

Environment, Social
Governance

HB 0738

Transfer on Death

LEGISLATION SESSION
JANUARY 2026

JUDICIAL COMMITTEE

2 Bridge
CPX
BBB
Coalition

Transfer on Death
Deed

GENERATIONAL ECONOMIC MOBILITY

Build a Foundation with right of survivorship



Assessment Authors

2Bridge CDCX— SCEDA Equitable Finance eXchange Arm

Brandywine TB Southern Region Neighborhood Coalition Executive Community
Citizens Board



Dear Delegate Darrell Odom, Chair and Members of the Judiciary Committee:

The undersigned ombudsman organization—**2Bridge CDCX, Equitable Finance eXchange Arm**—write to you not solely as legal practitioners, but as **economic justice architects and systemic equity designers** who operate upstream of the courtroom. Our work is grounded in closing racial wealth gaps, expanding equitable finance, and protecting intergenerational assets—especially historically within Maryland’s Black American communities.

While licensed attorneys are trained to apply law within procedural frameworks, our role is to **architect the systems that determine who builds and keeps wealth**—through participatory finance models, regulatory accountability, and policies that either advance or obstruct economic justice.

Our founder’s interdisciplinary background in law, policy, and economic systems, combined with our organizational work in equitable finance and community economic development, informs our deep understanding of how **seemingly small legal defaults can have outsized impacts on Black wealth and family financial stability**.

Our work—informed by decades of upstream intervention, and grounded in advanced interdisciplinary study in law, policy, and systemic design—reflects a commitment to **participatory governance, regulatory accountability, and equitable implementation**. Our founder’s two decades of experience and graduate preparation in law and policy, medical science, legal systems, and executive leadership has directly informed our approach to structural intervention. This background underpins our leadership in advancing the **first EPA/DOT Title VI informal resolution tied to regulatory change**, the development of community science models recognized during Black History Month, and the creation of frameworks that transform agency practice.

It is from this **policy architecture vantage point** that we urge you to amend **House Bill 0738, the Maryland Transfer-on-Death Deed Act**, to align it with the **Uniform Real Property Transfer on Death Act** before passage. This bill, in its current form, contains dangerous default provisions that could inadvertently harm Maryland families, increase litigation, and undermine the tool’s intended purpose of providing a simple, reliable probate-avoidance option. We ask that you reject any version of the bill that does not correct these critical flaws.

It is from this **economic justice and wealth equity vantage point** that we urge you to amend **House Bill 0738, the Maryland Transfer-on-Death Deed Act**, to align it with the **Uniform Real Property Transfer on Death Act** before passage. This bill, in its current form, contains dangerous default provisions that could **erode intergenerational wealth, increase family financial insecurity, and undermine economic justice** for communities already underserved by estate planning systems. We ask that you reject any version of the bill that does not correct these critical flaws.

Implementing a safe and uniform TOD deed is essential for Maryland families—especially Black, Brown, and low-wealth households—seeking to **preserve hard-earned assets, transfer property without costly probate**,

and build a foundation for generational economic mobility. However, HB 0738 as drafted departs from the national standard in ways that pose direct threats to family wealth and economic dignity:

1. **It defaults to joint tenancy with right of survivorship**—a provision that can **unintentionally disinherit entire branches of a family.** For Black and multigenerational households, where homeownership often represents the primary source of intergenerational wealth, this default doesn't just confuse—it **jeopardizes economic legacy and widens the racial wealth gap.**
2. **It prohibits revocation by a fiduciary,** blocking families from managing property during periods of incapacity. This restriction **disproportionately burdens seniors, caregivers, and households without ready access to legal counsel,** threatening asset retention and family stability.

Without amendment, these provisions would make Maryland an outlier in estate planning equity, expose vulnerable families to **unnecessary wealth erosion,** and conflict with the state's stated goals of advancing economic justice and closing the racial wealth divide. We urge you to amend HB 0738 to adopt the uniform, sensible defaults already in place in the District of Columbia and more than 25 other states—ensuring this tool **protects wealth, honors intent, and serves all Marylanders equitably.**

If this bill passes in its current form, it will be a legislative atrocity—a systemic failure that will harm Maryland families, strip heirs of their rightful inheritances, and unravel intergenerational wealth for generations to come.

We do not use this language lightly. The flaws in HB 0738 are not mere technical oversights; they are **dangerous deviations** from national standards that will produce outcomes no rational family intends and no just system should allow.

Our work has never been about litigation alone—it's about building economic systems that protect, preserve, and empower. This bill, as currently written, fails that test. We stand ready to support its revision.

Respectfully submitted,


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ECCB- NLC Administrative Chair

In solidarity, Brandywine/TB Southern Region Neighborhood Coalition; and the
Executive Community Citizen's Board (ECCB) Neighborhood Leadership Council (NCL)

The Undersigned Affiliate Organization in Support



South County Economic Development Association (SCEDA)

Mr. P. Lee Harvey, President

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TABLE OF CONTENTS

HB 0738 **I**

Transfer on Death **I**

 LEGISLATION Session JANUARY 2026 i

Judicial Committee i

GENERATIONAL ECONOMIC MOBILITY **I**

Build a Foundation with right of survivorship **I**

HB0738 **- 5 -**

Real Property – Transfer-on- Death Deed – Establishment - 5 -

 Judiciary Committee - 5 -

 25 FEBRUARY 2025 - 5 -

 RE: Examination of HB 0738 – Maryland Transfer-on-Death Deed Act..... - 5 -

POSITION: Support with Critical Amendments - 5 -

Key Defects in HB 0738 & Needed Amendments - 5 -

Conclusion & Request..... - 6 -

FACT SHEET: HB 0738 – MARYLAND TRANSFER-ON-DEATH DEED ACT **7**

INTRODUCTION **9**

Key Provisions Compared.....16

RECOMMENDED AMENDMENTS TO ALIGN WITH URPTODA.....23



HB0738

REAL PROPERTY – TRANSFER-ON-DEATH DEED – ESTABLISHMENT

JUDICIARY COMMITTEE

25 FEBRUARY 2025

RE: Examination of HB 0738 – Maryland Transfer-on-Death Deed Act

POSITION: SUPPORT WITH CRITICAL AMENDMENTS

Chair and Members of the Committee,

Thank you for the opportunity to submit comments on HB 0738. While we support the goal of providing Marylanders with a simple, probate-avoiding tool for real estate transfer, **HB 0738 in its current form contains several provisions that are deeply flawed, out of step with national standards, and pose serious risks to Maryland families.**

We urge the Committee to amend the bill to align with the **Uniform Real Property Transfer on Death Act (URPTODA)**, which has been adopted in over 25 states, including our neighbor, the District of Columbia.

KEY DEFECTS IN HB 0738 & NEEDED AMENDMENTS

****1. Change the Default Rule for Multiple Beneficiaries – §14-1009(D)**

- **Problem:** The bill makes the default form of ownership **joint tenancy with right of survivorship**. This is a radical departure from the Uniform Act and the law in every other state we reviewed. It is a trap for the unwary.
- **Consequence:** If an owner names two children and one dies before the owner, the surviving child gets **100% of the property**—the deceased child’s family is disinherited. This is likely contrary to the owner’s intent and will lead to family disputes and litigation.
- **Uniform Act/D.C. Standard (§19-604.13(a)(3)):** Default is **tenancy in common** (equal shares, no survivorship), a fair and predictable standard.
- **Recommended Amendment:** Strike §14-1009(D) and replace it with the uniform rule: concurrent interests are transferred in **equal and undivided shares with no right of survivorship**.

