

HB1270 - Maryland Real Property Transfer-on-Death

Uploaded by: Dakota Matthews

Position: FAV



John Hartline, Chair

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Charlotte Davis, Executive Director

Testimony in Support of
House Bill 1270- Maryland Real Property Transfer-on-Death (TOD) Act
House Judiciary Committee
March 09, 2022

The Rural Maryland Council supports House Bill 1270 Maryland Real Property Transfer-on-Death (TOD) Act. The bill intends to make it easier for families in Maryland to transfer their homes after they have passed. This will be done by allowing transfers of an individual's homes after they pass without the need for a probate, but instead through a transfer on death deed. This will benefit all Marylanders, but more specifically those of lower income and in underserved areas of the State.

It is much more common in underserved areas of Maryland, such as in rural communities, for a family member to pass and not have a will addressing who their home will go to after their death. This is because the creation of a will is expensive and these low income families do not have the finances or resources to create a will. Without the proper transfer of a multi-person home, families can become misplaced or even homeless. Once the family member does pass, the family also does not have the finances or resources to have the property transferred over to the new owner. They are also already spending money on funeral expenses and other associated costs of a family members death. The transfer on death deed is a much simpler process that does not require lawyers or large fees for someone to name a beneficiary of their property after their passing. Non-probate transfers are already applicable to other property in Maryland, such as vehicles and bank accounts. Many other states already allow transfer on death deeds for their residents. These states include some of those that border Maryland, including Virginia, D.C, and West Virginia,

The lack of a will or deed also results in what is considered heir's property. Heirs' property is land that has been inherited from a family member without a deed or documentation of ownership and can be passed down for generations, resulting in no clear owner or owners of the property. Families that own heirs' property are commonly minority and poorer families. This is because marginalized people historically have less access to certain resources, such as deeds to property or a will, that would have properly transferred ownership to the new owners. Heirs' property is an issue across the entire State. An article published by the Federal Reserve Bank of Richmond, *Whose Land Is It? Heirs' Property and Its Role in Generational Land Retention*, states Maryland's large black population and rural areas like parts of Appalachia and the Eastern Shore are indicators of increased likelihood of heirs' property, and that more urban areas such as Baltimore County also have higher rates of heirs' property. The Article also states the areas of Maryland with the greatest concentration of heirs' property are the eastern shore, Baltimore County, and Garrett County.

The Rural Maryland Council respectfully requests your favorable support of House Bill 1270.

The Rural Maryland Council (RMC) is an independent state agency governed by a nonpartisan, 40-member board that consists of inclusive representation from the federal, state, regional, county and municipal governments, as well as the for-profit and nonprofit sectors. We bring together federal, state, county and municipal government officials as well as representatives of the for-profit and nonprofit sectors to identify challenges unique to rural communities and to craft public policy, programmatic or regulatory solutions.

"A Collective Voice for Rural Maryland"

hb1270 testimony.pdf

Uploaded by: Louis Wilen

Position: FAV

Testimony in SUPPORT of HB1270

Maryland House of Delegates Bill hearing date March 9, 2022

Constituent Name: Louis Wilen
Olney, Maryland

Dear Mr. Chair and Members of the Judiciary Committee:

Your favorable vote for HB1270 will be appreciated. TOD for real estate is currently allowed in about half of the states so it's a proven practice.

TOD has worked very well for financial assets for decades in Maryland and other states. TOD for motor vehicles has also been available for several years in Maryland. Over the years, TOD has worked very well for millions of people.

With passage of TOD for real estate, expensive trusts will no longer be needed by middle-class and moderate income homeowners. They will finally be able to title ALL of their most valuable assets in TOD name, which will minimize the need for probate.

Thank you for your anticipated favorable vote for HB1270.

