

HB0986 Maryland Real Property Transfer-on-Death (TOD) Act

Judiciary Committee – March 8, 2023

Sponsor: Delegate Terri Hill

Position: Unfavorable

Testimony of Kevin Tucker, Clerk of the Circuit Court, Washington County

Thank you, Chairman Clippinger, Vice Chairman Moon, and members of the committee, for this opportunity to testify regarding House Bill 986. My name is Kevin Tucker, the Clerk of the Circuit Court for Washington County, and the President of the Maryland Circuit Court Clerks' Association. My testimony today is on behalf of myself and the Clerks' Association.

The Clerks of the Circuit Court ask for an unfavorable report on this bill because, even though the sponsor has worked to try and strengthen our previously identified issues with this bill, we still have several questions and concerns regarding the potential impact on members of the public who may attempt to use a Transfer-on-Death Deed to transfer property. These questions include:

- 1) In proposed Real Property §3-104 (a)(2)(II) – It indicates that *ownership of a property that is the subject of the transfer-on-death deed may be transferred on the assessment records to the designated beneficiary **only following the death of the transferor** named on the transfer-on-death deed.*
Questions: How will the assessment records and the land records offices know when the transferor's death has occurred? Is the beneficiary going to be responsible for notifying the Assessment office upon the passing of the transferor? How is this going to happen? How will the beneficiary know they are responsible for notifying the Assessment Office? What happens if they don't make the notification and the mistake is not discovered until years later? Who is going to ascertain that there is not a revocation of the TOD filed?

- 2) In proposed Real Property §14-806(B) - It indicates that a TOD is effective without notice or delivery to or acceptance by a beneficiary.
Questions: How will the beneficiary be made aware that they have been named beneficiary? How will they obtain title insurance on a property they haven't been notified about? What happens if they do not accept the property or disclaim it?

- 3) In proposed Real Property §14-809(B)(1) - It indicates that a beneficiary takes the property transferred by the TOD deed subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death.
Question: How will the beneficiary know what conveyances, encumbrances, etc. the property is subject to if this is not on the TOD?

For the foregoing reasons, the Circuit Court Clerks ask for an unfavorable report on SB 146. Thank you for the opportunity to comment, and I am available if you have any questions.