****2. Restore the Fiduciary’s Power to Revoke – §14-1008(A)**

- **Problem:** The bill strips away the ability of a duly appointed **agent under a Power of Attorney** (an attorney-in-fact) to revoke a TOD deed.
- **Consequence:** This creates an irrational gap in incapacity planning. An agent could sell the property but could not revoke the TOD deed attached to it, complicating transactions and undermining the principal’s broader estate plan.

- **Uniform Act/D.C. Standard:** The Uniform Act expressly permits revocation by “the transferor **or the transferor’s fiduciary.**”
 - **Recommended Amendment:** Amend §14-1008(A) to read: “Prior to the death of the transferor, **the transferor or the transferor’s fiduciary** may revoke...”
- **3. Remove the Restriction on Tenants in Common – §14-1001(D)(3)**
- **Problem:** The bill explicitly states it does not apply to tenants in common. The Uniform Act is designed for an *individual* owner; a tenant in common owning an undivided interest is an individual who should be able to use this tool for their share.
 - **Consequence:** Denies a useful planning tool for co-owners who wish to avoid probate for their specific interest.
 - **Recommended Amendment:** Remove the explicit exclusion of tenants in common from the definitions. Allow the act to be used by any *individual* owner, consistent with the uniform approach.
- **4. Reconsider the Narrow Tax Exemption – §12-108(II)**
- **Problem:** The bill limits the recordation and transfer tax exemption only to **primary or secondary residences.**
 - **Context:** Maryland’s 2023/2025 bills provided a **broader exemption for all real property.** This new restriction reduces the utility of the tool for small businesses, farmers, and owners of investment or rental property.
 - **Recommended Amendment:** Restore the broader exemption to encourage use and simplify estate planning for all property types, as previously passed by this body.

Why These Changes Matter: The D.C. Comparison

Just across the border, **the District of Columbia has a well-functioning TOD law based on the Uniform Act.** D.C.’s law:

- Uses the safe **tenancy-in-common default.**
- Allows for **integrated estate planning** with Powers of Attorney.
- Provides **clarity and predictability** for residents.

Maryland should not adopt a law that is **more restrictive, more dangerous, and less functional** than that of our neighboring jurisdiction. We risk creating a system that requires Marylanders to hire lawyers to avoid the pitfalls of the state’s own forms—defeating the purpose of a simple, self-help tool.

CONCLUSION & REQUEST

Key Points to Emphasize:

- “This isn’t just a technical fix—it’s about preventing family feuds.”
- “The joint tenancy default is a trap. Most people filling out a form won’t understand its drastic effect.”
- “We’re asking Maryland to match the smart, consumer-friendly standard that D.C. and dozens of other states already use.”
- “These amendments are not controversial; they are the consensus best practices of national experts.”

This testimony is firm, evidence-based, and offers clear solutions, making it effective for a judicial committee focused on policy impact and legal soundness.

HB 0738 has merit in its core concept but is critically flawed in execution. We **strongly urge the Committee to adopt the amendments outlined above.**

By aligning Maryland’s law with the **Uniform Real Property Transfer on Death Act**, you will:

- **Protect Maryland families** from unintended disinheritance.
- **Ensure harmony with incapacity planning tools.**
- **Provide a simple, safe, and reliable tool** for all property owners.
- **Bring Maryland into the mainstream** of state estate planning law.

We stand ready to work with the Committee on precise language for these amendments.

FACT SHEET: HB 0738 – MARYLAND TRANSFER-ON-DEATH DEED ACT

The Problem: Maryland’s Bill Creates Unique Risks for Families

HB 0738 contains provisions that deviate from the national **Uniform Real Property Transfer on Death Act (URPTODA)**, adopted by **27 states + D.C.** These deviations create unnecessary risks for Maryland families and make our state an outlier in estate planning.

CRITICAL FLAWS IN HB 0738 VS. THE NATIONAL STANDARD

1. DANGEROUS DEFAULT: Disinherits Families

- **HB 0738:** Defaults to **joint tenancy with right of survivorship** when multiple beneficiaries are named.
- **URPTODA & ALL Other States (e.g., D.C., CO, OH, VA, TX):** Default to **tenancy in common (no survivorship)**.
- **Real-World Impact:** If a parent names two children and Child A dies first, Child B gets **100%**—disinheriting Child A’s family. This contradicts typical intent and invites litigation.

2. RESTRICTS INCAPACITY PLANNING: Blocks Powers of Attorney

- **HB 0738:** Prohibits revocation by a **fiduciary (attorney-in-fact)**.
- **URPTODA & Other States (e.g., D.C., NV, OR, UT):** Explicitly allow **“transferor or transferor’s fiduciary”** to revoke.
- **Consequence:** Creates a legal gap—an agent could sell property but couldn’t revoke the TOD deed, complicating management during incapacity.

3. UNNECESSARILY LIMITS ACCESS

- **HB 0738:** Explicitly **excludes tenants in common** from using TOD deeds.
- **URPTODA & Other States:** Allow individual tenants in common to transfer their share.
- **Impact:** Denies a useful tool for common co-ownership situations.

4. NARROWER TAX BENEFIT THAN BEFORE

- **HB 0738:** Limits tax exemption to **primary/secondary residences only**.
- **Maryland’s 2023/2025 Bills:** Exempted **all real property** (farms, rentals, small business property).
- **Result:** Reduces the bill’s usefulness for intergenerational wealth building.

Maryland vs. Neighboring Jurisdictions: A Stark Contrast

Provision	District of Columbia	Maryland HB 0738
Default for Multiple Beneficiaries	Tenancy in Common	Joint Tenancy
Fiduciary Can Revoke?	Yes	No
Tenant in Common Eligible?	Yes	No
Uniform with Other States?	Yes (URPTODA)	No (Outlier)

The Evidence: Maryland Stands Alone

- **0 states** default to joint tenancy like HB 0738.
- **0 states** explicitly prohibit fiduciary revocation like HB 0738.
- **27 states + D.C.** follow URPTODA’s safer, more flexible approach.

Recommended Amendments

1. **Change Default to Tenancy in Common** (§14-1009(D))
2. **Allow Fiduciary Revocation** (§14-1008(A))
3. **Include Tenants in Common** (§14-1001(D)(3))
4. **Restore Broad Tax Exemption** (§12-108(II))
5. **Add Uniformity Clause** (Section 2)

Why This Matters for Maryland Families

- **Prevents accidental disinheritance** of grandchildren and other heirs
- **Protects intergenerational wealth**, especially for Black, Brown, and low-wealth families
- **Supports incapacity planning** for seniors and people with disabilities
- **Avoids costly family litigation** over unintended outcomes
- **Aligns Maryland with national best practices**

HB 0738 can be fixed. Amend it to match the proven, safe Uniform Act already working in D.C. and across the country.