Very respectfully,

Louis Wilen

Transfer-on-Death Act Testimony.pdf

Uploaded by: Steven Lewis

Position: FAV

HB1270 Testimony

To avoid probate for real estate, many states offer a transfer-on-death deed. This permits beneficiaries to inherit property without the need for probate court proceedings, saving the beneficiaries time and money. This article lists the 30 states that offer the option of a transfer-on-death deed: <https://www.nolo.com/legal-encyclopedia/free-books/avoid-probate-book/chapter5-1.html>

Offering the option of a transfer-on-death deed should not be controversial since it provides only advantages to owners of Maryland property. Maryland residents can now transfer their bank accounts, brokerage accounts, life insurance, and other assets without going through probate so they should also be able to transfer real estate without the need for probate as people living in 30 other states can.

I urge Maryland to offer a transfer-on-death deed and to make the transfer-on-death deed as flexible as possible. For example, if I have three children and one of them predeceases me, the transfer-on-death deed should offer the choice of having my home transfer to (a) my surviving two children or (b) having 33-1/3% of my home transferred to each of my two surviving children and 33-1/3% to the children of my deceased child. The transfer-on-death deed should also permit the naming of contingent beneficiaries.

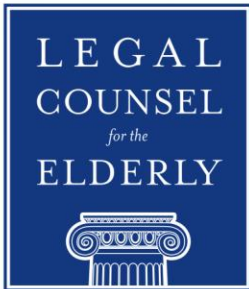
Similarly, Maryland offers a Vehicle Beneficiary Designation, which allows people to name a beneficiary for their car, but they can name only one beneficiary. I believe that people should be allowed to name more than one beneficiary (e.g., all of their children) for their car and that the naming of beneficiaries should be made as flexible as possible (see above paragraph).

Steven Lewis
125 Conduit St
Annapolis, MD 21401

AARP comments on-transfer-on-death-deed.pdf

Uploaded by: Terri Hill

Position: FAV



TRANSFER ON DEATH DEED (TODD)

Planning for what happens to your home after your death can be difficult. Transfer on death deeds provide a simple, cheap way to make sure your home is passed on as you wish.

How It Works

A transfer on death deed names the person or people who will get your home after your death. During your lifetime, you keep ownership of your home and you may revoke the transfer on death deed. Upon your death, your home goes to any surviving person named in the transfer on death deed.

Benefits of a Transfer on Death Deed

- Allows you to plan for what happens to your house during your lifetime.
- May be canceled at any time if you want to change what happens to your home.
- Your heirs may avoid probate.
- You keep ownership of your home, so you may still sell, mortgage, or transfer the home.
- You may also keep any tax benefits for senior homeowners.
- Unlike wills, there is no risk the deed is lost or destroyed



Disadvantages of a Transfer on Death Deed (TODD) & Special Considerations

To be eligible for a TODD, your real property **deed** must show that you have an **ownership interest** in your home.

There are special considerations to take into account if you own the property as a **joint tenant**, as opposed to a tenant in common, with another individual. As a **joint tenant**, if you predecease your co-owner, the TODD will not have any effect because the property automatically would transfer upon your death to the surviving joint tenant.

If you name **two people** as the **primary beneficiaries** and one predeceases you, the survivor will receive the entire property (unless you revoke the TODD). For example, if two daughters are beneficiaries, and one daughter passes away before you, her interest will **not** pass on to your deceased daughter's children. Your surviving daughter will own the whole house.

If you are **married**, but your spouse is **not** on the deed, and you give your home to **someone other** than your spouse in a TODD, then your spouse may not have a legal claim to a spousal share of the home because a TODD is not part of your Last Will & Testament.

If you become incompetent, you **cannot** revoke a TODD, but your power of attorney with authority over real property can sell or transfer your home for your benefit in your lifetime.

Creating a Transfer on Death Deed

A transfer on death deed requires the following information be filed with the Office of Recorder of Deeds in a notarized form:

- The names and addresses of all owners of the property.
- The legal description of the property to be transferred.
- The people receiving the property. You may name as many people as you wish.
- A statement that the property will transfer at the owner's death.
- The signature of the owner making the transfer and the date.

The Office of the Recorder of Deeds provides one example of what this form could look like online at <http://otr.cfo.dc.gov/node/501452>. You do not have to use this exact form, however, as long as what you file has all the information listed above. More information about filing with the Office of Recorder of Deeds also can be found online at <http://otr.cfo.dc.gov/service/otr-recorder-deeds>.

