property in working-class neighborhoods overassessed).

15 Andrew Kahrl, *The Power to Destroy: Discriminatory Property Assessments and the Struggle for Tax Justice in Mississippi*, 82 J. S. Hist. 579, 591-92 (2016). *See also* Connor Bailey et al., *Heirs' Property and Persistent Poverty Among African Americans in the Southeastern United States*, 2019 Heirs' Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment 9, https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf.

16 Andrew Kahrl, *More for Less: How Property Taxes Fuel Racial Inequality*, Tax Notes (Jan. 25, 2021), https://www.taxnotes.com/special-reports/tax-history/more-less-how-property-taxes-fuel-racial-inequality/2021/01/21/2l6gq.

17 Michelle Aronowitz, Edward L. Golding & Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, 2020 State of Housing in Black America: Challenges Facing Black Homeowners and Homebuyers During the COVID-19 Pandemic and an Agenda for Public Policy 2-10, https://www.nareb.com/site-files/uploads/2020/10/2020-SHIBA-REPORT-OFFICIAL-COPY.pdf.

18 Cameron LaPoint, Property Tax Sales, Private Capital, and Gentrification in the U.S. 27 (Mar. 20, 2023) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4219360.

19 Uniform Partition of Heirs' Property Act, Uniform Law Commission (Oct. 19, 2010), https://www.uniformlaws.org/viewdocument/final-act-97?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d&tab=librarydocuments.

20 In some states, if a homeowner has set up a certain kind of trust called a revocable or living trust, the heirs can secure ownership of a property without having to go through the probate process, but that kind of arrangement requires advance planning.

21 Garrett Hincken, *How 'Tangled Titles' Affect Philadelphia: Why Homeowners' Names Must Appear on Official Records—And How It Hurts Families and Neighborhoods When They Don't* 1 (2021), https://www.pewtrusts.org/-/media/assets/2021/08/tangledtitlesphilly_report_final.pdf.

22 *Id.*

23 Shana Jones & J. Scott Pippin, *Learning About the Land: What Can Tax Appraisal Data Tell Us About Heirs' Properties?*, 2019 Heirs' Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment 3, https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf.

24 *QuickFacts Dougherty County*, *Georgia*, United States Census Bureau (2022), https://www.census.gov/quickfacts/doughertycountygeorgia.

25 Jones & Pippin, *supra* note 12, at 4.

26 laska Stat. § 29.45.030(e).

27 Idaho Code §§ 55-1001, 55-1003.

28 Fla. Stat. § 196.031(1).

29 *Id.*

30 *Id.* § 193.155(1) (part of the Florida Save Our Home Act).

31 *Id.* § 193.155(3)(a).

32 *Id.*

33 *Id.*

34 *Id.* § 196.011.

35 This is a simple illustration. Keep in mind that, per Fla. Stat. Ann. § 193.1554(3), the reassessment of the property is subject to a 10% Assessment Limitation: any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.

36 Fla. Stat. § 196.031.

37 *See* Fla. Stat.§ 196.161

38 Bittner v. United States, 143 S. Ct. 713, 724 (2023) ("Under the rule of lenity, this Court has long held, statutes imposing penalties are to be 'construed strictly' against the government and in favor of individuals."); *See, e.g.,* State v. English, No. 97-4104, 2002 WL 31455610, at *2 (R.I. Super. Oct. 15, 2002) ("[S]tatutes are to be 'strictly construed against the government or parties seeking to enforce statutory penalties and in favor of the persons on whom penalties are sought to be imposed.' Known as the rule

of lenity, this principle 'rests on the fear that expansive judicial interpretations will create penalties not originally intended by the legislature.'") (quoting 3 Norman J. Singer, Statutes and Statutory Construction §§ 59.3, 60:3 (6th ed., 2001)).

39 *See* Bittner, 143 S. Ct. at 723 n.7.

40 Vega v. Robbins, No. 03-23953, 2006 WL 779734, at *6 (Fla. Cir. Ct. Mar. 17, 2006) (holding that a son was not entitled to a retroactive benefit of homestead exemption when his mother died; she left property in trust with him as executor, and he transferred title to himself upon her death).

41 Kelly v. Spain, 160 So.3d 78, 82 (Fla. Dist. Ct. App. 2015).

42 Miss. Code Ann. § 27-33-3; 35-006 Miss. Code R. § 003.01.101 (LexisNexis).

43 Miss. Code Ann. §§ 27-33-3, 27-33-67 to 27-33-79; 35-006 Miss. Code R. § 003.01.101 (LexisNexis).

44 Miss. Code Ann. § 27-33-17(f).

45 35-006 Miss. Code R. § 003.06.103.01.

46 *Id.*

47 Miss. Code Ann. § 27-33-31.

48 Mich. Comp. Laws §§ 211.1 to 211.7ff

49 *Id.* § 211.7u.

50 Senate Bill 55, which has passed the Senate, would extend a provision allowing an automatic poverty exemption under certain conditions and would allow for the exemption to be applied retroactively. S.B. 55, 102d Leg., Reg. Sess. (Mich. 2023), http://legislature.mi.gov/doc.aspx?2023-SB-0055.

