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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.