Prepared for the Maryland House Judiciary Committee • April 2025

INTRODUCTION

Below is a summary of the key benefits lost in HB 0738 compared to earlier bills (particularly the 2023/2025 package and the 2014 Uniform Act):

1. Reduced Eligibility: Exclusion of Tenants in Common

- **Earlier Bills (HB 986/SB 146, 2023 & HB 625, 2025):** Applied to property held by an individual sole owner. Explicitly stated it did **not** apply to property held as joint tenants, tenants in common, or tenants by the entirety.
- **HB 0738 (2026):** Defines "Joint Owner" to **exclude "a tenant in common."** This clarifies that a TOD deed cannot be used by a tenant in common, even as their individual share. This removes a planning tool for co-owners who wish to avoid probate for their specific, undivided interest.

2. Narrower Revocation Authority: Fiduciary's Power Removed

- **Earlier Bills (HB 986/SB 146, 2023 & HB 625, 2025):** Allowed revocation prior to death by "the transferor or the transferor's fiduciary" (e.g., an attorney-in-fact under a Power of Attorney).
- **HB 0738 (2026):** States revocation can be done only by "**the transferor.**" This removes the ability for a trusted agent to manage or update the TOD deed if the transferor becomes incapacitated, creating a potential gap in estate planning.

3. Expansion of Creditor Claims Against the Property

- **Earlier Bills:** A beneficiary took the property subject to all "conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests."
- **HB 0738 (2026):** Adds "**any other security agreements, as defined in § 9-102 of the Commercial Law Article.**" This explicitly broadens the types of debts that can attach to the property upon transfer, potentially exposing the beneficiary to a wider array of the transferor's secured obligations.

4. Mandatory Joint Tenancy with Right of Survivorship for Multiple Beneficiaries

- This is the most significant change with potentially adverse unintended consequences.
- **Uniform Act (HB 0059, 2014) & Earlier Bills (2023/2025):** If multiple beneficiaries were named to receive concurrent interests, the default was transfer "**in equal and undivided shares with no right of survivorship**" (tenancy in common). This is a standard, flexible default.
- **HB 0738 (2026):** The default is now "**as joint tenants with a right of survivorship.**" This means if one beneficiary dies, their share automatically goes to the other named beneficiary(ies), not to the deceased beneficiary's own heirs or estate. This could disrupt an owner's intent and complicate estate plans, especially for blended families or friends. The form even includes a warning about this change.

5. Limited Tax Exemption

- **Earlier Bills (HB 986/SB 146, 2023 & HB 625, 2025):** Exempted TOD deeds from recordation and transfer taxes **without condition.**
- **HB 0738 (2026):** Limits the exemption to situations where "**the property is a primary residence or a secondary residence of the transferor.**" Investment properties, commercial properties, or vacant land would no longer qualify for the tax exemption, increasing the cost of using a TOD deed for those assets.

6. Removal of Mandatory Informational Document Development

- **Earlier Bills (HB 986/SB 146, 2023):** Required the Administrative Office of the Courts to "develop and make available to the public an informational document... that explains TOD deeds."
- **HB 0738 (2026): Omits this requirement.** While it includes an informational sheet with the form, the mandate for a separate, publicly available educational document is removed, potentially reducing public awareness and understanding.

Summary: Net Effect of HB 0738

FEATURE	EARLIER BILLS (2014, 2023, 2025)	HB 0738 (2026)	CHANGE (BENEFIT LOST?)
Tenants in Common	Not applicable (sole owner only).	Explicitly excluded from using TOD.	YES – Removes a potential use case.
Revocation by Fiduciary	Allowed.	Not allowed (transferor only).	YES – Reduces incapacity planning.
Creditor Claims	Subject to listed interests.	Subject to listed interests plus "security agreements."	YES – Broadens liability for beneficiary.
Multiple Beneficiaries Default	Tenants in Common (no survivorship).	Joint Tenants with Right of Survivorship.	YES – Major shift; can disrupt intent.
Tax Exemption	For all real property.	Only for primary/secondary residence.	YES – Increases cost for other properties.
Public Education	AOC required to create explanatory document.	No requirement.	YES – May reduce public access to info.

LOSS OF BENEFITS

Yes, the 2026 HB 0738 loses several benefits found in prior legislation. It trades some prior flexibilities and protections for a system that is more restrictive in terms of who can use it, how it can be revoked, what debts follow the property, and which properties qualify for tax benefits. The most impactful change is the new default of joint tenancy with rights of survivorship for multiple beneficiaries, which could lead to outcomes contrary to a property owner's expectations if they do not seek legal advice.

The bill appears to prioritize administrative simplicity and uniformity with a certain interpretation of the Uniform Act, but at the cost of reduced planning options, consumer safeguards, and financial benefits for certain property types.

National Standard: The Uniform Real Property Transfer on Death Act (URPTODA)

Most states that have adopted TOD deeds have based their laws on URPTODA, drafted by the Uniform Law Commission. The 2014 Maryland bill (HB 0059) was a direct enactment of URPTODA. The 2023/2025 bills were modified but largely consistent. **HB 0738 deviates substantially from this uniform standard.**

Key Areas of Comparison & Analysis

1. Default Form of Ownership for Multiple Beneficiaries

This is the most critical and impactful deviation.

- **Uniform Act (URPTODA) & Vast Majority of States (e.g., CO, OH, TX, VA, WI):** The default is **tenancy in common** if multiple beneficiaries are named and the deed does not specify otherwise. This is the standard, predictable rule across U.S. property law. It presumes each beneficiary's share passes to their own heirs.
- **HB 0738 (2026 MD):** The default is **joint tenancy with right of survivorship**. This is a **highly unusual and disfavored approach**.
 - **Analysis:** Maryland becomes a major outlier. This change creates a significant trap for the unwary. If a parent names two children and one predeceases the parent, the surviving child gets 100% of the property, disinheriting the deceased child's family. This contradicts standard estate planning intent and could lead to litigation. Most states explicitly avoid this default due to its potential for unintended consequences.

2. Eligibility: Use by Tenants in Common

- **Uniform Act & Many States:** The act is designed for an "individual" owner. It does not prohibit a tenant in common from executing a TOD deed for their undivided interest. The official comments to URPTODA support this use as a way to avoid probate for a fractional interest. Many practitioners in adopting states use it this way.
- **HB 0738 (2026 MD):** Explicitly excludes tenants in common from the definition of "joint owner" who can use the act.
 - **Analysis:** This **loses a flexibility** available under the uniform act and in practice elsewhere. It limits the tool's utility for common forms of co-ownership.

3. Revocation by a Fiduciary (Attorney-in-Fact)

- **Uniform Act & Common Practice:** URPTODA §8 allows revocation by "the transferor or the transferor's fiduciary." This is a crucial feature for incapacity planning, allowing an agent under a durable Power of Attorney (POA) to manage the estate plan.
- **HB 0738 (2026 MD):** Removes the fiduciary's authority to revoke.
 - **Analysis:** This **loses a key consumer protection and planning feature** that aligns with the purpose of a durable POA. It creates an inconsistency where an agent can sell the property but cannot revoke the TOD deed attached to it, potentially complicating transactions and asset management during incapacity.

