

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](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