If you are age 60 or over and are interested in creating a transfer on death deed, call LCE at (202) 434-2120 and ask for "help creating a transfer on death deed." LCE will prepare the deed for those people who qualify for our free legal services.

HB1270 Testimony T.R.B.pdf

Uploaded by: Terri Hill

Position: FAV

March 7, 2022

Dear Chair Luke H. Clipplinger and Vice-Chair David Moon,

I just spent 13 months of my life administering to the probate for my mother's estate. My mother thoroughly prepared her estate by ensuring every possible asset had updated beneficiaries. It was her wish to minimize the paperwork and hassle in passing on her assets in a timely fashion along with minimizing any cost of probatable assets. It is a means to convey money/assets earned during a lifetime without detrimental effects to her heirs (children).

The only asset that could not avoid probate was her real estate property, the home and property she grew up in and inherited from her parents. The other option such as a living trust is an exorbitant cost for most of us to set up and very complicated along with any changes require ongoing maintenance costs and time. Another option, to deed a property to her beneficiaries pry to death means a high risk of potentially losing control over her asset during her lifetime. It also means the loss of a step-up basis for the beneficiaries and this is a method to pass along generational wealth, something that has been denied to many citizens.

Unfortunately, much of my time spent on the probate of the single asset of real estate property was dealing with my attorney, following up on the status of the probate, facilitating corrections of forms incorrectly submitted to the Register of Wills or the Register of Wills not receiving or losing the paperwork. This system is antiquated, complicated and highly inefficient.

Twenty-nine states and the District of Columbia currently have Transfer upon Death of Deeds available for their residents to utilize as a method for estate planning for the transfer of your real estate property to your beneficiaries.

This link provides the research survey on Transfer on Death Deeds in the U.S.A as of February 20,

2021 https://www.actec.org/assets/1/6/Transfer_on_Death_Deeds_Survey.pdf

This has many benefits for the homeowner (cited specifically from LeagalZoom.com, but listed on numerous legal websites):

Advantages of a TOD Deed

Following are a few benefits of the TOD deed compared with other methods of transferring property upon death:

- Transfer by will. Even with a will, the property must go through probate to be transferred to the new owner. A TOD deed avoids probate.
- Joint ownership. Having someone on the deed as a joint owner with rights of survivorship will avoid probate. Upon the death of one owner, title automatically goes to the surviving joint owner or owners. But all joint owners have equal rights in the property. Therefore, selling or mortgaging the property will require the

agreement of all joint owners. With a TOD deed, you keep full control of the property.

- Transfer to a living trust. While transferring property to a living trust can avoid probate without sacrificing control, setting up a trust requires a more complicated document than a TOD deed. If an attorney prepares the document, creating a living trust will be significantly more expensive than a TOD deed. But for large estates with various types of property, a comprehensive estate plan that includes a living trust may be advantageous.

Other advantages of a TOD deed may include:

- Maintaining homestead advantages. Many states offer asset protection and taxation benefits for a person's principal residence. These benefits may be lost with certain types of ownership transfers, but not with a TOD deed.
- Tax savings. Designating a beneficiary is not an immediate transfer, so no federal gift tax is owed. The beneficiary acquires ownership on the current owner's date of death. If the beneficiary later sells the property, any capital gain will be based upon the value of the property at the original owner's date of death, not the value when the original owner acquired the property.
- Maintaining Medicaid eligibility. If a person applying for Medicaid has made a gift of property within a certain period before applying, that gift may delay the receipt of benefits. Upon a Medicaid recipient's death, the government may seek reimbursement from the recipient's probate estate. A TOD deed is not usually considered a gift of the property, nor is the property part of the probate estate subject to reimbursement.

There are a few other important notes about transfer on death deeds:

- They can be revoked: You can create a new transfer on death deed that replaces the original or simply record a revocation form.
- The debt goes with the property: If you still owe money on your mortgage or if any liens are placed on the property, your beneficiary will inherit these liabilities.