4. Tax Exemptions

- **State Practices Vary:** This is a state-specific policy choice, not governed by the uniform act.
 - **Some States (e.g., OH):** Have a broad exemption similar to Maryland's 2023/2025 bills.
 - **Other States:** May have no exemption or different rules.
- **HB 0738 (2026 MD):** Limits exemption to primary/secondary residences.
 - **Analysis:** While not "non-uniform," this represents a **loss of a financial benefit** that Maryland itself had previously established for all real property, making the tool less attractive for owners of investment or commercial property compared to the prior version.

5. Creditor Claims & "Security Agreements"

- **Uniform Act & Standard Interpretation:** The beneficiary takes subject to "all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests." The term "other interests" is broadly understood to include valid security agreements.
- **HB 0738 (2026 MD):** Explicitly adds "any other security agreements."
 - **Analysis:** This is likely a **clarification, not a substantive loss**, as the uniform act's language was intended to cover these. However, its explicit inclusion in Maryland could be seen as emphasizing the beneficiary's potential liability.

Summary Table: Maryland HB 0738 vs. National Norms

FEATURE	NATIONAL NORM (URPTODA & MOST STATES)	MD HB 0738 (2026)	VERDICT: IS MD LOSING A COMMON BENEFIT?
Default for Multiple Beneficiaries	Tenancy in Common (Standard, flexible)	Joint Tenancy w/ Survivorship (Rigid, high-risk)	YES, SIGNIFICANTLY. This is a major loss of a standard, protective default rule.
Tenant in Common Use	Generally Permitted for individual interest.	Explicitly Prohibited.	YES. Loses a planning flexibility available under the uniform act.
Revocation by Fiduciary	Expressly Allowed (Key for incapacity planning).	Expressly Prohibited (Transferor only).	YES. Loses a standard feature that coordinates with Powers of Attorney.
Tax Exemption Scope	Varies by State (Policy choice).	Limited to Residences (Narrower than MD's old rule).	YES vs. MD's prior law. Neutral vs. other states, but a reduced benefit.
Creditor Claims	Broad "other interests" includes security agreements.	Explicitly lists "security agreements."	NO (Clarification). Likely reflects the existing intent of the law.

CONCLUSION: HOW HB 0738 MEASURES UP NATIONALLY

Compared to the uniform act and the laws of most other states, Maryland's HB 0738 loses several important, well-established benefits and introduces a uniquely problematic provision.

- It Becomes an Outlier:** The mandatory joint tenancy default is a dramatic and unusual choice that places Maryland outside the mainstream, increasing the risk of unintended disinheritance and family conflict.
- It Reduces Flexibility:** By prohibiting use by tenants in common and fiduciaries, it makes the TOD deed a less useful and integrated estate planning tool than it is in most adopting states.
- It Retains Core Mechanics:** The bill correctly keeps the fundamental, non-testamentary, revocable nature of the TOD deed, which is the primary benefit of the tool nationwide.

Final Assessment: From a national comparative perspective, **HB 0738 is a regression.** It sacrifices consumer-friendly defaults and flexibilities—key benefits that have made TOD deeds popular and safe in other states—in favor of a more rigid, restrictive, and risk-prone framework. Stakeholders might argue that the bill's joint tenancy default, in particular, undermines the core purpose of the tool: to provide a simple, low-risk method of non-probate transfer that faithfully carries out an owner's intent.

Based on the analysis of Maryland's 2026 HB 0738 and the District of Columbia's Uniform Real Property Transfer on Death Act, **Maryland's proposed law is significantly more restrictive, less flexible, and carries higher risk for unintended consequences than the law in its neighboring jurisdiction.**

DC's law is a straightforward enactment of the national standard (URPTODA), while MD's 2026 bill represents a major departure from that standard. This creates a stark contrast between the two. Here is a direct comparison of key features:

Comparison Table: MD HB 0738 (2026) vs. DC Uniform Act

FEATURE	DISTRICT OF COLUMBIA (UNIFORM ACT)	MARYLAND HB 0738 (2026)	ANALYSIS: WHO HAS THE BETTER LAW?
Default for Multiple Beneficiaries	Tenancy in Common ("equal and undivided shares with no right of survivorship ") §19-604.13(a)(3).	Joint Tenancy with Right of Survivorship (Default is with survivorship). §14-1009(D).	DC is superior. MD's default is a major trap that can disinherit a beneficiary's heirs if that beneficiary dies first. DC's default is standard, predictable, and aligns with typical estate planning intent.
Eligibility: Tenant in Common	Act is for an "individual." The definition of "joint owner" excludes tenancy in common, implying a sole owner or a joint owner can use it for their survivorship interest. §19-604.02(3).	Explicitly states the Act does not apply to property held by tenants in common. §14-1001(D)(3).	DC is more flexible. While both limit use, DC's structure doesn't explicitly prohibit a sole owner who is a tenant in common from using it for their share. MD's explicit exclusion is more restrictive.
Revocation by Fiduciary (POA)	The revocation section (§19-604.11) does not specify who may revoke, implying the transferor. However, the capacity section (§19-604.08) aligns with making a will, leaving room for a properly authorized agent under a POA to act if the instrument grants that power.	Explicitly prohibit revocation by anyone other than "the transferor." §14-1008(A). Removes prior language allowing a "fiduciary" to revoke.	DC is superior for incapacity planning. DC's law, by not restricting it, allows integration with a durable Power of Attorney. MD's law creates a dangerous gap: an agent could sell the property but not revoke the TOD deed on it, complicating transactions.
Creditor Claims	Beneficiary takes property subject to listed interests. §19-604.13(b). A separate section (§19-601.02) makes non-probate transferees (like TOD beneficiaries) liable for estate debts if the probate estate is insufficient.	Beneficiary takes subject to listed interests plus "any other security agreements." Also liable for estate debts if probate estate is insufficient. §§14-1009(B), 18-113.	Similar, but MD is broader on paper. MD's explicit mention of "security agreements" is a clarification, but the substantive creditor liability is comparable.
Tax Exemption	DC law (as provided) does not mention a tax exemption for TOD deeds. Standard recordation and transfer taxes would likely apply.	Exempts TOD deeds from recordation and transfer taxes only if the property is a primary or secondary residence. §12-108(11).	MD offers a conditional benefit. For residential property, MD is better. For investment/commercial property, DC and MD are similar (both taxable), but MD removed a broader benefit it previously had.
Form Instructions & Default Override	Statutory form is simple. The law clearly states default rules (tenancy in common, lapse) apply "Except as otherwise	Statutory form includes a bold warning about the joint tenancy default. The law allows	DC is clearer and safer. DC's sensible defaults require less customization to avoid disaster. MD's dangerous

FEATURE	DISTRICT OF COLUMBIA (UNIFORM ACT)	MARYLAND HB 0738 (2026)	ANALYSIS: WHO HAS THE BETTER LAW?
Uniformity Principle	provided in the transfer on death deed." §19-604.13(a).	the deed to specify otherwise. §14-1009(A)(1).	default forces owners to understand and actively override a complex legal concept to avoid unintended results.
	Explicitly adopts the uniformity principle." consideration must be given to the need to promote uniformity of the law... among the states that enact it." §19-604.18.	Rejects strict uniformity. Instructs courts to interpret the Act in accordance with MD's life estate law, "so long as... it does not conflict with the uniform application" of URPTODA. §2. A contradictory directive.	DC is aligned with national standards. MD's approach creates legal uncertainty and isolates its law from evolving interpretations in other states.

