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THE MARYLAND HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND 21401

SUPPORT

HB986 - Maryland Real Property Transfer-on-Death (TOD) Act

March 8, 2023

Chair Clippinger, Chair Atterbear, Vice-chair Moon, Vice-chair Wilkins, and Joint Committee Members,

HB986 creates a statutory form Transfer on Death Deed for transferring real property to a named beneficiary outside of probate. Thirty states and the D.C have TOD statutes or provisions for transferring real property to a named beneficiary immediately upon the death of the grantor without incurring the time delays and cost of probate. This is not a tool for everyone, but for families of marginal means for whom the family home is the only asset, a statutory TOD deed can be the key to home inheritance and a seed for creating generational wealth.

HB986 arose as one of four pieces of legislation introduced by the Life and Health Planning Subcommittee of Attorney General Brian Frosh's 2020 COVID-19 Access to Justice Task Force. Knowing that the Elder Law, Estates & Trusts, and Real Property sections of the Maryland State Bar had been wrestling with this issue, former Senator Addie Eckardt and I cross-filed legislation in 2021 to create a task force to study implementation of a Maryland TOD. With both bills stuck in the House, we were advised that, since there were TOD deeds in place and working in thirty (now thirty-one) states and D.C, a taskforce should not be necessary. We were instead tasked with pulling together an ad hoc stakeholders' workgroup and returning in 2022 with a policy proposal. We did and continued working after the 2022 bill hearings on compromises and tweaks to gain broad support.

HB986

- Closely follows the Uniform Real Property Transfer on Death Act language and provisions used in most of the state with TOD deeds for real property in creating the statutory TOD deed.
- Creates a non-testamentary instrument, a TOD deed, which may be used by an individual sole owner to transfer real property to a sole beneficiary upon the transferor's death.
- Does not apply to property that is held as joint tenants, tenants in common, or tenants by the entirety.
- Gives the Administrative Office of the Courts the leeway they requested to develop and make available to the layperson public documents explaining the indications, alternatives, contraindications, appropriate use, and detailed instructions for completion, registration, and revocation of the TOD deed documentation, including where the required property legal description may be found.
- Specifies, including information about where the legal description may be found and identifying information about the transferee, a form that may be used to create a TOD deed, and a form

that may be used to create an instrument of revocation, and informational sheets for each, that may be used to explain the forms.

For a significantly number of Marylanders, legal or financial counseling around estate planning is not possible. Even with a will, the cost and time to work through probate can be prohibitive. The challenges of passing the family home from one generation to the next can be particular difficult in rural areas where multiple generations 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. The costs and amount of time associated with the probate process can lead to a home going to tax sale and family members becoming displaced and even face homelessness. Inability to pass on the family home is a primary cause of generational wealth loss and, because of historic discriminatory housing, lending, and other policies, the growing racial wealth gap. These problems were exacerbated by the COVID-19 pandemic.

Life estate deeds without powers, living trusts, and joint tenancy are effective tools for passing real property outside of probate, but have their limitations with this subset of residents. The existing life estate deed with powers (LEDWP) can achieve the same goal. However, execution of a LEDWP does not protect the property from counting as an asset when being assessed for Medicaid eligibility. The TOD does. The LEDWP also requires legal assistance. The statutory TOD does not (although legal guidance is encouraged). TOD is a tool specifically for those without access to the others in the belt.

The stakeholders agreed to a narrow crafting of the legislation, opting to limit the deed to sole transferors and transferees, and in other ways, as compared to the URPTODA and TOD statutes in other states. As people become comfortable administering and using it, we can come back to expand or adjust the scope, as indicated. Should **HB986** be enacted, we would ask the jurisdictional committee chairs to consider asking the Bar, after the first 3 years of real property TOD deed implementation, its use, effectiveness, and any problem, and make recommendations for how to improve or limit it, and whether to expand the category of properties, grantors, or grantees allowed.

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

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