Thank you for introducing MD House Bill 1270 along with Senator Adelaide Eckardt (SB 853) and I am respectfully requesting that you continue to champion a change in the Maryland Uniform Real Property Transfer-on-Death Act. If the State of Maryland continues to deny its homeowners a timely, cost effective method to transfer their property upon death, I foresee myself going through yet another probate upon my father's death along with millions of other Maryland homeowners. The Maryland Uniform Real Property Transfer-on-Death Act has been proposed numerous times, but like everything in regards to death, no one wants to deal with it until death is at your doorstep knocking.

Sincerely,

T. R. B.

Lifelong Maryland Resident and Member of the 'Sandwich' Generation

HB1270 TOD sponsor testimony final 03072022.pdf

Uploaded by: Terri Hill

Position: FAV

TERRI L. HILL, M.D.

*Delegate - Legislative District 12
Baltimore and Howard Counties*

Health and Government Operations

Subcommittees

Government Operations and Health Facilities
Public Health and Minority Health Disparities



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SUPPORT

HB1270 - Maryland Real Property Transfer-on-Death (TOD) Act

March 9, 2022

Chairman Clippinger, Vice-chair, Moon and Judiciary Committee Members,

HB1270 creates a statutory form Transfer on Death Deed allowing real property to transfer to the beneficiary automatically upon death, thus avoiding the time and cost of probate.

The family home is usually the most valuable asset that an individual owns. In many cases, the home is a shelter for multiple generations or expanded members of a family. When the owner of the home dies, the family members who remain living in the home must file for probate in order to transfer the home to the decedent's heirs. For some family members, the complications and cost of probate are overwhelming and so probate is never commenced. For families who struggle financially some of these homes will go to tax sale for nonpayment of real property taxes and the family members may face homelessness. These problems were exacerbated because of deaths related to the COVID-19 pandemic.

Under the status quo, in which families for whom probate is overly complicated or expensive remain living in a home they do not own, or invest in the family home while their aging or ailing family member who owns the home is no longer able to maintain it, assuming sometimes some of the maintenance and other associated expenses of the property without having any ownership in the property. Upon the death of the love one, even with a will in existence, we too often find the cost of probate to be a major barrier to the heir taking ownership. This is a problem of particular significance in rural areas- where multiple generation frequently live and manage the same family farm, as well as in urban and suburban areas for working class people of low and moderate income. It is a primary cause of generational wealth loss and, because of historic discriminatory housing, lending, and other policies, contributes to the growing racial wealth gap.

HB1270 is introduced as one tool in the effort to expediently address existing disparity, and arose as one of four pieces of legislation introduced by the Life and Health Planning Subcommittee of the Attorney General's 2020 COVID-19 Access to Justice Task Force. One bill was enacted last year, and the two others passed the House but failed to make it out of Senate Committee.

HB1270 creates a statutory deed to effect the transfer of real property, in a manner similar to that for transferring a car. It will not be the best or preferred tool for everyone, but for persons whose only or primary assets is their home, it can be of enormous benefit. Wealthier people who can afford estate planning and the assistance of paid legal professionals have several tools for distributing their assets after death, it is appropriate that we have one that will work well for some who cannot.

Knowing that the Elder Law, Estates, and Trust and Real Property section of the Maryland State Bar had wrestled with this issue for some time, Senator Addie Eckardt and I cross-filed legislation last year to

create a task force to study the issue and real property TOD deeds in other states. The senate bill crossed to the house and the held in the Environment and Transportation committee where it was felt that a taskforce should not be necessary since there were so many jurisdictions where they were in place and working. As the bill sponsors, we were first asked to amend the bill from a taskforce to a policy, but when the subcommittee took the amendment up, it was clear that Judiciary was the of committee of appropriate jurisdiction and we were tasked with pulling together stakeholders as an ad hoc workgroup and returning with a policy proposal.