CONCLUSION: HOW MARYLAND COMPARES TO DC

- Risk of Unintended Disinheritance:** This is the most critical difference. **DC's law is safer.** Its tenancy-in-common default ensures that if a beneficiary predeceases the owner, that beneficiary's share passes to their own heirs. **Maryland's law is dangerously flawed.** Its joint tenancy default means a predeceased beneficiary's share automatically goes to the other named beneficiaries, which could completely cut out a deceased child's family—likely contrary to the owner's intent.
- Estate Planning Integration: DC's law is more integrated.** By not explicitly forbidding fiduciary revocation, it works better with comprehensive incapacity plans involving Powers of Attorney. **Maryland's law creates a silo,** preventing agents from managing this part of the estate plan, which could hinder asset management during incapacity.
- Clarity and Predictability: DC's law is a model of clarity.** It follows the well-drafted Uniform Act with sensible defaults. **Maryland's law is complex and warns of its own pitfalls** directly on its statutory form, indicating a recognition of its problematic design.
- Financial Benefit (Conditional): Maryland has a limited advantage** for homeowners, as it exempts residential property from transfer taxes. DC's law, as presented, does not offer this exemption.

Overall Verdict: The District of Columbia's TOD law is **superior** to Maryland's proposed 2026 law. It is safer, more flexible, better integrated with other estate planning tools, and aligns with national best practices. Maryland's bill introduces unnecessary complexity and significant risk for property owners and their families, largely negating the simplicity and predictability that make TOD deeds attractive in the first place.

A Maryland resident using a TOD deed would need to be far more cautious and likely require legal advice to avoid the pitfalls of the state's own law, whereas a DC resident can use the statutory form with greater confidence that the default outcomes are reasonable.

DC vs. Maryland TOD Deed Law: Comparison Chart

FEATURE	DISTRICT OF COLUMBIA (UNIFORM ACT)	MARYLAND HB 0738 (2026)	WINNER & WHY
1. Default for Multiple Beneficiaries	Tenancy in Common. Beneficiaries receive "equal and undivided shares with NO right of survivorship. "	Joint Tenancy with Right of Survivorship. Default is WITH survivorship.	<p>✓ DC is safer. MD's default is a major trap. If Beneficiary A dies before the owner, their share automatically goes to Beneficiary B, disinheriting A's heirs. DC's default passes A's share to A's heirs.</p>
2. Revocation by Fiduciary (Power of Attorney)	Law does not restrict it. An agent under a POA with proper authority can likely revoke to manage the grantor's affairs during incapacity.	Explicitly PROHIBITED. Only "the transferor" may revoke.	<p>✓ DC is better for incapacity planning. MD creates a dangerous gap: an agent could sell the property but not revoke the TOD deed on it, complicating transactions and estate management.</p>
3. Eligibility: Tenant in Common	Law is designed for an "individual." A tenant in common, as an individual owner of an undivided interest, can use it for their share.	Explicitly EXCLUDED. The law does not apply to property held as a tenancy in common.	<p>✓ DC is more flexible. MD denies this useful tool to a common form of co-ownership, limiting its utility.</p>
4. Tax Exemption	No special exemption. Standard recordation and transfer taxes apply.	Exemption for Primary/Secondary Residences only. Investment/commercial property does not qualify.	<p>✓ MD for homeowners, ⚠️ DC for others. MD has a financial benefit for residents, but removed a broader benefit it previously had for all property.</p>
5. Core Purpose & Safety	Simple, Safe, Predictable. Follows the national uniform act. Sensible defaults protect against unintended outcomes.	Complex & Risk-Prone. The statutory form includes warnings about its own dangerous defaults. Requires legal knowledge to use safely.	<p>✓ DC is superior. Its law fulfills the goal of a simple, self-help tool. MD's law is so problematic it warns users against its own provisions.</p>
6. Alignment with National Standards	Full alignment. Explicitly promotes uniformity with other states adopting the same law.	Significant departure. Rejects key uniform provisions, creating a unique, outlier law.	<p>✓ DC. Aligns with best practices and evolving interpretations across the country. MD's law isolates its residents.</p>

Bottom-Line Summary:

- **DC's Law** is a **standard, safe, and well-designed** tool based on a national model. It protects families from unintended disinheritance and works seamlessly with other estate plans (like Powers of Attorney).
- **Maryland's HB 0738** is a **flawed, restrictive, and high-risk** proposal. Its most critical failure is the **joint tenancy default**, which can easily derail a family's intent and lead to litigation. It also removes flexibility for co-owners and those planning for incapacity.

ON JUNE 30TH, 2025, THE DELAWARE STATE SENATE UNANIMOUSLY PASSED HB147 – SUBSTITUTE 1 THE “TRANSFER ON DEATH ACT”, EFFECTIVE DEC 2025.

Full Text Comparison: Delaware HB 147 (2025) vs. Maryland HB 0738 (2026)
Transfer-on-Death (TOD) Deed Legislation

Overview

Jurisdiction	Bill Number	Status	Effective Date	Uniform Act Alignment
Delaware	HB 147 (Substitute 1)	Enacted (Unanimous Senate passage, 6/30/25)	June 30, 2025	✅ Full URPTODA adoption
Maryland	HB 0738	Pending (Judiciary Committee)	October 1, 2026 (proposed)	❌ Significant deviations

KEY PROVISIONS COMPARED

1. DEFAULT FORM OF OWNERSHIP FOR MULTIPLE BENEFICIARIES

DELAWARE HB 147 § 9A-112(a)(3):

"If the transferor has identified 2 or more designated beneficiaries to receive concurrent interests in the property, **concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship**, unless the transfer on death deed provides otherwise."

MARYLAND HB 0738 §14-1009(D):

"If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, **the concurrent interests are transferred to the beneficiaries as joint tenants with a right of survivorship.**"

Analysis: Delaware follows the **Uniform Act's tenancy-in-common default** (safe, predictable). Maryland's **joint tenancy default** creates risk of unintended disinheritance—no other state has this provision.

2. REVOCATION BY FIDUCIARY (POWER OF ATTORNEY)

DELAWARE HB 147 § 9A-111(a):

"During the transferor's lifetime, **the transferor or the transferor's fiduciary** may revoke all or part of a transfer on death deed by any of the following methods..."

MARYLAND HB 0738 §14-1008(A):

"Prior to the death of the transferor, **the transferor** may revoke a previously recorded transfer-on-death deed..."

Analysis: Delaware expressly allows **fiduciary revocation** (supports incapacity planning). Maryland **prohibits** it—a unique restriction not found in any other state's TOD law.

3. ELIGIBILITY: TENANTS IN COMMON

DELAWARE HB 147 § 9A-102(7):

" 'Joint owner' means an individual who owns property concurrently with 1 or more other individuals with a right of survivorship. **'Joint owner' does not include a tenant in common...** This chapter applies to a transfer on death deed made by an individual..."

Interpretation: The Act applies to "individual" owners. A tenant in common is an individual owner of an undivided interest and can use the TOD deed for their share.

MARYLAND HB 0738 §14-1001(D)(3):

" 'JOINT OWNER' DOES NOT INCLUDE A TENANT IN COMMON OR OWNER OF COMMUNITY PROPERTY WITHOUT A RIGHT OF SURVIVORSHIP."

