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*“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.