HB 738

Department of Legislative Services

Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 738 (Delegate Phillips, *et al.*)
Judiciary Judicial Proceedings

Real Property - Transfer-on-Death Deed - Establishment

This bill establishes the Maryland Transfer-on-Death Deed Act in State law. The bill includes provisions relating to (1) the elements, recordation, and effects of a transfer-on-death (TOD) deed; (2) revocation of a TOD deed; (3) the effect of a transferor's death; (4) forms and informational documents for TOD deeds; (5) recordation of a notice of the death of a transferor; (5) exemption of TOD deeds from recordation and transfer taxes; and (6) interpretation and enforcement of the bill. The bill applies to any TOD deed made before, on, or after the bill's effective date by a transferor who dies on or after the bill's effective date.

Fiscal Summary

State Effect: General fund expenditures increase by $15,700 in FY 2027 only, for one-time programming costs for the Judiciary. General fund revenues may decrease and special fund revenues may increase, as discussed below.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary:

General Provisions and Elements, Recordation, and Effects

The bill creates a new subtitle within the Real Property Article (Title 14, Subtitle 10, "Maryland Transfer-on-Death Deed Act") specifying that a TOD deed, a nontestamentary

instrument, may be used by an owner to transfer a property to one or more beneficiaries upon the transferor's death. A TOD deed that designates multiple beneficiaries may transfer ownership of the property to the beneficiaries under any form of tenancy indicated in the TOD deed. If the TOD deed does not indicate a form of tenancy, title to the property must be conveyed to the designated beneficiaries on the death of the owner, or, if there are multiple owners, on the death of the last surviving owner, as joint tenants with rights of survivorship. A TOD deed is effective if, prior to the death of the transferor, it is recorded in the land records of the county where the property is located, in accordance with prerequisites, under the Real Property Article, to recording an instrument that effects a change of ownership. The bill makes specified changes to those prerequisite provisions relating to the fact that ownership of a property that is the subject of a TOD deed transfers on the death of the transferor and not as of the date of recordation.

A TOD deed must (1) comply with existing requirements for a deed under § 4-101 of the Real Property Article and (2) state that the transfer to the designated beneficiary is to occur at the transferor's death. A TOD deed does not require (1) notice or delivery to or acceptance by a designated beneficiary during the transferor's life or (2) consideration.

The Maryland Transfer-on-Death Deed Act does not (1) affect any method of transferring property otherwise allowed under existing State statute or (2) limit the right of any person to maintain a civil action for damages or other remedies otherwise available under any other provision of law. A TOD deed may be made or revoked by an individual if they have the same capacity required for making a will.

During a transferor's life, the TOD deed does not:

- affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;
- affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the TOD deed;
- affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the TOD deed;
- affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
- create a legal or equitable interest in favor of any designated beneficiary; or
- subject the property to claims or process of a creditor of any designated beneficiary.

Revocation

The transferor may revoke a previously recorded TOD deed, or any part of that recorded TOD deed, by recording in the land records of the county in which the property is located, before the death of the transferor, an executed and acknowledged:

- TOD deed that revokes the deed or part of the deed expressly or by inconsistency;
- instrument of revocation that expressly revokes the deed or part of the deed; or
- *inter vivos* deed that revokes the TOD deed or part of the deed expressly or by inconsistency.

After a TOD deed is recorded, it may not be revoked by (1) a revocatory act on the deed or (2) a testamentary document executed by the transferor, even if the testamentary document is executed after the date of recordation of the TOD deed.

If a TOD deed is made by more than one transferor (1) revocation by a transferor does not affect the deed as to the interest of another transferor and (2) a deed by joint owners is revoked only if it is revoked by all living joint owners.

"Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship, including a joint tenant and a tenant by the entirety. "Joint owner" does not include a tenant in common.

The provisions above related to revocation of a TOD deed do not limit the effect of an *inter vivos* transfer of the property.

Transferor's Death

Subject to specified limitations, if a beneficiary survives the transferor, on the death of a transferor that executed a TOD deed, the interest in the property is transferred to the designated beneficiary in accordance with the TOD deed. The interest of any designated beneficiary who fails to survive the transferor lapses. If the designated beneficiary does not survive the transferor and the transferor has provided for an alternate designated beneficiary in the TOD deed, the interest in the property is transferred to a surviving alternate designated beneficiary in accordance with the TOD deed on the death of the transferor. A TOD deed may provide for successive alternate designated beneficiaries.

A beneficiary takes the property transferred by the TOD deed subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and any other security agreements to which the property is subject at the transferor's death. A TOD deed transfers property without covenant or warranty of title even if the TOD deed contains a contrary provision. If a transferor is a joint owner and is survived by one or more joint owners, the property that is the subject of the TOD deed belongs to the surviving joint owner or owners with

right of survivorship. If a transferor is the last surviving joint owner, the TOD deed is effective on the transferor's death.