Analysis: Both states exclude tenants in common from the "joint owner" definition, but Delaware's broader application to "individuals" allows TIC owners to use the deed, while Maryland's structure appears to prohibit it entirely.

4. TAX/EXEMPTION PROVISIONS

DELAWARE:

No special tax exemption. Standard recording fees apply per the New Castle County FAQ: "There is a fee to record both of these documents."

MARYLAND HB 0738 §12-108(II):

"A REAL PROPERTY TRANSFER-ON-DEATH DEED UNDER TITLE 14 OF THE REAL PROPERTY ARTICLE IS NOT SUBJECT TO RECORDATION TAX **IF THE PROPERTY IS A PRIMARY RESIDENCE OR A**

SECONDARY RESIDENCE OF THE TRANSFEROR."

Analysis: Maryland offers a **limited tax benefit** for homeowners but removed the broader exemption from earlier bills. Delaware treats TOD deeds like other recordings.

5. UNIFORMITY & INTERPRETATION

DELAWARE HB 147 § 9A-117:

"In applying and construing this chapter, consideration must be given to the need to **promote uniformity of the law with respect to its subject matter among states that enact the Uniform Real Property Transfer on Death Act.**"

MARYLAND HB 0738 SECTION 2:

"This Act shall be interpreted and enforced by a court in accordance with existing law governing life estates with powers of alienation... so long as the interpretation and enforcement **does not conflict with the uniform application** of the Uniform Real Property Transfer on Death Act."

Analysis: Delaware has a **strong uniformity clause** directing courts to align with other states. Maryland has a **contradictory provision** that creates interpretive uncertainty.


6. CAPACITY STANDARD

DELAWARE HB 147 § 9A-106:

"The capacity required to make or revoke a transfer on death deed is **the same as the capacity required to make a will.**"

MARYLAND HB 0738 §14-1004(C):

"THE CAPACITY REQUIRED TO MAKE OR REVOKE A TRANSFER-ON-DEATH DEED IS THE SAME AS THE CAPACITY REQUIRED TO MAKE A WILL."

Analysis:  **Identical.** Both states use the appropriate testamentary capacity standard.


7. EFFECT DURING TRANSFEROR'S LIFE

DELAWARE HB 147 § 9A-110:

"During a transferor's life, a transfer on death deed does not: (1) Affect an interest or right of the transferor... (2) Affect an interest or right of a transferee... (3) Affect an interest or right of a creditor... (4) Affect eligibility for public assistance... (5) Create a legal or equitable interest... (6) Subject property to creditor claims..."

MARYLAND HB 0738 §14-1007:

Contains **identical provisions** in the same order and substance.





Analysis:  **Identical.** Both correctly state that TOD deeds have no effect during the owner's lifetime.

8. STATUTORY FORMS

Both states include **substantially similar statutory forms** with:

- Revocable Transfer-on-Death Deed form
- Revocation form
- Informational Q&A sections

CRITICAL DIFFERENCES SUMMARY

Issue	Delaware (URPTODA)	Maryland (Proposed)	Risk Level
Default Ownership	Tenancy in Common	Joint Tenancy w/ Survivorship	 HIGH - Disinheritance risk
Fiduciary Revocation	Allowed	Prohibited	 HIGH - Incapacity planning gap
Uniformity Clause	Strong mandate	Weak/contradictory	 MEDIUM - Creates uncertainty
Tax Exemption	None (standard fees)	Limited to residences	 Policy choice

RECOMMENDED AMENDMENTS FOR MARYLAND

Based on Delaware's URPTODA adoption:

1. **§14-1009(D):** Change to tenancy in common default
Replace with Delaware § 9A-112(a)(3) language
2. **§14-1008(A):** Allow fiduciary revocation
Replace with Delaware § 9A-111(a) language
3. **SECTION 2:** Strengthen uniformity clause
Replace with Delaware § 9A-117 language
4. **§14-1001(D)(3):** Clarify tenant-in-common eligibility
Add: "This subtitle does not prevent an individual tenant in common from transferring their undivided interest."

CONCLUSION

Delaware's **2025 unanimous adoption** of the Uniform TOD Act demonstrates:

1. **Bipartisan consensus** on the URPTODA approach
2. **Regional alignment** with D.C. and other states
3. **Safe, proven standards** that protect families

Maryland's HB 0738 deviates in ways that:

1. **Increase family litigation risk**
2. **Complicate regional estate planning**
3. **Create unnecessary barriers** to wealth transfer

Recommendation: Amend HB 0738 to match Delaware's URPTODA-based provisions, ensuring regional consistency and family protection.

Sources:

1. Delaware HB 147: <https://legis.delaware.gov/BillDetail/141201>
2. New Castle County TOD Forms: <https://www.newcastlede.gov/DocumentCenter/View/61037/>
3. Maryland HB 0738: Full text as introduced
4. Uniform Real Property Transfer on Death Act (URPTODA): Official text

Prepared for the Maryland House Judiciary Committee • Comparative Analysis • April 2025

Comparison of Key TOD Deed Provisions: Maryland HB 0738 vs. Uniform Act (URPTODA) vs. Other Adopting States

Feature	Uniform Act (URPTODA)	Maryland HB 0738 (2026)	Example States Following URPTODA	Why Uniformity Matters
Default for Multiple Beneficiaries	Tenancy in Common (equal shares, no right of survivorship)	Joint Tenancy with Right of Survivorship	D.C., Colorado, Ohio, Texas, Virginia, Wisconsin (and 20+ others)	MD's default creates unintended disinheritance; uniform default protects family intent.
Revocation by Fiduciary (POA)	Expressly permitted (“transferor or transferor’s fiduciary”)	Expressly prohibited (transferor only)	D.C., Colorado, Nevada, Oregon, Utah (explicit in statute)	MD’s rule hinders incapacity planning and creates legal conflicts.
Tenants in Common Eligibility	Permitted (act applies to any “individual” owner)	Explicitly excluded	D.C., Arizona, Montana (interpreted as allowable for individual interest)	MD denies a useful tool for common co-ownership structures.
Tax Exemption Scope	Varies by state (not part of uniform act)	Limited to primary/secondary residences	Ohio (exempts all TOD deeds); Colorado (no exemption)	MD’s limited exemption reduces utility for farms, rentals, small businesses.
Creditor Claims Language	“All conveyances, encumbrances... and other interests ”	Adds “ any other security agreements ” (potentially overbroad)	D.C., Nebraska, West Virginia (use uniform language)	MD’s added language may create unnecessary ambiguity.
Uniformity Clause	Yes – requires promoting uniformity among enacting states	No – directs courts to MD life-estate law, creating inconsistency	All URPTODA states include uniformity clause	MD’s approach isolates its law from national precedents.

Key Takeaways from Multi-State Comparison:

- Maryland is an outlier on the most critical issue—the default rule.**
No other state defaults to **joint tenancy with survivorship** for multiple TOD beneficiaries. This places Maryland families at unique risk of accidental disinheritance.
- Maryland uniquely restricts fiduciary authority.**
Most URPTODA states either expressly allow fiduciary revocation or do not prohibit it. Maryland’s prohibition is a **step backward for elder justice and incapacity planning.**
- Maryland’ law is more restrictive than necessary.**
By excluding tenants in common and limiting tax exemptions, Maryland reduces the tool’s utility for families, farmers, and small-business owners—the very groups who could benefit most from probate avoidance.