***HB1270** is the product of the workgroup which brought the range of stakeholders to the table, including the Estate and Trust and Real Property sections of the bar, Office of the Attorney General, the Department of Labor, Clerks of the Court, Registers of Wills, tile insurers, pro bona legal services, and title association. We were in contact with the Elder law section of the bar and are in discussion with SDA as well. Not everyone is excited about the product before you, but those who appreciate the unique benefits it offers to the particular group for which it is targeted accept the importance of it, and that the bill before you presents a compromise that addresses most concerns, is crafted for Maryland system and may require some tweaking.*

Recognizing that Maryland does things in its own unique way, we opted to limit the deed to sole transferors and transferees, and in other ways, as compared to the URPTODA or TOD statutes in other states, expecting that as people become comfortable administering and using it, we can come back to expand or adjust the scope, as indicated. An amendment for a Department of Legislative services audit at three years has also been requested.

For Maryland families for whom the family home is the family wealth, I respectfully urge a favorable report.

A handwritten signature in black ink, appearing to be "D. J. P.", written in a cursive style.

MSBA FAV Testimony

Uploaded by: Terri Hill

Position: FAV

To: Members of House Judiciary Committee

From: MSBA Estate & Trust Law Section

Date: March 8, 2022

Subject: **HB 1270** – Maryland Real Property Transfer-on-Death (TOD) Act

Position: **Support with Amendments**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports with amendments** House Bill 1270 – Maryland Real Property Transfer-on-Death (TOD) Act.

The probate process is the common means by which the ownership of real property must transfer at one's death. The process takes many months to complete and for many families the expenses associated with probate are beyond their means. When multiple generations live within a residence, the death of the property owner can leave family members at risk for becoming homeless. A Transfer-on-Death deed provides an alternative and simple means by which ownership of the property can pass outside the probate process to one's family or other intended beneficiaries.

There are two amendments to the bill that the Estate and Trust Law Section believes are appropriate to HB 1270. First, the Act should appear in the Real Property Article of Maryland's Annotated Code in lieu of the Estates and Trusts Article of the Code. As indicated by its name, the Maryland Real Property Transfer-on-Death Act makes a number of references to the Real Property Article and includes a substantial revision to that Article as part of the bill. The bill deals with mortgages, liens, taxes, assessments, land record issues, intake sheets, legal descriptions all of which are uniquely suitable for the Real Property Article. Second, as offered in an amendment to its cross-filed bill SB853, the Estates & Trusts Code should contain a reference to the TOD deed specifically stating that a TOD deed is a non-testamentary transfer. The Estate and Trust Law Section suggests that this be reflected by amending Section 1-401 (and not create a new Section 1-402 as proposed by the amendments offered in SB853) to be consistent with the approach taken in HB 342/SB 261, which bill provides for the transfer of an interest in a limited liability company outside of probate by way of a beneficiary designation made in an operating agreement.

Members of the Estate and Trust Law Section participated in the Maryland Attorney General's COVID-19 Recovery Task Force in which the TOD deed was recommended to help bridge the wealth divide. During the COVID-19 pandemic, the transfer of property through the

probate process, which is overseen by Maryland's Orphans' Courts, experienced delays as did much of the legal process. The pandemic brought into the spot light the need for additional tools to assist families with economic security following the loss of a family member.

For the reasons stated above, the MSBA **supports HB 1270 with amendments.**

For Further Information, Please Contact:

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hb1270_mvls_testimony.pdf

Uploaded by: Timothy Chance

Position: FAV



JUSTICE FOR ALL

MARYLAND HOUSE JUDICIARY COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
IN SUPPORT OF HB1270: MARYLAND REAL PROPERTY
TRANSFER-ON-DEATH (TOD) ACT
WEDNESDAY, MARCH 9, 2022

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Chair Clippinger and distinguished members of the Committee, thank you for the opportunity to testify in support of House Bill 1270.

My name is Tim Chance, and I am the Tangled Title Attorney 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 FY21, MVLS volunteers provided legal services to 3,353 people across the state. 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 and large property tax bills, which make it impossible to transfer property. For the reasons explained below, we respectfully request a favorable report on House Bill 1270.

