
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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