

Government of the District of Columbia

UNIFORM LAW COMMISSION



February 11, 2025

The Honorable Scott Phillips
House Judiciary Committee
Maryland House of Delegates
Room 100 House Office Building
6 Bladen Street
Annapolis, MD 21401

BY E-MAIL

RE: HB 625, Real Property – Transfer on Death Deed – Establishment

Dear Delegate Phillips:

I am Chair of the District of Columbia Uniform Law Commission and proposed the Uniform Real Property Transfer on Death Act (URPTODA) to the Council of the District of Columbia and testified in support of the Act both for the D.C. Commission and the Executive Branch of the District Government. URPTODA was passed by the Council unanimously on two readings and signed by the Mayor of the District of Columbia and, after laying before Congress, took effect as D.C. Law 19-230 on March 19, 2023. It is codified at D.C. Code § 16-604.01 *et seq.*

I whole-heartedly support the enactment of HB 625, which would enact URPTODA in Maryland. The Act has been in effect in the District for almost 12 years and has not created any problems. It has been endorsed by the District's Office of the Recorder of Deeds and has been implemented by that Office without incident.

Although a couple of practitioners who were members of the D.C. Land Title Association opposed URPTODA, we demonstrated that their concerns with the Act were not well founded. They argued that recordation of a transfer on death ("TOD") deed will cause uncertainty where there are multiple deeds and will cause lenders not to make a loan. However, we explained that there will be no uncertainty. D.C. Code § 19-611(a), specifically addresses the multiple deed situation. Among several inconsistent recorded TOD deeds, a later acknowledged deed revokes an earlier acknowledged deed. Lenders will make loans because their interests are protected by § 19-613(b), which provides that "[a] beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is

subject at the transferor's death." The American Bankers Association had an observer present and participating throughout the drafting of URPTODA and has had no problem with it. Lenders routinely make loans without incident in the states that have this sort of legislation in effect.

With respect to post-reverse mortgage transfers, recording a TOD deed is not a transfer and has no effect whatsoever during the transferor's lifetime. It is effective at death, the same as a will. Moreover, a suspect deed is subject to challenge by interested parties under general principles of fraud, undue influence, or similar grounds, just as any other deed transferring property.

In addition, the practitioners argued that the TOD deed enables fraud upon the elderly. We explained that this is not true. As the witness for AARP's Legal Counsel for the Elderly testified at the hearing in the District, URPTODA would help *prevent* fraud on the elderly. Experience shows that, in states that authorize TOD transfers of real property, this device is used more heavily by professional estate planners than by individuals. Similarly, the TOD deed has more protections built into it than other devices to which a person intent on defrauding might resort. These include the requirements that the property owner making a TOD deed have the same capacity as required to make a will, § 19-604.08, that the TOD deed have all of the essential elements and formalities of a properly recordable *inter vivos* deed, § 19-604.09(a), and that the TOD deed be recorded before the owner's death with the Recorder of Deeds, § 19-604.09(c).

In sum, as reflected in the District's 12 years' experience, enactment of URPTODA has proved beneficial to the residents of the District, especially low-income residents, who cannot afford the costs of estate planning attorneys. None of the concerns expressed by those who opposed the Act have materialized. Therefore, we hope that Maryland will join its neighboring jurisdictions in enacting this important legislation.

Sincerely,

A handwritten signature in blue ink that reads "James C. McKay, Jr." The signature is fluid and cursive, with the first name "James" being the most prominent part.

James C. McKay, Jr.
Chair
D.C. Uniform Law Commission