The Advanced Planning Project is an outreach effort designed to stabilize neighborhoods, preserve family assets and reduce the number of Baltimore City properties with deed and title entanglements that prevent homes from being in productive use. In conjunction with community partners across the city, MVLS is raising awareness about the importance of estate planning, especially in the context of community stabilization. As part of the My Home, My Deed, My Legacy Project, MVLS provides homeowner clinics to help Baltimore City residents stabilize their homes, through estate planning discussions, and secure critically important resources, including the Homeowners' Property Tax Credit. One of the main focuses of these discussions is avoiding probate, through payable on death accounts, vehicle beneficiaries, and life estate deeds. Although the clinics are focused in

Baltimore City, MVLS' community outreach and provision of legal services on these issues are statewide as the challenges with deeds and estate administration is a statewide problem. Additionally, the My Home, My Deed, My Legacy Project provides continuing direct representation, both by volunteer attorneys and staff attorneys, and myself to clients navigating the probate process.

Probate is a costly and time-consuming process. In addition to the fees associated with probate, it can cost several hundred dollars and take a minimum of nine months to open, administer, and close an estate. Our clients are homeowners who are facing financial hardship and they often don't have the resources to cover these expenses. It is imperative that they pass as many assets outside of probate as possible. MVLS provides a comprehensive estate planning approach that includes life estate deeds to protect the home for the client. Life estate deeds are an alternative to the client adding their children to the deed, which would open the client up to potential exploitation or unintended collections actions. Life estate deeds are a great tool to addressing the barriers that probate raises but they have their own challenges which include deed recording requirements and cost. Transfer-on-death deeds offer another alternative to the probate barrier for many of Maryland's most vulnerable residents. Transfer-on-death deeds provide a statutory form that will allow Maryland homeowners a more accessible vehicle to keep their homes in their families. Transfer-on-death deeds are an important additional option because of the aforementioned challenges. MVLS is committed to removing all barriers so that all Marylanders can participate in the judicial system and transfer-on-death deeds would be another tool to make the system more equitable. Below is an example that MVLS has seen of how a transfer on death deed could have prevented the potential loss of a client's family home.

Thomas lives in Baltimore City in his home that is currently titled in his deceased mother's name. Thomas, along with his sister, was named as personal representative for his mother's estate in 2019. The estate has been closed since December 2019 and Thomas has been trying to record the new deed since that time. Prior to the passage of House Bill 610, Thomas was ineligible for the Homeowners' Property Tax Credit and could not afford the annual property taxes. After consecutive donations from his community in 2020 and 2021, Thomas was able to pay the property's back taxes and keep the home out of tax sale. After his first attempt to record the deed in 2020 ended with the city losing the deed while it was being processed, Thomas is now undergoing the process of recording a new deed for the second time. Since his mother's passing, Thomas had constantly been faced with the very real possibility of losing the home through tax sale. Every hurdle that Thomas overcame in his journey to get the property was immediately followed by another potentially destabilizing challenge. The availability of an accessible transfer-on-death deed would have allowed Thomas's mother to record that deed during her lifetime and automatically pass the property to Thomas upon her death.

MVLS supports House Bill 1270 because it would remove a huge barrier standing in the way of Maryland families' ability to sustain homeownership.

Chair Clippinger and members of the Committee, thank you again for the opportunity to testify.

MLTA HB 1270 written testimony seeking unfavorable

Uploaded by: Jeffrey Thompson

Position: UNF



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

To: Members of the Judiciary Committee
From: MLTA Legislative Committee
Date: March 7, 2022 [Hearing date: March 9, 2022]
Subject: **HB 1270** – Maryland Real Property Transfer-on-Death (TOD) Act
Position: **Unfavorable**

The Maryland Land Title Association (MLTA) asks that you find **unfavorable House Bill 1270** – Maryland Real Property Transfer-on-Death (TOD) Act. 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.

Powers of alienation allow an individual who reserves a life estate while transferring property to remaindermen to later unilaterally sever the interests of those remaindermen 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 involvement to correct an improper conveyance or overturn a conveyance by an incapacitated individual or one obtained through undue influence.