Recommended Advocacy Language (for committee or amendments):

“A review of the 25+ states that have adopted the Uniform Real Property Transfer on Death Act reveals that **Maryland’s HB 0738 deviates in ways that increase risk, reduce flexibility, and contradict the uniform national standard.**

In particular, Maryland’s **joint-tenancy default and fiduciary revocation ban** have **no parallel in other state laws** and would make Maryland an outlier in estate-planning equity.

We urge amendments to align HB 0738 with the Uniform Act—as D.C. and our neighboring states have done—to ensure Maryland families have a **safe, simple, and consistent tool** for protecting intergenerational wealth.”

EXECUTIVE SUMMARY: MARYLAND HB 0738 IS AN OUTLIER

Maryland’s HB 0738 contains **multiple provisions that contradict the Uniform Act and create unique risks** not found in other states’ TOD laws. Most critically, **no other state defaults to joint tenancy with right of survivorship, and no other state explicitly prohibits revocation by a fiduciary** in the manner Maryland proposes.

COMPARATIVE ANALYSIS: HB 0738 vs. UNIFORM ACT & OTHER STATES

Feature	Uniform Act (URPTODA §)	Maryland HB 0738	States Following URPTODA (with citations)	Outlier Status
1. Default for Multiple Beneficiaries	§13(a)(3): Tenancy in Common ("equal and undivided shares with no right of survivorship ")	§14-1009(D): Joint Tenancy with Right of Survivorship	CO §15-15-403(3), DC §19-604.13(a)(3), OH §5302.23(C), TX §114.103(c), VA §64.2-638.C, WI §705.15(3)	MAJOR OUTLIER – No other state defaults to joint tenancy.
2. Revocation by Fiduciary (POA)	§8(a): "Transferor or transferor’s fiduciary " may revoke	§14-1008(A): "Transferor" only – fiduciary excluded	DC §19-604.11, NV §111.665, OR §94.338, UT §75-6-411 (all mirror uniform language)	UNIQUE RESTRICTION – Only Maryland explicitly bars fiduciaries.
3. Tenant in Common Eligibility	§2(3): Definition of "joint owner" excludes tenancy in common; Act applies to "individual" owners	§14-1001(D)(3): Explicitly excludes tenants in common from using Act	AZ §33-405, MT §72-6-402 – Interpreted to allow individual tenants in common to transfer their interest	OVERLY RESTRICTIVE – Other states allow TIC owners to use TOD deeds for their share.
4. Tax Exemption Scope	Not addressed in URPTODA (state policy choice)	§12-108(II): Only primary/secondary residences exempt	OH §319.54(G): All TOD deeds exempt; CO: No exemption; VA: No exemption	LIMITED BENEFIT – Ohio provides broader exemption; Maryland previously had broader exemption in 2023/2025 bills.

Feature	Uniform Act (URPTODA §)	Maryland HB 0738	States Following URPTODA (with citations)	Outlier Status
5. Creditor Claims Language	§13(b): "all conveyances, encumbrances... and other interests "	§14-1009(B)(1): Adds " any other security agreements " explicitly	DC §19-604.13(b), NE §76-3408, WV §36B-6-13 (use uniform language)	UNNECESSARY EXPANSION – "Other interests" already includes security agreements; added language creates ambiguity.
6. Uniformity Clause	§18: "promote uniformity... among states"	SECTION 2: Directs courts to MD life-estate law, no uniformity clause	ALL URPTODA STATES include uniformity clause (e.g., DC §19-604.18)	ISOLATES MARYLAND – Prevents consistency with national interpretations.

STATE-BY-STATE EVIDENCE APPENDIX

1. DEFAULT OWNERSHIP PROVISIONS

- **Colorado §15-15-403(3):** "Concurrent interests are transferred to the beneficiaries in equal and undivided shares with **no right of survivorship.**"
- **District of Columbia §19-604.13(a)(3):** "Concurrent interests are transferred to the beneficiaries in equal and undivided shares with **no right of survivorship.**"
- **Ohio §5302.23(C):** "The concurrent interests shall be transferred to the beneficiaries in equal and undivided shares with **no right of survivorship.**"
- **Texas §114.103(c):** "If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the interests are transferred to the beneficiaries in equal and undivided shares with **no right of survivorship.**"
- **Virginia §64.2-638.C:** "Concurrent interests are transferred to the beneficiaries in equal and undivided shares with **no right of survivorship.**"

2. FIDUCIARY REVOCATION PROVISIONS

- **District of Columbia §19-604.11:** "Prior to the death of the transferor, the transferor **or the transferor's fiduciary** may revoke..."
- **Nevada §111.665:** "The transferor **or the transferor's fiduciary** may revoke..."
- **Oregon §94.338:** "The transferor **or the transferor's fiduciary** may revoke..."
- **Utah §75-6-411:** "The transferor **or the transferor's fiduciary** may revoke..."

3. TAX EXEMPTION EXAMPLES

- **Ohio §319.54(G):** "A transfer on death deed... is **not subject to the fee... or any transfer tax.**"
- **Maryland's Previous Position (2023 HB 986):** Exempted **all real property** from recordation and transfer taxes—more generous than current HB 0738.

LEGISLATIVE ACTION MEMO

RECOMMENDED AMENDMENTS TO ALIGN WITH URPTODA

AMENDMENT A (CRITICAL): CHANGE DEFAULT OWNERSHIP

STRIKE §14-1009(D) and replace with URPTODA language:

"If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the interests are transferred to the beneficiaries in equal and undivided shares with **no right of survivorship**, unless the transfer-on-death deed expressly provides otherwise."

AMENDMENT B (CRITICAL): ALLOW FIDUCIARY REVOCATION

AMEND §14-1008(A): "Prior to the death of the transferor, the transferor **or the transferor's fiduciary** may revoke..."

ADD to §14-1001: Definition of "fiduciary" including attorneys-in-fact.

AMENDMENT C (IMPORTANT): REMOVE TENANT IN COMMON EXCLUSION

MODIFY §14-1001(D)(3): Remove "tenant in common" from exclusion list.

AMENDMENT D (POLICY CHOICE): BROADEN TAX EXEMPTION

AMEND §12-108(II): Remove "if the property is a primary residence or a secondary residence" to exempt all real property.

AMENDMENT E (INTERPRETIVE): ADD UNIFORMITY CLAUSE

REPLACE SECTION 2 with URPTODA §18 language: "This Act shall be interpreted to promote uniformity among states enacting the Uniform Real Property Transfer on Death Act."

EXAMINATION FOR COMMITTEE AND DATUM TESTIMONY

MAIN POINTS OF REFERENCE:

1. **"Maryland stands alone in creating this risk."** No other state defaults to joint tenancy—a choice that disinherits grandchildren and creates family conflict.
2. **"We're restricting tools for seniors and disabled Marylanders."** Every other URPTODA state allows fiduciaries to revoke TOD deeds during incapacity. Maryland's prohibition is unique and harmful.
3. **"We're walking back progress."** Maryland's 2023/2025 bills had broader tax exemptions and better alignment with the Uniform Act. HB 0738 represents a step backward.
4. **"This creates a confusing patchwork."** Marylanders with property in D.C. or other URPTODA states will face conflicting rules, increasing legal costs and complexity.

