

WRITTEN TESTIMONY IN SUPPORT OF
REAL PROPERTY – TRANSFER–ON–DEATH DEED – ESTABLISHMENT

Maryland General Assembly
Kirethia Chambers, Student Attorney

I submit this written testimony in support of the bill to establish the Maryland Transfer–on–Death Deed Act. I am a student attorney in the Estate Planning and Heirs’ Property Clinic at Howard University School of Law. The families I represent are the direct beneficiaries of this legislation, elderly homeowners, many of modest means, who want to ensure their homes pass to their children and grandchildren without the cost and complexity the law currently needs from them.

Maryland already allows transfer–on–death designations for motor vehicles, bank accounts, and investment accounts. In each case, the owner retains full control during their lifetime, and the asset passes automatically at death without probate. The family home, typically the most valuable asset a Maryland family will ever own, is the only major asset class without this option. This bill closes that gap.

The only comparable planning tool currently available in Maryland is the life estate deed with powers of alienation. It has the same goal, transferring real property at death outside of probate, but it requires an attorney to work correctly. Under Maryland law, the powers to sell, mortgage, and encumber the property must be explicitly and precisely stated in the deed, or the owner permanently loses control of the property. *See Burke v. Burke*, 204 Md. 637, 642 (1954). Because the consequences of drafting error are so severe, attorney involvement is not optional in practice, it is a necessity. *See Md. Code, Real Property § 3-104(f)(1)(i)*. For families who cannot afford that cost, the life estate deed is not a realistic option.

This bill changes that. The statutory form provided in the Act allows any Maryland homeowner to execute, acknowledge, and record a transfer–on–death deed on their own. The legal protections that no present interest passes to the beneficiary during the owner’s lifetime, that the deed does not affect the owner’s Medicaid eligibility, and that the property is not reachable by the beneficiary’s creditors flow from the statute itself, not from whether the deed was drafted correctly. A family should not need to hire an attorney to access the same planning tool that Maryland already provides for their car and their bank account.

Delegate Phillips’ constituents and Maryland homeowners across the State deserve a straightforward, affordable path to protect their most valuable asset and provide for the people they love. Thirty states have already enacted this protection. Maryland should be next. I respectfully urge the committee to vote in favor of this bill.