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 1270**.

Testimony HB1270 Circuit Court Clerk's Association

Uploaded by: Kathleen Duvall

Position: UNF

Kevin Tucker – President-Elect
Washington County

Terry Lord – Secretary
Caroline County



Maryland Circuit Court Clerks' Association

11 N. Washington Street, Suite 16
Easton, MD 21601

Heather DeWees – Vice-President
Carroll County

Kathleen Duvall
President
Talbot County

Diana Liebno – Treasurer
Howard County

"Where there is unity, there is strength"

HB1270 Maryland Real Property Transfer-on-Death (TOD) Act
Judiciary Committee – March 9, 2022

Sponsor: Delegate Terri Hill

Position: Unfavorable

Written Testimony of Kathleen Duvall, President, Maryland Circuit Court Clerk's Association

Thank you, Chairman Clippinger and members of the committee for this opportunity to submit written testimony opposing House Bill 1270. My name is Kathleen Duvall, the Clerk of the Circuit Court for Talbot County. I am also the President of the Maryland Circuit Court Clerk's Association, which represents the elected Clerks of the Circuit Court in Maryland. This written testimony is on behalf of our Association.

Our Clerk's Association requests an unfavorable report for HB 1270 because we have concerns that this important piece of legislation is being rushed. The Clerks of the Circuit Court, responsible for the recording of these documents, were brought in after much of this bill was drafted. We recommend the bill be tabled for this year to allow adequate time for the House and Senate sponsors to fully discuss the implications with affected groups including the Real Estate Bar, the State Department of Assessment and Taxation, and others. 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. And despite recent efforts over the last several weeks to address issues in the bill that might cloud a beneficiary's title to the real property being transferred, there are still some questions that need to be resolved. 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. In addition, it has been stated that creating a TOD Deed would be similar to 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.

Passing the bill under the belief that all of these issues can be worked out later is putting the cart before the horse, and even though we believe the bill is being submitted with the best of intentions, we would counsel that this issue should not be rushed.

Specific sections in the bill that we have concerns which still need to be resolved are:

Section 16.5-301 - the proposed options to "revoke" a TOD should be the same as the formalities of a deed. A simple letter in the land records should not be sufficient to revoke a conveyance. It should be done through another deed.

Section 16.5-403 makes no sense. What is the "period of time following the death of the transferor and prior to a beneficiary exercising ownership over the property"? Doesn't the transfer take affect at death?

Section 16.5-501 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 a number of advantages and disadvantages depending on someone's circumstances which could raise ethical issues for the Judiciary.

Section 3-104 - why are we allowing individual to transfer their property without a certification that they are current on their property taxes/municipal bills?

In summary, because there are so many questions left unanswered regarding how this bill would fit into current land records statutes in Maryland, our Association requests the committee give an unfavorable report on HB 1270 so there can be more time to work out the details before the next legislative session. Thank you for the opportunity to comment.

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Uploaded by: Sara Elalamy

Position: UNF

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

HB1270.docx.pdf

Uploaded by: Director Michael Higgs

Position: INFO

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HEARING DATE: March 9, 2022

BILL: HB1270

TITLE: Maryland Real Property Transfer-on-Death (TOD) Act

SDAT POSITION: Letter of Information

The State Department of Assessments and Taxation (SDAT) notes that HB1270 would be challenging to implement and pose major IT costs.

This legislation requires SDAT to develop and implement a registry for the registration of transfer-on-death deeds. The purpose of this bill is to transfer ownership of a property on the assessment records upon the death of the transferor indicated on the transfer-on-death.

SDAT is deeply concerned about the potential impacts of this legislation because the department will not be able to audit any documentation in the registry. This legislation does not address a cure process for disputed documents nor does it address how the transfer would take place from the clerk of the courts to SDAT.

This legislation extends an extremely difficult timeline for the implementation of the proposed major operational changes.

For these reasons, SDAT offers this Letter of Information and strongly urges a reconsideration of HB1270 in its current form.