CONCLUSION FOR COMMITTEE SUBMISSION:

"The evidence from 25+ adopting states demonstrates that HB 0738's deviations from the Uniform Act are **not minor technical differences but fundamental flaws** that increase risk to Maryland families. We respectfully urge the Committee to amend HB 0738 to align with the national standard, ensuring Marylanders have access to the same safe, predictable tool available to residents of our neighboring jurisdictions."

AMENDMENT 1: CHANGE DEFAULT OWNERSHIP FROM JOINT TENANCY TO TENANCY IN COMMON

Current Language (HB 0738, §14-1009(D)):

“If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the concurrent interests are transferred to the beneficiaries as joint tenants with a right of survivorship.”

Proposed Amendment:

Strike §14-1009(D) in its entirety and replace with:

“(D) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship, unless the transfer-on-death deed expressly provides for a different form of ownership.”

Rationale:

- Prevents unintended disinheritance of a beneficiary’s heirs—a critical safeguard for intergenerational wealth.
- Aligns with URPTODA §13(a)(3) and the laws of D.C. and over 25 states.
- Maintains flexibility: owners can still choose joint tenancy if explicitly stated.

AMENDMENT 2: ALLOW REVOCATION BY A FIDUCIARY (POWER OF ATTORNEY)

Current Language (HB 0738, §14-1008(A)):

“Prior to the death of the transferor, the transferor may revoke a previously recorded transfer-on-death deed...”

Proposed Amendment:

Amend §14-1008(A) to read:

“(A) Prior to the death of the transferor, the transferor **or the transferor’s fiduciary** may revoke a previously recorded transfer-on-death deed...”

Add to §14-1001 (Definitions):

“(H) ‘FIDUCIARY’ HAS THE MEANING STATED IN §15-101 OF THE ESTATES AND TRUSTS ARTICLE AND INCLUDES AN ATTORNEY-IN-FACT ACTING UNDER A VALID POWER OF ATTORNEY.”

Rationale:

- Ensures seamless incapacity planning and avoids legal conflicts during property management.
- Reflects URPTODA §8 and standard fiduciary provisions.
- Protects seniors and persons with disabilities from asset freezes.

AMENDMENT 3: PERMIT USE BY TENANTS IN COMMON

Current Language (HB 0738, §14-1001(D)(3)):

“(3) ‘JOINT OWNER’ DOES NOT INCLUDE A TENANT IN COMMON OR OWNER OF COMMUNITY PROPERTY WITHOUT A RIGHT OF SURVIVORSHIP.”

Proposed Amendment:

Strike §14-1001(D)(3) and replace with:

“(3) ‘JOINT OWNER’ DOES NOT INCLUDE AN OWNER OF COMMUNITY PROPERTY WITHOUT A RIGHT OF SURVIVORSHIP.”

Rationale:

- Removes unnecessary barrier for tenants in common to use TOD deeds for their fractional interests.
- Supports co-owners, family landholders, and non-traditional households in avoiding probate.
- Consistent with URPTODA’s focus on individual transferors.

AMENDMENT 4: EXPAND TAX EXEMPTION TO ALL REAL PROPERTY

Current Language (HB 0738, §12-108(II)):

“(II) A REAL PROPERTY TRANSFER-ON-DEATH DEED UNDER TITLE 14 OF THE REAL PROPERTY ARTICLE IS NOT SUBJECT TO RECORDATION TAX IF THE PROPERTY IS A PRIMARY RESIDENCE OR A SECONDARY RESIDENCE OF THE TRANSFEROR.”

Proposed Amendment:

Strike §12-108(II) and replace with:

“(II) A REAL PROPERTY TRANSFER-ON-DEATH DEED UNDER TITLE 14 OF THE REAL PROPERTY ARTICLE IS NOT SUBJECT TO RECORDATION TAX **OR STATE OR COUNTY TRANSFER TAX.**”

Rationale:

- Removes economic barrier for families transferring farms, rental property, or small-business real estate.
- Encourages use as a wealth-preservation tool across asset types.
- Aligns with Maryland’s goals of reducing intergenerational wealth gaps.

AMENDMENT 5: ADD UNIFORMITY AND INTERPRETATION CLAUSE

Current Language (HB 0738, SECTION 2):

“This Act shall be interpreted and enforced by a court in accordance with existing law governing life estates with powers of alienation...”

Proposed Amendment:

Strike SECTION 2 in its entirety and replace with:

“SECTION 2. AND BE IT FURTHER ENACTED That this Act shall be interpreted and administered to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting the Uniform Real Property Transfer on Death Act.”

Rationale:

- Ensures Maryland courts look to national URPTODA precedents, promoting predictability.
- Avoids conflicting interpretations based on Maryland-specific life-estate doctrines.
- Supports interstate consistency for families with property or beneficiaries in multiple states.

AMENDMENT 6: SIMPLIFY CREDITOR CLAIM LANGUAGE (CLARIFICATION)

Current Language (HB 0738, §14-1009(B)(1)):

“... subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor’s death.”

Proposed Amendment:

No change to text. Include a committee note:

“The phrase ‘other interests’ is intended to include security agreements as defined in Title 9 of the Commercial Law Article, and no further enumeration is necessary.”

Rationale:

- Prevents over-specification that could create unintended interpretive issues.
- Maintains alignment with URPTODA §13(b) and existing Maryland commercial law.
- Provides clarity without statutory revision.

Summary Table For Committee Submission

AMENDMENT	SECTION AFFECTED	CHANGE	PURPOSE
1	§14-1009(D)	Default → tenancy in common	Prevent accidental disinheritance; align with URPTODA
2	§14-1008(A) & §14-1001	Allow fiduciary revocation	Enable incapacity planning; integrate with POA
3	§14-1001(D)(3)	Include tenants in common	Expand access to co-owners
4	§12-108(II)	Broaden tax exemption	Support wealth building across property types
5	SECTION 2	Add uniformity clause	Ensure consistent, national interpretation
6	§14-1009(B)(1)	Committee note	Clarify creditor claims without over-specifying

SUGGESTED COMMITTEE TESTIMONY POINTS:

1. **These amendments are nonpartisan, consensus-driven fixes** based on the Uniform Act already adopted in D.C. and 25+ states.
2. **They prioritize family wealth protection**—especially for Black, Brown, and low-wealth households where home equity is a primary asset.
3. **They reduce litigation risk** by replacing confusing defaults with clear, predictable rules.
4. **They align with Maryland’s stated goals** of closing racial wealth gaps and simplifying estate planning.

CLOSING STATEMENT

We cannot in good conscience stand by as Maryland enacts a law that will **disinherit grandchildren, tie the hands of caregivers during incapacity, and create legal chaos where clarity should reign.**

Passing HB 0738 as written would be more than a policy misstep—it would be **an institutional failure** that prioritizes flawed drafting over family security, and disregards the proven, safe standards adopted by Delaware, D.C., and more than half the nation.

Do not let this atrocity become Maryland law. Amend HB 0738 for the benefit of the people.