A beneficiary may disclaim all or part of the beneficiary's interest, as provided under the Maryland Uniform Disclaimer of Property Interests Act, Title 9, Subtitle 2 of the Estates and Trusts Article. The bill modifies the Maryland Uniform Disclaimer of Property Interests Act to require that in the case of a disclaimer of an interest created by a beneficiary designation (such as a TOD deed) that is disclaimed after the designation becomes irrevocable, the disclaimer of an interest in real property must be recorded in the land records of the county where the real property that is the subject of the disclaimer is located.

Forms and Informational Documents

The bill specifies a form that may be used to create a TOD deed, a form that may be used to create an instrument of revocation, and informational sheets for each. The bill also specifies a form that may be used and recorded to provide notice of the death of a transferor (discussed below). An individual may establish a TOD deed by executing, acknowledging, and recording a form TOD deed. The form TOD deed must (1) be recorded in accordance with the policies and procedures established by the clerk of the circuit court before the transferor's death and (2) state that the transfer to the beneficiary occurs at the transferor's death.

Notice of the Death of a Transferor

On the death of a transferor, a beneficiary or the beneficiaries of a TOD deed may record notice of the death of a transferor in the land records of the county in which the property is located. However, notice of the death of the transferor is not required to effectuate the transfer of the property, which is deemed to have occurred at the death of the transferor. The clerk of the court must forward notification of the death of a transferor to the State Department of Assessments and Taxation (SDAT) in the same manner as a deed or a lease.

Exemption from Recordation and Transfer Taxes

A real property TOD deed is not subject to recordation tax or State or county transfer tax if the property is a primary residence or a secondary residence of the transferor.

Interpretation and Enforcement of the Bill

The bill must be interpreted and enforced by a court in accordance with existing law governing life estates with powers of alienation, to the extent practicable and so long as the interpretation and enforcement does not conflict with the uniform application of the

Uniform Real Property Transfer on Death Act promulgated by the Uniform Law Commission.

Current Law:

Property of a Deceased Person

Under the Estates and Trusts Article, all property of a decedent (deceased person) is subject to the estates of decedents law, and upon the person's death must pass directly to the personal representative (a fiduciary who settles and distributes the estate of the decedent in accordance with the terms of any will and the estates of decedents law) for administration and distribution. "Property" is all real and personal property of the decedent and any right or interest in the property, which does not pass, at the time of the decedent's death, to another person by the terms of the instrument under which it is held, or by operation of law.

Exemption from Recordation and Transfer Taxes

When estate assets are distributed in kind to beneficiaries, the personal representative must execute and deliver an instrument or deed of distribution assigning, transferring, or releasing the assets to the beneficiary as evidence of the title of the beneficiary to the property. A recordation tax, transfer tax, or any other State or local excise tax may not be imposed on the transfer by a personal representative of property or an interest in property without consideration or on the recordation of an instrument executed by a personal representative that transfers property or an interest in property without consideration.

Disclaimer

Under the Maryland Uniform Disclaimer of Property Interests Act, a person may disclaim (*i.e.*, refuse to accept) in whole or in part any interest in or power over property, including a power of appointment, regardless of whether the creator of the interest or power imposed a restriction upon the transfer of, or a restriction or limitation on the right to disclaim, the interest or power.

A disclaimed interest passes according to the terms of the instrument creating the interest if it provides for the disposition of the interest if it is disclaimed, or of disclaimed interests in general. If the instrument does not provide for the disposition of a disclaimed interest, the interest passes, if the disclaimant is an individual, as if the individual had died immediately before the time of distribution of the interest, or if the disclaimant is not an individual, as if the disclaimant did not exist.

State Fiscal Effect:

General Fund Expenditures

General fund expenditures increase by $15,696 in fiscal 2027 only, to cover costs incurred by the Judiciary for programming changes related to the recording of TOD deeds by clerks of the circuit court.

SDAT can implement the bill with existing resources.

General Fund Revenues

General fund revenues may decrease each fiscal year, beginning in fiscal 2027, due to reduced probate fee and inheritance tax revenues collected by the registers of wills, which oversee administration of decedents' estates. Real property transferred under the bill is transferred outside of the probate estate, removing property from the probate estate, and probate fees are collected by the registers of wills based on the value of the probate estate. The transfers will still be subject to inheritance tax if the beneficiary is a taxable individual, but if the decedent has no other probate assets, the transfer may not be reported, and the tax may not be collected. The extent of any decrease in general fund revenues cannot be reliably estimated but may only be minimal. Registers of wills' salaries and office expenses are paid from fees and inheritance tax revenues collected by the registers, with the remainder of the revenues deposited in the State general fund.

Special Fund Revenues

To the extent recordation of a TOD deed, an instrument of revocation, or a notice of the death of a transferor is subject to the $40 surcharge imposed on recordable instruments by clerks of the circuit court under § 13-604 of the Courts and Judicial Proceedings Article, special fund (Circuit Court Real Property Records Improvement Fund) revenues increase each fiscal year by an indeterminate amount beginning in fiscal 2027.

Additional Comments: The bill is a modified version of the Uniform Real Property Transfer on Death Act drafted by the Uniform Law Commission.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 625 of 2025 and SB 146 and HB 986 of 2023.

Designated Cross File: SB 651 (Senator Henson, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Orphans' Court of Baltimore County; State Department of Assessments and Taxation; Department of Legislative Services

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