

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Sara Elalamy
410-260-1561
RE: House Bill 1270
Maryland Real Property Transfer-on-Death (TOD) Act
DATE: March 2, 2022
(3/9)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1270.

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. The section is also very prescriptive, requiring very specific content. If the AOC were to develop information on this topic, the substance of the information should be left to the sound discretion of the Judiciary.

In addition, there are several implementation concerns for the clerk's offices. First, it is unclear how the State Department of Assessment and Taxation (SDAT) 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.

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.

Further, there appears to be a discrepancy in the bill regarding whether there can be one beneficiary or multiple beneficiaries. On pg. 5, line 18, there is a reference to one or more beneficiaries. However, on pg. 6, lines 7 and 8 there is a reference to one beneficiary.

Moreover, Real Property 3-104 (d) requires any deed or document provided for recording to have a name printed above or below the signature line. This bill does not include the printed names requirement, which should be required with any signature.

cc. Hon. Terri L. Hill
Judicial Council
Legislative Committee
Kelley O'Connor