51 Mich. Comp Laws § 211.7dd(a)(iii).

52 *Id.* § 211.7cc(5).

53 *Id.* § 211.120(2).

54 *Id.* § 211.7cc(3)(a).

55 Tex. Tax Code Ann. § 11.13 (West).

56 *Id.* § 11.43(c).

57 *Id.* § 11.43(i).

58 *Id.* § 11.431(a).

59 *Id.* § 11.43(o).

60 The Texas Comptroller has created fill-in forms for these different scenarios. *Property Tax Exemptions*, Texas Comptroller of Public Accounts, https://comptroller.texas.gov/taxes/property-tax/exemptions/ (last visited July 6, 2023).

61 53 Pa. Stat. and Cons. Stat. Ann. §§ 8581-8588 (West).

62 Property Tax Relief, Pa. Dep't of Cmty. and Econ. Dev., https://dced.pa.gov/download/homestead-application-pdf/?wpdmdl=58451&refresh=643d9e2e433fa1681759790&ind=0&filename=Homestead_Application.pdf (last visited July 6, 2023).

63 53 Pa. Stat. and Cons. Stat. Ann. § 8584(h) (West).

64 Affidavit in Support of Application for Homestead Exemption, City of Phila., https://www.phila.gov/media/20220614120654/Revised-Affidavit-042314-2.pdf (last visited July 6, 2023).

65 *Tangled Title Fund*, Phila. VIP, https://www.phillyvip.org/tangled-title-fund/ (last visited July 6, 2023).

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Statement James McKay for DC Uniform Law Commissio

Uploaded by: Vanessa Clark Brooks

Position: INFO

Government of the District of Columbia
UNIFORM LAW COMMISSION

February 11, 2025

The Honorable Scott Phillips
House Judiciary Committee
Maryland House of Delegates
Room 100 House Office Building
6 Bladen Street
Annapolis, MD 21401

BY E-MAIL

RE: HB 625, Real Property – Transfer on Death Deed – Establishment

Dear Delegate Phillips:

I am Chair of the District of Columbia Uniform Law Commission and proposed the Uniform Real Property Transfer on Death Act (URPTODA) to the Council of the District of Columbia and testified in support of the Act both for the D.C. Commission and the Executive Branch of the District Government. UPRTODA was passed by the Council unanimously on two readings and signed by the Mayor of the District of Columbia and, after laying before Congress, took effect as D.C. Law 19-230 on March 19, 2023. It is codified at D.C. Code § 16-604.01 *et seq.*

I whole-heartedly support the enactment of HB 625, which would enact URPTODA in Maryland. The Act has been in effect in the District for almost 12 years and has not created any problems. It has been endorsed by the District's Office of the Recorder of Deeds and has been implemented by that Office without incident.

Although a couple of practitioners who were members of the D.C. Land Title Association opposed URPTODA, we demonstrated that their concerns with the Act were not well founded. They argued that recordation of a transfer on death ("TOD") deed will cause uncertainly where there are multiple deeds and will cause lenders not to make a loan. However, we explained that there will be no uncertainty. D.C. Code § 19-611(a), specifically addresses the multiple deed situation. Among several inconsistent recorded TOD deeds, a later acknowledged deed revokes an earlier acknowledged deed. Lenders will make loans because their interests are protected by § 19-613(b), which provides that "[a] beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is

subject at the transferor's death." The American Bankers Association had an observer present and participating throughout the drafting of URPTODA and has had no problem with it. Lenders routinely make loans without incident in the states that have this sort of legislation in effect.

With respect to post-reverse mortgage transfers, recording a TOD deed is not a transfer and has no effect whatsoever during the transferor's lifetime. It is effective at death, the same as a will. Moreover, a suspect deed is subject to challenge by interested parties under general principles of fraud, undue influence, or similar grounds, just as any other deed transferring property.

In addition, the practitioners argued that the TOD deed enables fraud upon the elderly. We explained that this is not true. As the witness for AARP's Legal Counsel for the Elderly testified at the hearing in the District, URPTODA would help *prevent* fraud on the elderly. Experience shows that, in states that authorize TOD transfers of real property, this device is used more heavily by professional estate planners than by individuals. Similarly, the TOD deed has more protections built into it than other devices to which a person intent on defrauding might resort. These include the requirements that the property owner making a TOD deed have the same capacity as required to make a will, § 19-604.08, that the TOD deed have all of the essential elements and formalities of a properly recordable *inter vivos* deed, § 19-604.09(a), and that the TOD deed be recorded before the owner's death with the Recorder of Deeds, § 19-604.09(c).

In sum, as reflected in the District's 12 years' experience, enactment of URPTODA has proved beneficial to the residents of the District, especially low-income residents, who cannot afford the costs of estate planning attorneys. None of the concerns expressed by those who opposed the Act have materialized. Therefore, we hope that Maryland will join its neighboring jurisdictions in enacting this important legislation.

Sincerely,

James C. McKay, Jr.
Chair
D.C. Uniform Law Commission