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“Where there is unity, there is strength”

HB 986 Maryland Real Property Transfer-on-Death (TOD) Act
Judiciary Committee – March 8, 2023
Sponsor: Delegate Terri Hill
Position: Unfavorable

Written Testimony of Dawne Lindsey, member of 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 986. My name is Dawne Lindsey, the Clerk of Court for Allegany County. I’m providing this written testimony on behalf of the Maryland Circuit Court Clerk’s Association, which represents the elected Clerks of the Circuit Court in Maryland.

Our Clerk’s Association last year submitted an unfavorable report when this same bill was submitted, as HB1270 because we had major concerns. We had asked that the legislation be tabled to allow 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. HB 986 has only had minor changes from last year and the major concerns for the clerks are still exist.

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. 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, there has been a comparison that a TOD Deed would be like 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.

Specific sections in the bill that we have concerns are:

Section 3-104, Page 4, Line 21 - why are we allowing individual to transfer their property without a certification that they are current on their property taxes/municipal bills?

Section 14-806, Page 13, line 6: No notice to beneficiary is required.

Section 14-806, Page 13, line 8: No consideration, lost revenue for counties and the state.

Section 14-809, Page 15, line 25: Beneficiary subject to all encumbrances, liens, mortgages, etc. Debt may go unpaid due to beneficiary not knowing they now own the property. Section 14-809, page 15, line 25 – Change Financial institutions will not have clue there is new owner. How will financial institutions be notified the owner is deceased and there is a new owner?

Section 14-809, Page 15, line 30: Delivery of Deed occurs at transferors' death. How will anyone know the death occurred to transfer ownership?

Section 14-812 Page 16, Line 20 - 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 14-811, Page 16, Line 10: 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 several advantages and disadvantages depending on someone’s circumstances which could raise ethical issues for the Judiciary

Section 14-811, page 17, Line 8: Mailing address say if available. How will anyone be able to contact beneficiary with no contact information?

Section 14-811, page 22, Line 9: It says before Notary Public or other individual authorized by under the law. Who is going to know who is authorized under the law? Parties will contact the clerk’s office for advice on this.

Section 14-811, page 20, Line 5: on the instruction form it says, *“you don’t have to tell anyone you’re making them the beneficiary, but secrecy can cause later complications and might make it easier for others to commit fraud.”* This is the main problem with the bill that the clerks are concerned about. No one, including the beneficiary of the TODD, SDAT, and Taxation offices, “will even know that there is” a new owner as there is no notification of death requirement built in.

The opportunity for fraud is very high with this bill.

In closing we can see the good intention Delegate Hill has with this bill; however, we have experienced firsthand how a poorly executed deed can not only cause a financial burden but be extremely stressful for parties to clear up. We suggest that the Register of Wills would be a much better location to record a Transfer of Death Deed than the clerk’s office.